

2005/5

June 2005

All about tax?

On June 15th the Government announced its appointments to the newly established Charities Commission. This follows the passing of the Charities Act on April 15th.

In my view the community sector can take some comfort from the membership of the new Commission (*see page 4 for the list*). From my experience of working with many of them over the years, the members have a much greater understanding of the purposes of the Act and the Commission than do either the government officials or indeed the politicians who passed this legislation.

As the saying goes, to a hammer every problem looks like a nail. To government, every problem is about tax. From a government perspective, charitable status is simply a particular type of tax status; the purpose of a Charities Commission is to register charities to determine their eligibility for certain tax privileges, while maintaining the integrity of the tax system.

We recall the totally inadequate nature of the initial Charities Bill, which required a major re-write at the 11th hour. We may also recall that the government had selected the Ministry of Economic Development (MED) as the lead agency responsible for the development of the legislation and the Commission, because of its experience in developing registration systems. The fact that it had no record of working with the charitable sector was irrelevant. It was all about tax. Even now, officials are firmly of the view that the most important consideration of the registration and annual return forms is whether or not the questions will meet IRD's requirements, not the needs of the organizations who have to complete the forms.

Nevertheless I believe the Commission members will recognize that the key function of the Commission is to determine whether or not your organisation qualifies as a charity. All those forms are **not** to provide IRD with information to determine eligibility for charitable tax exemption. Rather, the information is necessary so that the Commission, and the Commission alone, can determine that your organisation has as its purpose, and is in fact engaged in, activities which are in the public interest.

That's what charities are – public good organisations. The Commission must first satisfy itself that it understands what constitutes the public interest, no small task in itself, and then decide on the information it receives from your organisation that your organisation meets this test.

Our perceptions of what constitutes the public interest changes over time. I used to work at NZCCS, which received charitable tax status back in 1935. Seventy years later, our understanding of disability, and what constitutes the public interest from the perspective of people with disabilities, is different.

Has your organisation kept up with such changes? Well, the Commission will have to decide.

Are there organizations that have previously been denied charitable tax status which the Commission may think are indeed charitable? Consider the thousands of amateur sporting bodies involved in the promotion of health and fitness, community participation and other activities clearly of public benefit. Giving them charitable status would have a considerable impact on the tax base. How might governments react to that?

In the long term, the Commission has the capacity to reshape the charitable sector to better reflect our understanding of activities which benefit our community. In doing so, however, it may well face challenges both from the sector, particularly if it upsets some sacred cows, and from government if it extends charitable status to organizations previously denied this status. In these circumstances its integrity will be put to the test. I for one welcome the appointments and wish each of the Commissioners well.

Pat Hanley

Pat Hanley is a member of the ANGOA Coordinating Committee and was a member of the Registration Reporting and Monitoring (of Charities) Working Party and the Charities Commission Establishment Group.

PARLIAMENT

Introduced

Criminal Proceeds and Instruments Bill

This replaces the current Proceeds of Crime Act 1991. It introduces a civil forfeiture regime that, once the Court has found on the balance of probabilities that property is the proceeds of crime, will force criminals to prove all their property is not so derived. It also updates the existing conviction-based regime.

The Crown will be able to seek a High Court order restraining a person's assets if it can show reasonable grounds to believe the person benefited directly or indirectly from serious criminal activity. The orders will prevent those assets being dispersed or their value deliberately eroded.

The Court can then order confiscation if it is satisfied the Crown has proven to the civil court standard of the balance of probabilities that the person did in fact derive some benefit from criminal activity. No specific criminal offence, or value of benefit, need be proved.

Submissions called for Coroners Bill

This aims to reform the coronial system to improve its effectiveness and ensure that it responds better to the needs of bereaved families, including their cultural and spiritual needs. It establishes a chief coroner to provide leadership and support to coroners and moves to the appointments of up to 20 mostly full-time, legally qualified coroners. This will enable them to travel to provincial areas rather than just main centres.

The Bill requires family members to be notified at significant steps through the inquest process, and introduces uniform procedures for retention and release of bodies and body parts. Families may be authorised by the coroner to view, touch and remain near a body, and in some circumstances may be able to object to post-mortems.

The Bill sets out in detail the types of deaths that must be reported to the police and the procedure to be followed after that. It aims to enhance inquiry and inquest processes. Coroners will continue to be able to admit evidence to help them make recommendations and comments to prevent similar deaths.

Evidence Bill

This draws together both common law and statutory provisions relating to evidence into one comprehensive scheme, and replaces most of the existing law on the admissibility and use of evidence in Court proceedings.

Its purpose is to 'help secure the just determination of proceedings' by

- Providing for facts to be established by the application of logical rules;
- Promoting fairness to parties and witnesses;
- Protecting rights of confidentiality and other important public interests;
- Avoiding unjustifiable expense and delay.

It simplifies and generalises the present law regarding hearsay, statements of opinion and expert evidence, and protects complainants in prosecutions for sexual offences from certain questions and evidence about their sexual experience and reputation. It provides a privilege for clients of legal advisers in confidential communications, for a party to a proceeding in respect of the information used in preparing that proceeding, and for parties in a civil dispute in respect to documents prepared in confidence and in connection with attempts to settle a dispute. There is some privilege against self-incrimination.

The privilege may however be displaced in proceedings under Part II of the Children, Young Persons and their Families Act and the Care of Children Act if the Judge is satisfied it is in the best interests of the child.

The Bill also protects the identity of the sources of journalists where they have promised non-disclosure of identity, unless a Judge of the High Court rules that public interest outweighs any likely adverse effect on the source or others.

Anybody eligible to give evidence in a criminal proceeding can be compelled to give that evidence, with some exceptions including spouses and de facto partners. Special arrangements are made for children, and a witness anonymity order may be made by a Judge.

News

New ACC Treatment Injury Law

ACC's medical misadventure rules are being replaced with new treatment injury provisions under the Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 3). Under the new rules, ACC claimants do not have to demonstrate medical error or show that their condition is both rare and severe when they suffer an injury during treatment by a registered health provider. The new cover provisions provide that treatment injuries are simply ones that result from treatment.

While treatment injury cover under the new Act is broader than the old medical misadventure rules, not every adverse outcome will be covered. For instance, cover won't be available if the injury was a necessary part of the treatment, if it was caused wholly or partly by the underlying health of the claimant, or because the treatment did not produce the desired outcome. The Act comes into force on 1 July 2005 and applies only to claims lodged on or after that date.

Changes to Credit Union Rules

A first set of proposed changes to the legislation governing friendly societies and credit unions comprises:

- allowing credit unions to decide their own common bond;
 - allowing charities and incorporated societies to join credit unions;
 - allowing credit unions to determine their own minimum deposit levels;
 - removing the requirement to specify charges in credit unions' rules; and
 - allowing credit unions to extend new services to members.
- Legislation will be introduced later this year.

Legislation Update

Legislation	Stage and Progress	Impact
Children, Young Persons & Their Families Amendment (No. 4) Bill	Awaiting second reading. Amended by SOP 261.	Aims to improve youth justice processes & prevent persistent offending SOP 261 allows CYFS to assign investigation and care to NGO services, and specifies post-assessment procedures.
Coroners Bill	Before Justice & Electoral Select Committee. Submissions close 14 August (see p.2)	Reforms coronial system for effectiveness and better response to bereaved families. See p.2
Courts and Criminal Matters Bill	Awaiting second reading.	Deals with fines collection and civil enforcement; amends 9 Acts
Criminal Procedures Bill	Before Law & Order Select Committee; report due 29 July 2005	Omnibus bill to improve court efficiency, modify jury system, change double jeopardy rule.
Criminal Procedures & Instruments Bill	Introduced 22 June 2005.	Replaces Proceeds of Crime Act 1991; introduces civil forfeiture regime for proceeds of crime.
Disabled Persons Employment Promotion (Repeal & Related Matters) Bill	Awaiting second reading	Ensures people with disabilities in sheltered workshops have the same wage and employment rights as other workers.
Employment Relations (Flexible Working Hours) Amendment Bill. Private Members' Bill, Sue Kedgley	Before Transport and Industrial Relations Committee. Submissions by 13/07/05. Report due 14/08/05	Aims to provide employees with young and dependent children the statutory right to request part-time and flexible working hours, and a framework for negotiating reduced working hours.
Evidence Bill	Before Justice & Electoral Select Committee. Submissions close 14 August (see p.2)	Draws together common law and statutory provisions for evidence, replaces existing law..
Human Rights (Gender Identity) Amendment Bill Private Members' Bill, Georgina Byer	Introduced 24/10/04. Consideration delayed till 11/08/05. Awaiting first reading	Includes 'gender identity' as a prohibited grounds for discrimination.
Injury Prevention, Rehabilitation & Compensation Amendment Bill	Passed.	Significant changes in medical error and misadventure provisions.
Legal Services Amendment Bill (No. 2)	First reading 17/05/05. Submissions by 12/08/05.	Updates and extends the criteria for eligibility for legal aid.
Members of Parliament (Pecuniary Interests) Bill	First reading completed. Now before Standing Orders Committee. Report due 14/08/05	Set up a register of MP's pecuniary interests, including involvement in Trusts and other bodies receiving government funding.
New Zealand Day Bill Private Members' Bill, Peter Dunne	First reading 6 April. Before Justice and Electoral Committee. Submissions by 29/07/05.	Replaces Waitangi Day with a New Zealand Day to be celebrated on 6 February or nearest Monday every year.
NZ Sign Language Bill	Before Justice & Electoral Committee; report due 23/06/05	Officially recognises NZ Sign Language.
Oaths Modernisation Bill	First reading 18/05/05. Before Government Administration Committee. Submissions by 01/07/05. Report due 14/08/05	Modernises the language used in existing oaths.
Residential Tenancies Amendment Bill	Social Services Select Committee reported back 10/04/03. Awaiting second reading.	Select Committee recommends clarifying definition of boarding house' protection for tenants' property, limits to bonds' 14 days termination for education providers and employers.

Appointments

Rae Lamb, formerly Health reporter with Radio New Zealand, is to take up a new position as *Deputy Health and Disability Commissioner* with special responsibility for complaints resolution.

Charities Commission

The Charities Commission will commence its operations on 1 July 2005. Responsibility for the Commission will transfer from the Ministry of Economic Development to the Department of Internal Affairs (DIA), which reports to Rick Barker as Minister for the Community & Voluntary Sector.

Members of the Inaugural Board

Sid Ashton, Chairperson, is an Officer of the New Zealand Order of Merit for services to Maori and the Community, and has been a Christchurch accountant for over 30 years. He chaired the Tax and Charities Working Party and the Charities Commission Establishment Group, which advised the Ministry of Economic Development on the setting up of the Commission. He currently serves on the charitable trusts of the Christchurch Arts Festival and Diabetes Training and Research. He is also Director of Ryman Healthcare, a publicly-listed company.

Judith Timpany, Deputy Chairperson, is the Chief Executive of the Whanganui Community Foundation Inc and a Justice of the Peace. Her 19 years work experience in the charitable sector includes three years as a Whanganui City Councillor, Chairmanship of Philanthropy New Zealand, membership of WINGS CF (an international grant maker's body) and as a Director in relation to environmental and infrastructural services on behalf of the Wanganui District Council.

From 2001 - 2003 she served on both the Tax and Charities Working Party and the Accountability of Charities Working Party. She has commercial expertise having served as a Trustee of the Wanganui Savings Bank and then Trust Bank Central Ltd. From 1993 - 2004 she was a director of the publicly listed company Powerco Ltd.

Board members

Kerry Ayers, a Christchurch based lawyer, specialises in trust law with the law firm Helmore Ayers. He is an accredited LEADR (Lawyers Engaged in Alternative Dispute Resolution) mediator. Over several years, Kerry assisted iwi in the Chatham Islands and was recently appointed Vice President of the New Zealand Law Society. He also has had a long involvement with the Canterbury and New Zealand law societies and is a member of the NZ Law Foundation.

Ian Calder, an Officer of the New Zealand Order of Merit for services to children and the family, has considerable experience in and knowledge of the not-for-profit sector. Ian was chief executive of Barnardos New Zealand from 1976-2003, president of the New Zealand Federation of Volun-

tary Welfare Organisations, treasurer of the International Forum for Child Welfare, and a member of various government advisory boards including the 1988-89 Working Party on the Taxation of Charities and Sporting Bodies. Since 2003 he has been a member of the Social Workers Registration Board.

Frank Claridge, a Justice of the Peace, is an Auckland accountant who has been involved with many not-for profit and charitable organisations in financial management and governance roles throughout his career. From 1984 until July 2003, Frank served as treasurer for the Royal New Zealand Foundation of the Blind and is a past treasurer of the New Zealand Federation of Voluntary Welfare Organisations. He has also been a member of the Fund Raising Institute of New Zealand's National Ethics Committee, and served on the Tax and Charities Working Party 2001/2 and the Ministry of Economic Development's Charities Commission Establishment Group. He has also had continuous involvement with the governance of the Methodist Church since 1962. Frank is a Fellow of the NZ Trustees Association, and is a member of their National Executive.

Amohaere Houkamau is the chief executive of Te Runanga o Ngati Porou, based in Ruatoria, and has played a leading role in developing iwi based service delivery. At the forefront of development in Ngati Porou during the last decade, she has also been actively involved in youth, Maori and women's issues in the Canterbury region, where she was an inaugural member of the Canterbury Regional Employment Board (REAC). Amohaere has also been a member of the Oringi Kaupapa Trust and the National Youth Council. She is a member of the Board of Maori Television. She also co-chairs the Tairāwhiti District Taskforce Social Development Forum and is a member of the Lottery National Community Distribution Committee and the Tairāwhiti Development Co-ordinating Committee.

Patricia (Pat) Webster is a Member of the New Zealand Order of Merit for Services to international development and to the community and voluntary sector. A former Executive Director of the Council for International Development, she has had particular links with Oxfam and Save the Children New Zealand. She was an executive member of ANGOA (the Association of Non-Governmental Organisations of Aotearoa) and a member of the Steering group on Government and Voluntary Sector Relationships from 2001-2003.

Pat was a member of the Accountability of Charities Working Party from 1995-1999 and in 2001-2002 was a member of the Tax and Charities Working Party. She is from Nelson where she is a member of the Community Workers Training and Support Trust and a community representative on the governance board of the Nelson Bays Primary Health Organisation, which is also a charitable trust.

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