

9 December 2022

Committee Secretariat
Social Services and Community Committee
Select Committee Services
Parliament Buildings
WELLINGTON 6160

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Charities Amendment Bill

Introduction

1. Thank you for the opportunity to submit our comments on the Charities Amendment Bill (the 'Bill'). The External Reporting Board (XRFB) is the independent Crown entity responsible for developing and issuing financial reporting, auditing and assurance, and climate standards in Aotearoa New Zealand. For further information on the XRFB, please refer to **Appendix A**.
2. Registered charities play a critical role in supporting their communities across New Zealand and we welcome the Bill as an important part of ensuring they continue to do so. We support the Bill's objective to enabling simpler financial reporting from small charities to reduce the compliance burden while ensuring sufficient transparency is retained for interested parties and the public.¹
3. Our concerns relate only to clause 19 of the Bill, which provides the responsible Minister and the Chief Executive of Internal Affairs with considerable discretion to exempt smaller charitable entities from preparing financial statements in accordance with standards issued by the XRFB. It is unprecedented for Parliament to delegate such a power to the Government in this context. Parliament defines financial reporting entities under all other enactments that impose financial reporting obligations.
4. The exemption powers proposed in clause 19 are Henry VIII clauses. Our view is that they are inconsistent with the guidance provided on Henry VIII clauses in Part 15.1 of the Legislation Design and Advisory Committee's *Legislation Guidelines*.
5. We recommend removing the power for the Minister and Chief Executive to make exemptions from the Bill. If the Committee decides that some small charitable entities should no longer be required to comply with XRFB standards, then the Committee should add bright line rules in the reported-back version of the Bill.

¹ Per the [explanatory note to the Bill](#)



Background

6. Approximately 50 Acts of Parliament, including the Charities Act 2005, require individual entities and classes of entity to prepare financial statements in accordance with applicable accounting standards issued by the XRB.
7. Our role as an independent Crown entity is to determine the nature and extent of information that entities across various sectors and of differing sizes must disclose in order to discharge their accountabilities. We have tiers of reporting to account for the varying capabilities that different reporting entities have based on their size and whether they are for-profit or not-for-profit entities.
8. The XRB has developed four tiers of reporting for registered charities. Tier 4 is for entities with operating payments of less than \$140,000 per year. To be appropriate for these entities the Tier 4 Standard requires simplified cash-based accounting rather than more traditional accrual-based accounting.

Our *main* concern about clause 19

9. Financial reporting by charitable entities is important. It promotes accountability and transparency by providing information about the effective and efficient use of the charity's resources by those who govern the charity (i.e., boards and committees) to those who provide the charity with resources (i.e., members of the charity, the donating public and taxpayers (indirectly, because charities obtain tax benefits by registering under the Charities Act).
10. Currently all registered charities in New Zealand are required to file financial statements with Charities Services prepared in accordance with XRB standards.² Clause 19 proposes to relax this requirement by adding two Henry VIII provisions to the Charities Act.
11. The proposed section 42AB provides for regulations to be made setting asset and/or expenditure thresholds that would permit registered charities below those dollar thresholds to prepare financial information in accordance with rules stated in regulations instead of preparing in accordance with XRB standards. The regulations would be made by the Governor General on the recommendation of the Minister of the Community and Voluntary Sector.
12. The proposed section 42AC states that the Chief Executive of Internal Affairs may, by notice, exempt 'qualifying charitable entities' from complying with the obligation to prepare financial statements in accordance with XRB standards.

² Per [Section 42A](#) of the Charities Act 2005

13. The qualifying charitable entities that are exempted from complying with XRB standards would instead provide 'minimum financial information' as part of its annual return prepared in accordance with requirements specified in the regulations. The only criterion for exercising these powers appears in subsection (2) of each of the proposed sections. It requires the Minister or Chief Executive 'to have regard to the purpose of this Act'. The purpose is stated in very broad terms in section 3 of the Charities Act.
14. Clause 19 effectively means that the Minister and Chief Executive will have almost unfettered discretion about how to exercise this power. This is unprecedented. None of the 50-odd other Acts that impose financial reporting requirements provide Ministers or public servants with this type of discretion.
15. We are further concerned by the lack of certainty on which this discretion would be granted. Clause 19 specifies several things that 'minimum financial information' *may* include without making any clear proposals. Because of this it is difficult for us to form an impression of whether the minimum financial information will appropriately balance the compliance burden with the benefits of transparency and accountability.
16. We are strongly of the view that Parliament should make all decisions about which entities are required to prepare financial statements in accordance with accounting standards issued by the XRB. Defining reporting entities in primary legislation will avoid any risks, perceived or real, of the Minister making arbitrary decisions.
17. We also hold the view that these proposed powers are inconsistent with the Henry VIII-related commentary in Part 15.1 of the LDAC Legislation Guidelines. Part 15.1 of the Guidelines state that:

Legislation should empower secondary legislation to amend or override an Act only if there is a strong need or benefit to do so, the empowering provision is as limited as possible to achieve the objective, and the safeguards reflect the significance of the power.
18. Our view is that clause 19 does not meet the 'strong need or benefit test'. Even if it were met, it is clear that the provisions do not limit the Minister or Chief Executive's power to the minimum required or provide appropriate safeguards.
19. If the Committee were to decide to retain these Henry VIII provisions, we would recommend two changes to clause 19.
20. First, we would suggest the addition of one or more criteria that would impose meaningful constraints on the powers of the Minister and Chief Executive. We would suggest a requirement for the Minister/Chief Executive to consider the advantages and disadvantages of permitting classes of charitable entity to be exempted from reporting in accordance with applicable financial reporting standards. The addition of this criterion would require the Minister and Chief Executive to balance the compliance burden with the benefits of transparency and accountability.

21. Second, an appropriate safeguard would be to require the Minister and Chief Executive to consult with the XRB before making any exemption decisions. The XRB has expertise in ensuring that the minimum financial information set in the regulations provides sufficient transparency and accountability to the public.

Improvements to Tier 4

22. We agree that some charities currently find the Tier 4 Standard difficult to apply. We received this feedback from both the consultation undertaken by the Department of Internal Affairs when developing the Bill and from our recently completed post-implementation review of the Tier 4 Standard.
23. In response we developed and issued for consultation in May 2022 proposals to shorten and simplify the Tier 4 Standard. Public consultation on these proposals closed in September 2022 and the feedback received indicated strong support for the proposals. We expect the new Tier 4 Standard will be approved by the New Zealand Accounting Standards Board in December 2022, and we expect to issue the new and improved Tier 4 Standard to be available for use in the new year.
24. We are confident that the new Tier 4 Standard will maintain an appropriate level of transparency, while also reducing the current reporting burden for registered charities under the \$140,000 size threshold.

Consolidated list of recommendations

25. The XRB recommends removing the exemption power in section 19 from the Bill.
26. If the exemption power is retained, the XRB recommends adding requirements for the Minister/Chief Executive:
 - (a) to consider the advantages and disadvantages of permitting classes of charitable entity to be exempted from reporting in accordance with applicable accounting standards
 - (b) to consult with the XRB before exercising the exemption power.

Contact details

27. If you have any queries or require clarification of any matter in this submission, please contact April Mackenzie, Chief Executive.
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Yours sincerely



April Mackenzie
Chief Executive
External Reporting Board

Appendix A – The External Reporting Board (XRB)

XRB's Vision

The XRB's vision is that New Zealand prospers through effective decision making informed by high-quality, credible, integrated reporting. Our aim is to contribute to New Zealand's goal to create a sustainable, inclusive and prosperous economy. High-quality information is critical to ensuring decision making that impacts the wellbeing of New Zealand and New Zealanders is well informed.

Our strategy recognises that high quality information goes beyond financial information and includes non-financial elements of performance including value creation, sustainability, and the wider impacts an organisation has on society and the environment. When integrated, this information spans the natural, human, social, and financial capitals that support intergenerational wellbeing. We enable high quality, credible, and integrated reporting through the provision of robust frameworks and standards that are internationally credible, while being relevant to Aotearoa New Zealand so that reporting and assurance in New Zealand promote trust, confidence, transparency, and accountability.

XRB's Key functions

The External Reporting Board (XRB) is the independent Crown entity responsible for developing and issuing financial reporting, auditing, assurance, and ethical standards in New Zealand.

Legislation introduced by the Government determines who is required to report in accordance with generally accepted accounting practice (GAAP). The XRB is responsible for what these entities are required to report, being XRB Standards.

Under the Financial Reporting Act 2013, the XRB issues standards for all entities that are required, or opt, under law to prepare financial statements that comply with GAAP.

In issuing its standards, the XRB focuses on users' needs for information in general purpose financial reports (GPFR), that is, information intended to meet the needs of users who are not able to require an entity to prepare reports tailored to their particular information needs. In the case of incorporated societies, such users would be resource providers — including funders and donors — and members as recipients of services. The XRB undertakes various activities to ensure that it continues to set standards that meet the general purpose needs of users of financial reports, including undertaking due process consultation (as required under section 22 of the Financial Reporting Act 2013) and carrying out user-needs research.