

**SUBMISSION TO THE SOCIAL SERVICES SELECT
COMMITTEE ON THE CHARITIES BILL**

Council for International Development

3 June 2004

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Executive Summary

1. Although the Council for International has many concerns about the Charities Bill, we wish to draw the Select Committee's attention to the following points, which we believe are particularly important:
 - **Charitable purpose.** A definition of charitable purpose should be developed through further consultation. The Bill should make clear that advocacy is included among the activities that organisations may legitimately engage in to advance their charitable purposes. (Paragraphs 15-21.)
 - **Approved donee status.** The purposes set out in the Bill relating to approved donee status for organisations sending funds outside New Zealand should be broadened to include activities in support of human rights, peace, environmental protection, and other matters. The way in which 'developing countries' are defined should be changed. (Paragraphs 39-42.)
 - **Terrorism provisions.** The link between the Charities Bill and the Terrorism Suppression Act should be removed, due to concerns about the broad definition of terrorism and the absence of clear parameters for designation of terrorist entities in the Terrorism Suppression Act. (Paragraphs 26, 46.)
 - **Supply of information.** The Commission should not be permitted to supply information or documents obtained through its inquiries into charitable organisations to other persons or agencies. (Paragraphs 58-59.)
 - **Publication of possible breach.** The Commission should not be allowed to publish details of alleged but unproven breaches of the Act, wrongdoing, or grounds for disqualification. (Paragraphs 61-62.)
 - **Role of the Commission.** The Commission's role should not be merely regulatory; it should also provide support and advice to charitable organisations. (Paragraphs 11, 22.)
 - **Independence of the Commission.** The Commission should be as independent as possible of government, and the Inland Revenue Department should not be able to overrule decisions of the Commission. (Paragraphs 12, 13, 68, 69, 72.)
 - **Qualification of officers.** The provisions disqualifying a person who has been imprisoned, or sentenced to an imprisonable offence, from being an officer of a charity, should be deleted. (Paragraphs 27-28.)
 - **Funding of the Commission.** The Commission should not be required to be self-funding, but should have a mix of government funding and funding from registration fees. Registration fees should be set at a moderate level, and there should be no annual fees. (Paragraphs 8-10.)
 - **Regulations.** The regulations to be promulgated in relation to the Bill should be the subject of consultation with the community and voluntary sector. (Paragraph 70.)

About the Council for International Development

2. The Council for International Development (CID) is the umbrella organisation that represents 63 New Zealand-based non-government organisations (NGOs) involved with overseas aid and development. A list of member organisations is attached to this submission as Appendix A. To become a member of CID, an NGO must be a registered legal entity. CID member organisations agree to abide by a Constitution and Code of Ethics that promotes accountability and includes a set of principles about development.
3. CID's members cover a wide range of different types of organisations, from very small, voluntary organisations that concentrate on a particular issue or a particular part of the world to large organisations employing significant numbers of paid staff. Most member organisations send money overseas for development and disaster relief, usually in support of partner organisations in developing countries. Some are solely involved in overseas development, some are predominantly involved in overseas development but also have small programmes within New Zealand, and some focus predominantly on activities within New Zealand while also sending some money overseas. A minority of CID's membership has no direct involvement in sending money overseas, but has an interest in international development issues. These organisations may be involved in activities such as educating the New Zealand public about development issues or campaigning for human rights internationally, or may intend to start supporting overseas projects in the future.

Overview

4. In preparing this submission, CID has consulted with its member organisations. The Charities Bill was discussed at CID's regional meetings held in Auckland, Wellington and Christchurch on 19, 28 and 30 April 2004. All member organisations have had an opportunity to provide input into this submission, which has also been discussed by the CID Board. In addition, Tim Allison of CID member organisation TEAR Fund was a member of the ANGOA (Association of Non-Governmental Organisations of Aotearoa) Charities Commission Working Group.
5. CID supports the establishment of a Charities Commission and of a registration system for charities and donee organisations. We therefore support the intent of the Charities Bill. We believe that a Charities Commission and registration system can be of benefit to charitable organisations, the communities they serve and the government. Benefits should include:
 - improved accountability of charities to the public and the government;
 - increased availability of information about charitable organisations;
 - provision by the Commission of support and advice to charitable organisations.

6. CID endorses the following principles, which were set out by the ANGOA Charities Commission Working Group in a briefing paper on the Charities Bill. We agree with the ANGOA Working Group that these principles are widely held within the New Zealand community and voluntary sector, including charitable organisations:
- a. The sector seeks to maintain and enhance **accountability** to the public of New Zealand who donate their time and money in support of the sector.
 - b. There is a need to uphold the **independence and values** of the sector as distinct from government and the private sector.
 - c. There is a need to increase our **knowledge and understanding** of the many thousands of organisations that make up the charitable sector.
 - d. There is a need to work effectively with government to advance the interests of our communities.
 - e. There is a need to better reflect the nature and culture of New Zealand society today, in matters affecting the community and voluntary sector.

CID believes that the Charities Bill and the operation of the Charities Commission should be consistent with these principles.

7. While supporting the intent of the Bill, CID has a number of serious concerns about the current wording of the Bill, and we make recommendations for changes to the Bill. We also raise concerns about some matters that are not specifically addressed in the Bill, but are of great importance to the way in which the Charities Commission will operate. We begin with some general comments about the proposed Commission, before commenting on particular clauses of the Bill.

The Charities Commission

8. According to the Frequently Asked Questions on the Charities Commission Preparatory Unit website, the government has decided that the Commission will be fully funded from registration and annual fees.¹ CID strongly opposes the proposal that the Commission should be fully funded by charitable organisations themselves. We endorse the recommendation of the Working Party on Registration, Reporting and Monitoring of Charities that ‘The Commission should be funded partly by the taxpayer through government and partly by fees from registered charities, with the fees set at a moderate level.’² In the Working Party’s view:

Charities produce public goods and benefits that are of immense value to the nation. Accordingly, we recommend the difference between the income generated through fees and the actual cost of the

¹ <http://www.charities.govt.nz/resources/faq.html>

² ‘Report by the Working Party on Registration, Reporting and Monitoring of Charities’, 28 February 2002, p. 5

Commission's functions, including establishment costs, be provided by Government.³

CID believes strongly that the Working Party's recommendation should be accepted by the government. The Working Party pointed out that the Charities Commission will be taking over functions currently performed by government departments, and that the budget for these functions should also be transferred to the Commission.

9. CID also agrees with the Working Party that, since most New Zealand charities are small, the registration fee should be set at a moderate level. We further believe that organisations wishing to register both as charitable entities and as approved donees should have to pay only one registration fee, and that there should be no annual return fee for registered organisations. The aim should be to allow as many organisations as possible to register, and sufficient government funding should be provided so as to keep registration fees low.
10. Funding of the Commission should also be sufficient to allow it to carry out its several functions effectively and expeditiously. It is likely that the Commission will have to register and monitor 30,000 or more organisations. It will also have to provide support and advice to charities and government, and conduct research. These are huge tasks. The Commission must be funded at a level that ensures it has sufficient staff and resources to carry out these tasks.
11. The role and functions of the Commission as currently set out in the Bill's Explanatory Note, in clause 10 of the Bill, and in material produced by the Charities Commission Preparatory Unit, seem very focused on registration and monitoring of charitable organisations, and on provision of advice to government. The Commission's role in providing support to charitable organisations seems to be limited to educating and supporting them to comply more easily with their regulatory duties and obligations. CID supports the view of the Working Party on Registration, Reporting and Monitoring of Charities that the Commission should also provide advice and support to the charitable sector. This support and advice role should go beyond compliance with regulations, and should include promoting good practice within the sector.⁴
12. It is vital that the Commission should be as independent of government as possible in order to preserve the integrity and independence of the community and voluntary sector. The need to respect the independence of community, voluntary and iwi/Māori organisations is recognised in the 'Statement of Government Intentions for an Improved Community-Government Relationship' (December 2001). Any attempt by the government to intervene in the Commission's decisions or processes will clearly have an adverse impact on the independence of organisations

³ Ibid., p. 14

⁴ Ibid., pp. 5, 7

which rely on the Commission to grant them the benefit of charitable or donee status. We address the issue of the Commission's independence further in relation to particular clauses below.

13. According to Margaret Wilson's First Reading Speech on the Charities Bill, the Inland Revenue Department (IRD) will retain the authority to deny tax exemption to a registered charity if the IRD is not satisfied that the organisation's purposes are, in fact, charitable.⁵ This important fact is not apparent from reading the Bill. CID strongly believes that the IRD should not have the authority to overrule the Charities Commission in this way. Indeed, we wonder why the government is going to the trouble of establishing a Commission if the IRD's power to grant or deny tax exempt status is to remain unchanged. It seems even stranger that charities are being asked to fully fund a Commission whose decisions can be overturned at any time by the IRD. CID recognises that the IRD has an interest in the granting of charitable status, and we would not oppose provisions allowing the IRD to appeal decisions of the Charities Commission. We do, however, oppose the proposal that the IRD should retain the unilateral power to deny tax exemption to registered charities. We also believe that any operational protocol between the Commission and the IRD (as referred to in Cabinet papers) should be made public.⁶
14. One of the principles in CID's Code of Ethics is recognition of the importance of the Treaty of Waitangi. The government has also committed itself to recognising and respecting the principles of the Treaty of Waitangi in the development of its relationships with community, voluntary and iwi/Māori organisations. CID believes that the Charities Bill should be amended to include a requirement that the Charities Commission perform its functions in a manner consistent with the principles of the Treaty of Waitangi. While CID understands that the government intends to review the inclusion of so-called 'Treaty clauses' in legislation, we believe that the inclusion of such a provision in the Charities Bill would find widespread support among organisations likely to seek registration with the Commission.

Recommendations:

- ***The Charities Commission should not be funded solely by fees paid by charitable organisations.***
- ***Registration fees should be set at a low level so as to allow as many organisations as possible to register with the Commission.***
- ***Organisations wishing to register both as charitable entities and as approved donees should have to pay only one registration fee.***
- ***There should be no annual fees.***
- ***The shortfall between the income earned from registration fees and the cost of the Commission's functions, including establishment costs, should be met by the government.***

⁵ <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=19307>

⁶ Cabinet paper, June 2003, paragraph 35, at www.charities.govt.nz/resources/cab-est.html

- *Government funding should be at a level sufficient to provide adequate staffing and resources for the Commission to carry out its functions effectively and expeditiously.*
- *One of the Commission's roles should be to provide support and advice to charitable organisations. This support role should not be limited to providing assistance in complying with regulatory obligations.*
- *The Commission should be as independent of government as reasonably possible.*
- *The Inland Revenue Department should not have the power to deny tax exemption to registered charities, and any protocol between the IRD and the Commission should be made public.*
- *The Charities Bill should be amended to require the Commission to perform its functions in a manner consistent with the principles of the Treaty of Waitangi.*

Clause 4(2) – charitable purpose

15. The Bill uses the same classification of charitable purposes that has been used up until now by the IRD. Charitable purposes are those that relate to ‘the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community’. While this classification is sufficiently broad to include all activities that would generally be considered charitable, it leaves a lot of scope for interpretation by the Charities Commission.
16. The phrase ‘relief of poverty’ could be understood as implying a model that is not based on empowering poor people or assisting them to realise their rights. This, in turn, could lead to a narrow view of charitable purpose that is based on the provision of services and excludes activities such as awareness-raising, campaigning and advocacy.
17. CID strongly agrees with the view of the Working Party on Registration, Reporting and Monitoring of Charities that ‘advocacy for any cause that is itself charitable in terms of the definition, should also be regarded similarly. This would continue to exclude the promotion of a political party or a particular candidate for political office.’⁷ For many of CID’s member organisations and their partner organisations overseas, campaigning for social, political and economic change is an integral part of their efforts to eliminate poverty.
18. Questions about political activities, campaigning and advocacy by charities have arisen in other countries. In England and Wales, organisations with a stated political purpose cannot be registered as charities. However, while charities may not have political *purposes*, they may engage in political activity in order to advance charitable purposes such as the relief of poverty. Such political activity may include campaigning for, or against, changes to law or government policy, whether

⁷ ‘Second Report by the Working Party on Registration, Reporting and Monitoring of Charities’, 31 May 2002, p. 12

in the UK or abroad.⁸ CID believes there is much to recommend this approach. We endorse the view expressed by Richard Fries, former Chief Commissioner of the Charities Commission for England and Wales, that ‘the contribution of charities to public understanding of the issues with which they are concerned’ is just as important as their role in providing services. Mr Fries, speaking during his visit to New Zealand last year, went on to say:

The role of charities in contributing to public debate, in advocacy and lobbying and, where appropriate, campaigning and demonstrating on behalf of their beneficiaries and interests is therefore vital – and may bring them into conflict with government. It is therefore essential that regulation should support this role, both by setting the framework within the law for it and by protecting the advocacy and campaigning right of charities from attack.⁹

19. CID believes that the phrase ‘advancement of religion’ should be amended to make clear that it applies to all religions. We also believe that the advancement of non-religious philosophies such as rationalism or humanism should be a charitable purpose. We acknowledge that the term ‘philosophies’ is a very broad one, and would probably need to be narrowed down.
20. The Working Party on Registration, Reporting and Monitoring of Charities recommended the adoption of a more detailed definition of charitable purpose, which would provide greater guidance to the Commission.¹⁰ This definition was not included in the Bill, and CID believes that there must be wider consultation before any new definition is adopted. However, the Working Party’s definition seems to us to be a good one, and one that is consistent with generally-held values in New Zealand society, although we suggest that the Working Party’s definition be amended in line with our comments about advancement of religion in paragraph 19. Our amended version of the Working Party’s definition appears as Appendix B of this submission. Note that this definition specifically refers to advocacy as one of the ways of advancing charitable purposes. The Select Committee might also like to consider the definition of charitable purpose contained in clause 2 of the new draft Charities Bill that has just been released in the UK.¹¹
21. Whether or not a new definition of charitable purpose is to be developed, the Bill should be amended to make clear that charities may legitimately engage in political activity and advocacy to advance their charitable purposes. In our view, it is preferable to explicitly state this in the Bill,

⁸ See the pamphlet *Political Activities and Campaigning by Charities* at www.charity-commission.gov.uk/publications/pdfs/cc9text.pdf

⁹ Richard Fries, ‘Charities Commission: The Concept in Light of English Experience’, November 2003 <http://www.community.net.nz/HotTopics/TaxCharities/Background/EnglishCharitiesCommission.htm>

¹⁰ ‘Second Report by the Working Party on Registration, Reporting and Monitoring of Charities’, 31 May 2002, pp. 11-15 (their proposed definition is on p. 15)

¹¹ www.homeoffice.gov.uk/docs3/charitiesbill_040527.pdf

rather than leaving it to the Commission to decide, or to receive Ministerial direction, about the legitimacy of advocacy.

Recommendations:

- ***Through a process of further consultation, develop a definition of charitable purpose to replace that in clause 4(2).***
- ***Amend the Bill to state that charities may legitimately engage in advocacy to advance their charitable purposes.***

Clause 10 – Commission’s functions

22. In line with the discussion in paragraph 11, CID recommends that one of the Commission’s functions should be to provide support and advice to the charitable sector, and to promote good practice within the sector.

Recommendation:

- ***Amend clause 10 to add the following function: ‘provide support and advice to the charitable sector, and promote good practice within the sector’.***

Clause 13(1) – qualification for registration

23. Clause 13(1) provides that an entity qualifies for registration as a charitable entity if, in the case of the trustees of a trust, ‘every amount derived by the trustees in trust is applicable for exclusively charitable purposes’, and in the case of a society or institution, the entity ‘is established and maintained exclusively for charitable purposes’. CID believes that the ‘*exclusively* for charitable purposes’ threshold is too high. This will be particularly problematic if the Charities Commission takes a narrow view of ‘charitable purposes’ that excludes activities such as advocacy (see paragraphs 15-18).
24. How the Commission will interpret ‘charitable purposes’ will not become clear until it commences operation. We note that, at present, IRD examines an organisation’s aims and if any one of those aims is deemed to be non-charitable the organisation does not qualify for charitable exemption. IRD does, however, allow charitable exemption for organisations that use some of their funds for non-charitable purposes ‘if the non-charitable purpose is secondary or incidental (rather than an independent purpose), and if it is a result of carrying out the charitable purpose’. It seems likely that in many cases it would be difficult to determine what are ‘independent’, as opposed to ‘secondary or incidental’, purposes. We also note that the IRD has taken the view that ‘political aims (for example, seeking changes to existing law)’ are unacceptable for an organisation seeking charitable status.¹² As we have stated in paragraphs 17-18, CID considers that advocacy is a legitimate activity for charitable organisations to carry out in support of

¹² Inland Revenue, *Charitable Organisations: A Tax Guide for Charities, Donee Organisations and Other Groups*, December 2002, p. 39

their charitable purposes. This includes seeking changes to existing law, but excludes promotion of a particular political party or candidate for political office.

25. CID recommends that the qualification test in clause 13(1) be changed from ‘exclusively’ to ‘principally’. However, we support the provision in 13(1)(b)(ii) that a society or institution does not qualify as a charitable entity if it is carried on for the private pecuniary profit of any individual. We also believe that charitable entities should be required to account for their use of money in a transparent manner, so that it is clear that any funds donated for charitable purposes have been used for those purposes.

Recommendation:

- ***Amend clause 13(1) to replace the words ‘for exclusively charitable purposes’ in 13(1)(a) with ‘for purposes which are principally charitable’, and to replace the words ‘exclusively for charitable purposes’ in 13(1)(b) with ‘principally for charitable purposes’.***

Clause 13(4) – terrorism provisions

26. This clause refers to certain provisions of the Terrorism Suppression Act 2002 that deal with terrorist offences and the designation of organisations as terrorist entities. CID made a submission in November 2001 on the amendments to the Terrorism (Bombings and Financing) Bill, which became the Terrorism Suppression Act. Among other issues, we raised concerns about the broad definition of ‘terrorist act’ in section 5, and about the absence of clear guidelines or parameters for designation of terrorist and associated entities. We recognise that the version of the Bill on which we made our submission differs in some respects from the current form of the Terrorism Suppression Act. Nevertheless, we stand by our submission of 2001, and continue to have concerns about the provisions of the Terrorism Suppression Act referred to in the Charities Bill. We therefore oppose any link between the Charities Bill and the Terrorism Suppression Act.

Recommendation:

- ***Delete clause 13(4).***

Clause 15 – qualification of officers

27. Clause 15, subclauses (2)(c) and (d), provide that a person is disqualified from being an officer of a charitable entity if that person has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or has been convicted and sentenced to imprisonment for an offence punishable by a term of imprisonment of less than 2 years. While the Commission can waive the application of these disqualifying factors, CID believes that it should be left for charitable organisations themselves to decide whether or not a past conviction for imprisonable offences

should disqualify someone from serving as an officer of the organisation. We can see no reason why a person's past convictions should disqualify her or him from serving as an officer of an organisation. In some cases (such as Prisoners' Aid Societies, for example), such convictions could even make a person *more* qualified. We note that no such restriction applies to company directors under the Companies Act 1993, nor would a person be prohibited from serving on the Charities Commission itself by reason of past convictions.

28. If the intention of these subclauses is to disqualify a person who has yet to serve his or her sentence from being an officer, the same wording could be used as in Schedule 2, clause 3(2)(d) of the Bill.

Recommendation:

- *Delete subclauses 15(2)(c) and (d).*

Clause 16 – application for registration

29. The forms, documentation and fee required as part of an application for registration are all to be prescribed by regulation in due course. We have already stated in paragraph 9 that registration fees should be kept low so as to allow as many organisations as possible to register. Likewise, registration forms and documentation should be kept as simple as possible. CID considers that the following documents should be sufficient for registration:

- a copy of the organisation's trust deed or other founding document;
- a copy of the organisation's constitution or rules;
- a copy of the organisation's latest annual report;
- a copy of the organisation's latest annual financial statement;
- a list of the organisation's officers.

30. We welcome the statement that 'The Government recognises the diversity of structures in the charitable sector. The Bill provides that organisations with branches could register as one entity, or as multiple entities. The key criterion is that the registration and annual returns provides the required information to cover the activity of all services carried out.'¹³ We wish to emphasise the importance of making it as simple as possible for organisations with local branches to register. We believe it may be necessary to make provision for 'umbrella registration' by a national or 'parent' body on behalf of its branches, with reporting requirements for branches kept to a minimum.

¹³ <http://www.charities.govt.nz/resources/faq.html>

Recommendations:

- ***The forms and documentation required for registration of charitable entities should be as simple as possible. Organisations should be required to submit only the documents listed in paragraph 29.***
- ***Options for ‘umbrella registration’ on behalf of local branches of an organisation should be considered.***

Clause 23 – registration number

31. Clause 23(1) states that a charitable entity must state its registration number ‘in every written communication’ sent by or on behalf of the entity, and on all fundraising materials that are on display to the public. CID recognises the value of displaying registration numbers as a means of building public trust in registered charities, although we question whether it is necessary to make displaying registration numbers compulsory, as it should be in a charitable entity’s interest to do so. An alternative would be simply to require that the number be disclosed on request. We also suggest that registered charities could be authorised to display a logo indicating that they are registered with the Commission.
32. CID believes that the phrase ‘every written communication’ is too vague. It is not clear, for example, whether it applies to email communication. It is also unclear whether it applies to written communication within the organisation. We recommend that the types of written communication on which registration numbers must be stated should be specified in the Bill. We suggest that the requirement to state registration numbers could be limited to the following types of written communication (including emails):
 - Communication which seeks to raise funds from the general public.
 - Communication with members or supporters of the organisation, or prospective members or supporters.
 - Other communication in which the organisation’s status as a registered charitable entity is relevant.
33. We also recommend that organisations be given a grace period of 12 months after registration before they are legally obliged to begin stating their registration number in relevant written communication. This will allow them time to adjust to the new requirement and to make changes such as printing new letterhead. Such a grace period seems important in light of the fact that a breach of clause 23 is punishable by a fine of up to \$2000.

Recommendations:

- ***The nature of the written communication on which organisations are required to state their registration numbers should be specified more clearly in clause 23.***

- *Organisations should be given a grace period of 12 months after registration as a charitable entity before they are required to state their registration number in written communication.*

Clause 26 – grounds for removal from register

34. CID believes that deregistration of organisations should be a last resort. Before moving to deregister an entity, the Charities Commission should work with the organisation concerned and help the organisation to rectify any problems.
35. The Bill provides that an entity may be removed from the register if any amount derived by trustees in trust is applied for a non-charitable purpose (clause 26(1)(a)), or if a society or institution has any non-charitable purpose or is not maintained exclusively for charitable purposes (clause 26(1)(b)(i) and (ii)). As we have explained in paragraphs 23-25, CID believes that an organisation should not have to operate *exclusively* for charitable purposes to qualify as a charitable entity. We recommend that these subclauses be amended accordingly.
36. In clause 26(1)(h), a significant or persistent failure by one or more collectors acting on behalf of the entity to meet their obligations under the Act is made grounds for deregistration. It seems excessively harsh that failure by one collector can lead to deregistration of the entire organisation. A requirement should be added that the organisation can be deregistered only if the significant or persistent failure has occurred with the knowledge of the officers or administrators of the entity, and where those officers or administrators have failed to take appropriate action.
37. Clause 26(1)(i) provides that an entity can be deregistered if ‘any person’ engages in ‘serious wrongdoing in connection with the entity’. Serious wrongdoing is defined in clause 4(1), and includes corrupt use of funds and other matters. This provision seems too broad. If, for example, an organisation’s funds have been corruptly used by an employee or some other person acting on behalf of the organisation, the organisation itself is a victim of this offence. It seems unfair that the organisation should be further penalised by being deregistered. CID recommends that the organisation should only be deregistered where the serious wrongdoing has been carried out by, or with the knowledge of, an officer or administrator of the entity. Even then, it may not be appropriate to deregister an organisation if one officer or administrator has engaged in serious wrongdoing without the knowledge of the others.

Recommendations:

- *Amend 26(1)(a) to read ‘in the case of the trustees of a trust, the funds received by the trustees in trust are not applied principally for charitable purposes’.*
- *Delete 26(1)(b)(i) and (ii) and substitute the words ‘is not being maintained principally for charitable purposes’.*

- *Amend 26(1)(h) by adding the following words after ‘this Act’: ‘where such failure has occurred with the knowledge of the officers or administrators of the entity, and where these officers or administrators have failed to take steps to correct the collector’s failure’.*
- *Amend 26(1)(i) to read ‘any officer or administrator of the entity has engaged in serious wrongdoing in connection with the entity, or any other person has engaged in serious wrongdoing in connection with the entity with the knowledge of an officer or administrator of the entity’. The same amendment should also be made in clause 27(1)(c).*

Clause 30 – Commission’s duties in responding to an objection to removal from the register

38. In paragraph 67, we argue that a formal process of internal appeal against decisions of the Commission would be preferable to the rather weak provisions for ‘objection’ in clauses 29 and 30. However, if the current objection provisions are retained, we believe that the Commission should be required to provide a written response to an organisation’s objection to being removed from the register. This written response should set out the reasons why the Commission has decided to uphold or refuse the objection, referring specifically to the points raised in the objection.

Recommendation:

- *Insert a new subclause in clause 30 requiring the Commission to provide a written response to objections to removal from the register, setting out the Commission’s reasons for upholding or declining to uphold the objection.*

Clause 31(1)(b) – donee status and use of funds for overseas purposes

39. CID supports the intent of the provisions in clause 31 of the Bill which will allow the Commission to register an entity as an approved donee if the organisation’s funds are used for overseas purposes. This will replace the current system whereby donee status for organisations with overseas purposes must be approved by Parliament. We also support the fact that, in contrast to the provisions relating to registration as a charitable entity, organisations are required to devote their funds ‘wholly or principally’ (rather than ‘exclusively’) to the specified purposes in order to qualify for donee status.
40. CID is generally happy with purposes specified in clause 31(1)(b), but we recommend that the following should be added to the purposes set out in this clause of the Bill:
- promotion of human rights;
 - support for peace and disarmament;
 - support for conflict resolution and post-conflict reconciliation;
 - support for environmental protection and ecological sustainability.

It should also be made clear that advocacy in support of any of the other listed purposes is a legitimate activity for approved donee organisations to engage in.

41. We note that 31(1)(b)(iii) and (iv) refer to support for development in ‘a country recognised by the United Nations as a developing country’. So far as CID is aware, there is no official United Nations list of developing countries. There are a number of lists of developing countries used by different international organisations. CID recommends that that the Bill should refer to the Organisation for Economic Cooperation and Development (OECD) Development Assistance Committee (DAC) List of Aid Recipients. This list consists of two parts:
- Part I is the list of developing countries and territories. Aid to these countries counts as ‘Official Development Assistance’.
 - Part II is the list of countries and territories in transition. Aid to these countries is classified as ‘Official Aid’. This list is made up of countries in Central and Eastern Europe, and some ‘more advanced’ developing countries and territories, including the French Pacific territories of French Polynesia and New Caledonia.

We attach the 2003 DAC List as Appendix C.

42. Almost all of the money that is sent overseas by CID’s member organisations goes to developing countries in Part I of the OECD DAC list. However, some of our member organisations do send money to countries in Part II of the list. In 2001-02, for example, \$20,700 went to the Czech and Slovak Republics and \$6800 went to French Polynesia. We recommend that assisting in the development of any country on the OECD DAC List of Aid Recipients should be a purpose qualifying an organisation for donee status.

Recommendations:

- ***Amend clause 31(1)(b) to add the purposes listed in paragraph 40.***
- ***Amend clause 31(1)(b)(iii) and (iv) by replacing the words ‘a country recognised by the United Nations as a developing country’ with the words ‘a country on the current OECD Development Assistance Committee List of Aid Recipients’.***

Clause 31(2) – donee status and promotion of a religious or political creed

43. Clause 31(2) provides that an entity whose funds are used for overseas purposes does not qualify to be registered as an approved donee if it has ‘a purpose (not being merely an incidental purpose) that involves the promotion or advancement of a particular religion, cult, or political creed.’ There is an inconsistency in the fact that no such restriction applies to qualification for registration of charitable entities, or to qualification for approved donee status for entities that operate only within New Zealand. We also believe that the clause as currently worded could unfairly restrict

good development work undertaken by organisations that are overtly identified with a particular religious or political belief. A number of religiously-based organisations phrase their developmental objectives or purposes in religious language, and it seems that such organisations could be denied approved donee status by clause 31(2). Likewise, a development organisation associated with the trade union movement might have purposes that would be deemed to involve promotion of a ‘political creed’. In light of such concerns, CID believes that clause 31(2) should be deleted.

44. There is a legitimate concern that New Zealand-based organisations could engage in proselytising in developing countries in a way that exploits vulnerable people. CID would support an amendment to the Bill that would deny approved donee status to organisations that engage in such exploitation of the vulnerability of poor or marginalised people. This should, however, be on the basis of the organisation's activities, not its purposes. In other words, an organisation should be denied registration, or should be deregistered, only where it has been shown to have engaged in proselytising which exploits vulnerable people. We acknowledge that this presents challenges both in finding appropriate wording for the Bill, and in enforcing any such provision if it were to be included in the Bill. Nevertheless, we suggest that the Select Committee should give consideration to ways in which approved donee status can be denied to organisations which engage in exploitative practices while not denying registration to those organisations which engage in valuable development work while phrasing their purposes in religious or political terms.

Recommendations:

- ***Delete clause 31(2).***
- ***Insert a new clause providing that an entity may be denied registration as an approved donee, or may be removed from the register of approved donees, if that entity has been shown to have engaged in activities such as proselytising in a way that exploits vulnerable people overseas.***

Clauses 32 and 33 – public institutions and funds

45. There appear to be no definitions of ‘public institution’ and ‘fund’ in either the Charities Bill or the Income Tax Act 1994. CID does not understand these terms to apply to our member organisations, but we cannot be sure in the absence of a definition. We note that public institutions and funds can only be registered as approved donees if they are maintained *exclusively* for certain purposes *within New Zealand*.

Recommendation:

- ***Provide definitions for the terms ‘public institution’ and ‘fund’, as used in clauses 32 and 33.***

Clause 35 – terrorism provisions

46. Our comments in paragraph 26 also apply to this clause.

Recommendation:

- *Delete clause 35.*

Clause 36 – application for registration

47. Our comments in paragraph 29 also apply to this clause.

Recommendation:

- *The forms and documentation required for registration of approved donees should be as simple as possible. Organisations should be required to submit only the documents listed in paragraph 29.*

Clauses 43 and 44 – deregistration of approved donees

48. Our comments in paragraphs 34 and 37 also apply to this clause.

49. The provisions relating to deregistration of charitable entities provide in clauses 28 to 30 for prior notice of intention to deregister to be given, for objections to deregistration to be lodged, and for the Commission to consider any objections that are received. CID believes that the same provisions for objecting to deregistration should apply in the case of approved donees. However, in paragraph 67 we also propose that a more formal internal appeals process should be established for deregistration and other decisions of the Commission.

Recommendations:

- *Amend 43(2)(e) to read ‘any officer or administrator of the entity or fund has engaged in serious wrongdoing in connection with the entity or fund, or any other person has engaged in serious wrongdoing in connection with the entity or fund with the knowledge of an officer or administrator of the entity or fund’. The same amendment should also be made in clause 44(c).*
- *Provide for prior notice to be given of intention to remove an approved donee from the register, and for objection to removal from the register, in line with the provisions for charitable entities in clauses 28 to 30.*

Additional comments on Part 2, Subpart 2 – register of approved donees

50. As discussed in paragraphs 31-33, clause 23 of the Bill requires charitable entities to state their registration numbers in written communication and on fundraising materials that are on display to the public. As we have stated in paragraph 31, there is a case for not requiring the display of registration numbers, except upon request. However, CID believes that, if charitable entities are required to display their registration numbers, the same

requirement should apply to approved donees. This is subject to our comments in paragraphs 32 and 33 and our recommendations following those paragraphs.

Recommendation:

- ***Approved donees should be required to state their registration number in the same way that charitable entities are required to do by clause 23(1). However, this requirement should be modified in the ways discussed in paragraphs 32 and 33.***

Clause 47 – duty to notify changes

51. CID accepts that any change to an organisation’s name or address for service should be notified to the Commission as soon as possible. However, we think that 20 working days is too short a period of time to allow, particularly for small and voluntary organisations. We recommend that this be changed to eight weeks.
52. With regard to changes in the officers, rules or purposes of a charitable entity or approved donee, we consider that it should be sufficient to notify these changes to the Commission as part of the organisation’s annual return.

Recommendations:

- ***Amend clause 47 by deleting 47(1)(c) to (e), and by replacing the words ‘20 working days’ with the words ‘8 weeks’ in 47(2)(d).***
- ***Include a requirement to report any changes to an entity’s officers, rules or purposes as part of the regulations on annual returns to be made under clause 55.***

Clauses 54 and 55 – annual returns

53. The form of annual returns, and the particulars to be contained in them, are to be prescribed by regulation. Clause 55(2) states that these regulations may prescribe different requirements for different types of entities or funds, and Cabinet papers indicate that it is intended that there will be different reporting requirements for organisations of different sizes and types. CID supports this principle, and we endorse the view of Richard Fries, former Chief Commissioner of the Charities Commission for England and Wales, that ‘the creation and submission of annual reports and accounts should be proportional to the scale of and public interest in the charity, with emphasis on “light touch” regulation of small charities’.¹⁴
54. CID believes that annual return forms and documentation should be kept as simple as possible. The only documentation that a registered charitable

¹⁴ Richard Fries, ‘Charities Commission: The Concept in Light of English Experience’, November 2003 www.community.net.nz/HotTopics/TaxCharities/Background/EnglishCharitiesCommission.htm

entity or donee should be required to provide for its annual return should be a copy of its annual report and annual financial statement. It should also be required to report any changes to its officers, rules or purposes.

55. With regard to financial statements, we support the recommendation of the Working Party on Registration, Reporting and Monitoring of Charities that an audited statement should only be required in the case of ‘organisations that receive more than \$100,000 annually from public donations, excluding church collections and grants from grant making bodies’.¹⁵ For other organisations, it should be sufficient to submit an unaudited summary of financial information.
56. Clause 54(1) states that charitable entities and approved donees must file annual returns with the Commission within 4 months after the organisation’s balance date. While 4 months may seem like a long time, we are concerned that this is likely to be unrealistic for small, voluntary organisations. We note that Cabinet papers show that it was originally intended to allow 5 months for annual returns, but this was changed to 4 months. The reasons given for this change, namely to promote good governance within the sector and to enable the Commission to more efficiently fulfil its functions, are not persuasive.¹⁶ We recommend that charitable entities and approved donees be given *at least* 5 months from their balance date to file their returns.
57. It is unclear whether the reporting requirements of the Charities Commission will replace existing reporting requirements for charitable entities and approved donees that are also incorporated societies. Cabinet papers indicate that the intention was that registered charities should not also be required to report to the Registrar of Incorporated Societies.¹⁷ It also appears that this may be the effect of the amendment to the Incorporated Societies Act 1908 in Schedule 4 of the Charities Bill. However, one of the Frequently Asked Questions on the Charities Commission Preparatory Unit website states that charitable trusts and incorporated societies will ‘still need to comply with the requirements of being those types of entities’.¹⁸ CID believes that registered charities and approved donees which are also incorporated societies should not be required to report separately to the Registrar of Incorporated Societies.

Recommendations:

- ***The forms and documentation required for annual returns should be as simple as possible. The only documents required should be a copy of the organisation’s annual report and annual financial statement.***

¹⁵ ‘Report by the Working Party on Registration, Reporting and Monitoring of Charities’, 28 February 2002, p. 20

¹⁶ Cabinet paper, December 2003, paragraph 30, at www.charities.govt.nz/resources/cab-tpc.html

¹⁷ Cabinet paper, June 2003, recommendation 24, at www.charities.govt.nz/resources/cab-est.html

¹⁸ <http://www.charities.govt.nz/resources/faq.html>

- *Only organisations that receive more than \$100,000 annually from public donations (excluding church collections and grants from grant making bodies) should be required to submit audited financial statements.*
- *Amend clause 54(1) to allow charitable entities and approved donees at least 5 months from their balance date to file annual returns with the Commission.*
- *Reporting to the Charities Commission by charitable entities and approved donees which are also incorporated societies should replace reporting to the Registrar of Incorporated Societies.*

Clause 62 – supply of information and documents to other persons

58. Clause 62 refers to information or documents obtained by the Commission under clauses 57 to 61, which relate to the Commission’s powers to inquire into charitable entities, approved donees, and other persons. Under clause 58 there is a duty to assist the Commission by supplying any information or documents requested by the Commission as part of its inquiry. However, the clause also specifies that this duty does not infringe on privileges such as that against self-incrimination and legal professional privilege. Clause 62(1)(b) then provides that the Commission may supply information or documents obtained as part of its inquiries to any person for the purpose of detecting and prosecuting offences against any other Act. Information and documents obtained in this way are not admissible in criminal proceedings.
59. CID objects to this provision of clause 62(1)(b), and recommends that it be deleted from the Bill. While a person might have no legitimate reason to withhold information or documents from the Commission, that person might have a legitimate reason to withhold that information or those documents from another agency. The Commission should not pass on information or documents obtained for one purpose to any agency that will use them for a quite different purpose. It appears from the Cabinet papers that the intent of this clause may be to allow the Commission to refer matters to other government agencies such as the police or the IRD if the Commission considers that such matters would be more appropriately inquired into by those other agencies.¹⁹ If this is so, a new clause should be substituted which is more tightly worded.

Recommendation:

- *Delete clause 62(1)(b).*

Clause 63 – warning notices

60. This clause provides that the Commission *may* issue a warning notice to an individual, charitable entity or approved donee if it considers that certain breaches of the Act or serious wrongdoing have occurred, or if an entity or

¹⁹ Cabinet paper, June 2003, paragraph 23 and recommendation 31, at www.charities.govt.nz/resources/cab-est.html

donee is no longer qualified to be registered. CID can see no reason why the Commission should not be required to issue such a warning notice in all cases, rather than having discretion to do so. We believe that individuals and organisations have the right to be given warning before the Commission takes any further action.

Recommendation:

- *Amend clause 63(2) by replacing the word ‘may’ with ‘must’.*

Clause 64 – publication of details of possible breach

61. This clause allows the Commission to publish a notice setting out details of a possible breach of the Act, possible serious wrongdoing, or a statement that an organisation is, or may be, no longer qualified to be registered as a charitable entity or approved donee. Clause 64 applies if the Commission has given notice to an organisation under clause 63 and the organisation has failed to remedy the problem within the specified time. There is no requirement that the alleged breach, or wrongdoing, or disqualification, must have been proved before the Commission publishes these details – the Commission is free to publish something that it believes *may* be the case. The purpose of such publication is unclear.
62. CID opposes this clause, which we believe could have very damaging effects for charities. Charitable organisations depend on their good name in order to attract support from the public. Publication by the Commission of unproven allegations that are later found to be false could cause the public to lose their trust in an organisation. In some cases, withdrawal of public support could unjustifiably force a charity to close down. Even if the record is subsequently corrected, members of the public may still act on the principle of ‘Where there’s smoke, there’s fire’. We note that clause 100 gives members and employees of the Commission immunity from liability for acts or omissions in performance of their duties. Furthermore, publication of a notice under clause 64 may not be treated as defamatory, except where the Commission acts in bad faith. Such immunity could lead the Commission to publish allegations without exercising due caution. CID believes that the provisions of clause 64 are unreasonable and contrary to natural justice, and that the clause should be deleted.

Recommendation:

- *Delete clause 64.*

Clause 65 – administrative penalty

63. This clause provides that the Commission may require the officers of a charitable entity or approved donee to pay a penalty for failing either to notify changes under clause 47, or to submit annual returns under clause 54, within the prescribed time. The amount of the penalty is to be prescribed by regulations. CID believes that, even if the deadlines for

notifying changes and filing annual returns are extended as recommended in paragraphs 51 and 56, there could be legitimate reasons why organisations fail to meet these deadlines. We recommend that clause 65(1) be amended to ensure that organisations will only be penalised if they have failed to meet deadlines without reasonable excuse (or words to that effect).

64. Clause 65 appears to make officers of charitable entities and approved donees personally liable for the administrative penalty imposed under this clause. In addition, clause 66 provides that an organisation may not indemnify, or effect insurance for, officers in respect of penalties under clause 65. CID is concerned that the personal liability imposed by these clauses could deter people from volunteering to serve as officers of charitable entities and approved donees. We have sought legal advice on the personal liability provisions of this clause, and we are advised that they appear to be inconsistent with the provisions of the Incorporated Societies Act 1908. If this is the case, how is this inconsistency to be resolved for charitable entities and approved donees that are also incorporated societies? We recommend that the entity or donee, rather than its officers, should be made liable for the penalty imposed by clause 65.

Recommendations:

- ***Amend clause 65(1) by inserting the words ‘where such failure has occurred without reasonable excuse’ as a new subclause following subclause 65(1)(b).***
- ***Amend clause 65(1) by making the charitable entity or approved donee, rather than its officers, liable for penalties imposed under this clause.***

Clause 66 – indemnities and insurance

65. As we have explained in paragraph 64, we do not believe that officers should be held personally liable for penalties imposed under clause 65. If they are to be held personally liable, organisations should be able to indemnify or effect insurance for their officers in respect of these penalties. Either way, CID recommends that the reference to penalties under section 65 be removed from clause 66(1).

Recommendation:

- ***Amend clause 66(1) by deleting the words ‘any liability to pay any penalty under section 65 or’.***

Clause 67 – right of appeal

66. This clause provides for a right of appeal to a District Court against certain specified decisions of the Commission. CID believes that appeals against decisions not to register, or to deregister, an organisation should go to the High Court. The High Court has greater expertise in this area of law, and while the arguably greater accessibility of District Courts must also be

considered, we believe on balance that it is important to have appeals on questions of registration and deregistration heard by a suitably expert and senior court.

67. According to Cabinet papers, it was intended that the Commission's decisions to decline registration and impose compliance sanctions would be subject to an internal administrative review within the Commission, with final internal appeals to be heard by the Commission's Chair sitting alone. Charitable organisations could then appeal decisions to the courts when the Commission's internal appeals process had been exhausted.²⁰ Provisions for such an internal appeals process have not been included in the Charities Bill, which instead contains much weaker provision for the lodging of 'objections' to removal from the register of charitable entities in clauses 29 and 30. As noted in paragraph 49, the Bill does not provide for objections to deregistration of approved donees. CID believes that a formal appeals process within the Commission should be included in the Bill, as a first step before appeals go to court, and should apply both to charitable entities and to approved donees.

Recommendations:

- *Amend clause 67 to provide that appeals against decisions of the Commission to refuse to register, or to remove from the register, an entity or fund, should go to the High Court.*
- *The Bill should provide for a formal internal appeals process which would take place prior to appeals going to court.*

Clause 86 – power of the Minister to direct the Commission

68. Under this clause, the responsible Minister may direct the Commission to give effect to a government policy that relates to the Commission's functions and objectives. CID has grave concerns about the implications of this clause for the Commission's independence. It appears that it could, for example, allow the Minister to direct the Commission to interpret the definition of charitable purpose in a particular way. CID believes that if the government wishes to provide clearer direction to the Commission, it should be required to do so by amending the Act, thus allowing such amendments to be subject to parliamentary scrutiny.

Recommendation:

- *Delete clause 86.*

Clause 88 – independence of Commission

69. This clause safeguards the independence of the Commission by providing that the Minister is not authorised to direct the Commission to bring about

²⁰ Cabinet paper, June 2003, paragraphs 30-31 and recommendation 37, at www.charities.govt.nz/resources/cab-est.html

a particular result in respect of a particular person or persons. However, there is no provision prohibiting the Minister from directing the Commission to bring about a particular result in respect of a particular *class of persons* or a particular *type of activity* (such as advocacy). We recommend that the clause be amended to prohibit such direction by the Minister. If it is considered necessary to direct the Commission to treat a particular class of persons, or a particular type of activity, in a particular way, this should be done by amending the Act.

Recommendation:

- ***Amend clause 88(1) by inserting the following words after the words ‘particular person or persons’: ‘or of any particular class of persons, or of any particular type of activity undertaken by charitable entities or approved donees or by entities applying for registration as charitable entities or approved donees’.***

Clause 139 – regulations

70. A number of matters are to be prescribed by regulation. In our comments on particular clauses of the Bill, we have set out our views on some of the matters to be prescribed by regulation. However, we hope that submissions on the Bill will not be the only opportunity to comment on these regulations. We believe the regulations, once drafted, should be the subject of consultation with the community and voluntary sector. CID would particularly appreciate the opportunity to comment on the regulations specified in clause 139(1)(a) to (e) and (k).

Recommendation:

- ***Regulations made under clause 139 should be the subject of consultation with the community and voluntary sector.***

Schedule 1, clause 2 – performance of the Board’s functions

71. This clause states that the Board must ensure that the Commission performs its duties in a manner ‘consistent with the spirit of service to the public’. CID would also like the Board to ensure that the Commission acts in a manner consistent with the spirit of service to the charitable sector.

Recommendation:

- ***Amend schedule 1, clause 2 by adding the words ‘and the charitable sector’ at the end of the clause.***

Schedule 2, clause 8 – removal of members

72. This clause provides that the Minister may remove a member of the Commission from office ‘at any time and entirely at his or her discretion’. No criteria for a decision to remove a member are provided in the Bill.

CID is concerned that this clause could threaten the independence of the Commission by allowing the Minister to remove a member if the Minister disagrees with that member's views or decisions, especially the member's political views. We recommend that removal of members from office should not be entirely at the Minister's discretion, and that criteria for such removal should be set out in the Bill. Criteria should relate to matters such as serious wrongdoing, rather than to members' views or decisions.

Recommendation:

- *Amend schedule 2, clause 8 by setting out criteria for removal of members from office.*

List of CID recommendations

1. The Charities Commission should not be funded solely by fees paid by charitable organisations.
2. Registration fees should be set at a low level so as to allow as many organisations as possible to register with the Commission.
3. Organisations wishing to register both as charitable entities and as approved donees should have to pay only one registration fee.
4. There should be no annual fees.
5. The shortfall between the income earned from registration fees and the cost of the Commission's functions, including establishment costs, should be met by the government.
6. Government funding should be at a level sufficient to provide adequate staffing and resources for the Commission to carry out its functions effectively and expeditiously.
7. One of the Commission's roles should be to provide support and advice to charitable organisations. This support role should not be limited to providing assistance in complying with regulatory obligations.
8. The Commission should be as independent of government as reasonably possible.
9. The Inland Revenue Department should not have the power to deny tax exemption to registered charities, and any protocol between the IRD and the Commission should be made public.
10. The Charities Bill should be amended to require the Commission to perform its functions in a manner consistent with the principles of the Treaty of Waitangi.
11. Through a process of further consultation, develop a definition of charitable purpose to replace that in clause 4(2).
12. Amend the Bill to state that charities may legitimately engage in advocacy to advance their charitable purposes.
13. Amend clause 10 to add the following function: 'provide support and advice to the charitable sector, and promote good practice within the sector'.
14. Amend clause 13(1) to replace the words 'for exclusively charitable purposes' in 13(1)(a) with 'for purposes which are principally charitable', and to replace the words 'exclusively for charitable purposes' in 13(1)(b) with 'principally for charitable purposes'.
15. Delete clause 13(4).

16. Delete subclauses 15(2)(c) and (d).
17. The forms and documentation required for registration of charitable entities should be as simple as possible. Organisations should be required to submit only the documents listed in paragraph 29.
18. Options for ‘umbrella registration’ on behalf of local branches of an organisation should be considered.
19. The nature of the written communication on which organisations are required to state their registration numbers should be specified more clearly in clause 23.
20. Organisations should be given a grace period of 12 months after registration as a charitable entity before they are required to state their registration number in written communication.
21. Amend 26(1)(a) to read ‘in the case of the trustees of a trust, the funds received by the trustees in trust are not applied principally for charitable purposes’.
22. Delete 26(1)(b)(i) and (ii) and substitute the words ‘is not being maintained principally for charitable purposes’.
23. Amend 26(1)(h) by adding the following words after ‘this Act’: ‘where such failure has occurred with the knowledge of the officers or administrators of the entity, and where these officers or administrators have failed to take steps to correct the collector’s failure’.
24. Amend 26(1)(i) to read ‘any officer or administrator of the entity has engaged in serious wrongdoing in connection with the entity, or any other person has engaged in serious wrongdoing in connection with the entity with the knowledge of an officer or administrator of the entity’. The same amendment should also be made in clause 27(1)(c).
25. Insert a new subclause in clause 30 requiring the Commission to provide a written response to objections to removal from the register, setting out the Commission’s reasons for upholding or declining to uphold the objection.
26. Amend clause 31(1)(b) to add the purposes listed in paragraph 40.
27. Amend clause 31(1)(b)(iii) and (iv) by replacing the words ‘a country recognised by the United Nations as a developing country’ with the words ‘a country on the current OECD Development Assistance Committee List of Aid Recipients’.
28. Delete clause 31(2).
29. Insert a new clause providing that an entity may be denied registration as an approved donee, or may be removed from the register of approved donees, if that entity has been shown to have engaged in activities such as proselytising in a way that exploits vulnerable people overseas.
30. Provide definitions for the terms ‘public institution’ and ‘fund’, as used in clauses 32 and 33.
31. Delete clause 35.
32. The forms and documentation required for registration of approved donees should be as simple as possible. Organisations should be required to submit only the documents listed in paragraph 29.
33. Amend 43(2)(e) to read ‘any officer or administrator of the entity or fund has engaged in serious wrongdoing in connection with the entity or fund, or any other person has engaged in serious wrongdoing in connection with the entity or fund with the knowledge of an officer or administrator of the entity or fund’. The same amendment should also be made in clause 44(c).

34. Provide for prior notice to be given of intention to remove an approved donee from the register, and for objection to removal from the register, in line with the provisions for charitable entities in clauses 28 to 30.
35. Approved donees should be required to state their registration number in the same way that charitable entities are required to do by clause 23(1). However, this requirement should be modified in the ways discussed in paragraphs 32 and 33.
36. Amend clause 47 by deleting 47(1)(c) to (e), and by replacing the words ‘20 working days’ with the words ‘8 weeks’ in 47(2)(d).
37. Include a requirement to report any changes to an entity’s officers, rules or purposes as part of the regulations on annual returns to be made under clause 55.
38. The forms and documentation required for annual returns should be as simple as possible. The only documents required should be a copy of the organisation’s annual report and annual financial statement.
39. Only organisations that receive more than \$100,000 annually from public donations (excluding church collections and grants from grant making bodies) should be required to submit audited financial statements.
40. Amend clause 54(1) to allow charitable entities and approved donees at least 5 months from their balance date to file annual returns with the Commission.
41. Reporting to the Charities Commission by charitable entities and approved donees which are also incorporated societies should replace reporting to the Registrar of Incorporated Societies.
42. Delete clause 62(1)(b).
43. Amend clause 63(2) by replacing the word ‘may’ with ‘must’.
44. Delete clause 64.
45. Amend clause 65(1) by inserting the words ‘where such failure has occurred without reasonable excuse’ as a new subclause following subclause 65(1)(b).
46. Amend clause 65(1) by making the charitable entity or approved donee, rather than its officers, liable for penalties imposed under this clause.
47. Amend clause 66(1) by deleting the words ‘any liability to pay any penalty under section 65 or’.
48. Amend clause 67 to provide that appeals against decisions of the Commission to refuse to register, or to remove from the register, an entity or fund, should go to the High Court.
49. The Bill should provide for a formal internal appeals process which would take place prior to appeals going to court.
50. Delete clause 86.
51. Amend clause 88(1) by inserting the following words after the words ‘particular person or persons’: ‘or of any particular class of persons, or of any particular type of activity undertaken by charitable entities or approved donees or by entities applying for registration as charitable entities or approved donees’.
52. Regulations made under clause 139 should be the subject of consultation with the community and voluntary sector.
53. Amend schedule 1, clause 2 by adding the words ‘and the charitable sector’ at the end of the clause.
54. Amend schedule 2, clause 8 by setting out criteria for removal of members from office.

Appendix A - CID member organisations (June 2004)

- ↗ **ActionLove**
- ↗ **ADRA** - Adventist Development Relief Agency
- ↗ **Alay Buhay Foundation**
- ↗ **Amnesty International ***
- ↗ **AMB** - Anglican Missions Board
- ↗ **BANZAID** - Baptists of Aotearoa NZ Aid & Development
- ↗ **Bridgebuilders Trust ***
- ↗ **The Cambodia Trust**
- ↗ **CALM** - Campaign Against Land Mines
- ↗ **CARITAS** - Caritas Aotearoa
- ↗ **Connected Media Trust**
- ↗ **CBM** - Christian Blind Mission
- ↗ **CCF** - Christian Children's Fund
- ↗ **Communities OnLine Trust**
- ↗ **CWS** - Christian World Service
- ↗ **DRC** - Development Resource Centre
- ↗ **ECPAT** - End Child Prostitution Pornography and Trafficking
- ↗ **FPAID** - Family Planning Association International Development
- ↗ **Fred Hollows Foundation**
- ↗ **Habitat for Humanity NZ ***
- ↗ **IHC (Inclusion International)**
- ↗ **International Needs**
- ↗ **LAC** - Latin America Committee
- ↗ **Mahitahi** - People Working Together
- ↗ **Medical Aid Abroad**
- ↗ **NMT** - Nelson Mandela Trust
- ↗ **NI** - New Internationalist
- ↗ **NZACU** - NZ Association of Credit Unions
- ↗ **NZCFS** - NZ/China Friendship Society
- ↗ **O Le Lafitaga Trust**
- ↗ **OXFAM** - Oxfam NZ
- ↗ **Pacific Paramedical Training Centre**
- ↗ **Pacific Women's Watch (NZ) Inc**
- ↗ **PIRM** - Pacific Institute of Resource Management
- ↗ **QPSNZ** – Quaker Peace and Service Aotearoa New Zealand
- ↗ **RMS** - Refugee and Migrant Service
- ↗ **Richmond Fellowship NZ**
- ↗ **Rotary New Zealand World Community Service**
- ↗ **SCNZ** - Save the Children NZ
- ↗ **Soroptimist International**
- ↗ **Surf Aid**
- ↗ **TEAR** - Tear Fund
- ↗ **Te Korowai Aroha Aotearoa**
- ↗ **Te Ora Hou**
- ↗ **The Africa Centre**
- ↗ **The Peace Foundation***
- ↗ **TLM NZ** - The Leprosy Mission, NZ
- ↗ **The Trade Aid Movement**

- ↗ **The Salvation Army**
- ↗ **Transparency International**
- ↗ **The UMMA Trust**
- ↗ **UNICEF** - NZ National Committee
- ↗ **UNIFEM** - NZ National Committee
- ↗ **UNANZ** - United Nations Association of NZ
- ↗ **VCLSN** - Vietnam Cambodia Laos Support Network
- ↗ **Vietnam Health Trust**
- ↗ **Vision Pacific Charitable Trust**
- ↗ **VSA** - Volunteer Service Abroad
- ↗ **Wellington Palestine Group**
- ↗ **WWF** - Worldwide Fund for Nature
- ↗ **WVNZ** - World Vision of NZ
- ↗ **YMCA** - Young Men's Christian Associations of NZ
- ↗ **YWCA** - Young Women's Christian Association of NZ

* *Associate members*

Appendix B – possible definition of charitable purposes²¹

Charitable purposes shall be:

- the advancement of health, which includes the prevention and relief of sickness, disease or human suffering
- the advancement of education
- the advancement of social and community welfare, which includes:
 - the prevention and relief of poverty, distress or disadvantage of individuals or families
 - the care, support and protection of the aged and people with a disability
 - the care, support and protection of children and young people, and
 - the promotion of community development to enhance social and economic participation
- the advancement of any religion or philosophy (such as rationalism or humanism)
- the advancement of culture and heritage, which includes:
 - the promotion and fostering of culture
 - the care, preservation and protection of New Zealand heritage
 - the practice and development of Tikanga Māori, and
 - the practice, development and protection of Te Reo Māori
- the advancement of the natural environment, and
- other purposes beneficial to the community, which include:
 - the promotion and protection of civil and human rights, and
 - the prevention and relief of suffering of animals

In the above context, ‘advancement’ includes protection, maintenance, support, research, improvement, enhancement and advocacy.

²¹ Modified from the definition in ‘Second Report by the Working Party on Registration, Reporting and Monitoring of Charities’, 31 May 2002, p. 15