

Feedback form: the structure of the charities regulator, decision-making and the appeals process

If you wish, you may use this form to provide your comments on the options and questions.

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Options

Please mark (with a X) either don't support, support or don't know for each option and the listed proposals. Note option 1 (no change) is not listed here.

Part 1: Structure of the regulator and decision-making	Do not support	Support	Do not know
Option 2: Clarify current structure and decision-making processes			
Providing more information to the sector and public on how the regulator operates and makes decisions.		x	
Amend the Act to clarify how the Registration Board makes its registration decisions and how information is considered where possible.		x	
Option 3: Increase accountability and transparency requirements on the regulator			
Mandatory public reporting requirements on the regulator.		x	
Requirement for Charities Services to publish their decisions (in addition to publication of Registration Board decisions).		x	
Making the current Charities Sector Group a formal advisory body under the Act, and increasing its role/ functions.	x		
Through amendments to the objections mechanism under the Act, enable entities to be able to speak to the Registration Board (alongside providing a submission) when a registration decline or deregistration is being proposed by Charities Services.		x	
Option 4: Strengthen the independence of the Registration Board			
Provide for the Registration Board to have its own secretariat and/or increase its oversight functions of Charities Services and increase the number of Board members.	x		

Part 2: The appeals framework	Do not support	Support	Do not know
Option 2: Expanding decisions available for appeal – to include those that impact a charity financially, create additional requirements for charities, or may cause potential damage through the public release of information.		x	
Option 3: Establishment of a Test Case Litigation Fund – to provide financial assistance to registered charities and entities, to help them meet some, or all, of the litigation costs of their appeal.	x		
Option 4: Appeals heard at the High Court as hearings <i>de novo</i> – to allow the decision to be considered afresh, and to allow the Registration Board to be party to the appeal.	x		
Option 5: The introduction of a new appeals body prior to the High Court , through either		x	
<ul style="list-style-type: none"> the use of an existing Tribunal (expanded to hear Charities Act appeals); or 	x		
<ul style="list-style-type: none"> the establishment of an Appeals Panel. 		x	

Questions

Part 1: structure of the regulator and decision-making

Problem definition: a perceived lack of transparency and accountability of decision-making may undermine the legitimacy of the regulator.

Question	Comment
1. Do you agree with the problem statement? Why or why not?	Yes, feedback we have received from members indicates there is scope for improving the transparency and accountability of decision-making by the current regulator.

Option 1: no change (status quo)

Question	Comment
2. What are the risks of doing nothing and continuing with the status quo?	No comment

Option 2: clarify current structure and decision-making processes

Question	Comment
3. The regulator in New Zealand is unique, with roles and responsibilities split between the Registration Board and Charities Services. Would further clarification of how this split model works, and the independence and accountability measures in place, help address concerns? Why/why not?	Yes, clarifying the split regulatory model would assist stakeholders better understand the respective roles of Charities Services and the Registration Board. A simple diagrammatic depiction of the relationship between the two entities and their respective regulatory roles could also assist.
4. How could we make the decision-making process more transparent?	A simple illustrative approach to describing the steps taken is likely to assist many stakeholders better understand the decision-making process
5. What parts of the decision-making process need clarifying in the Act to reduce confusion and reduce inconsistency?	No comment

Option 3: increase accountability and transparency requirements on the regulator

Question	Comment
6. Would the proposed increased performance reporting obligations on the regulator improve trust and confidence? Why/why not?	As stated in our response to Q1 above, feedback we have received from members indicates there is scope for improving the transparency and accountability of decision-making by the current regulator. Introducing performance reporting obligations that complements existing annual review reports is likely to enhance the Charities Services status as a credible regulator amongst stakeholders.
7. What could be the benefits of formalising the Charities Sector Group and expanding their role?	No comment
8. Would the ability for applicants to speak to the Registration Board through an amended objection process support the transparency of decision-making? Why/why not?	No comment

Option 4: strengthen the independence of the Registration Board

Question	Comment
9. How could the Registration Board's role be reframed to give further trust in the independence of the regulator and decision-making?	Whilst there is merit in the proposal to strengthen the independence of the Registration Board by introducing its own secretariat, there is insufficient evidence that the costs of establishing and maintaining such a secretariat can be sufficiently justified.

Part 2: Appeals

Problem: lack of accessibility and lack of development of case law

Question	Comment
1. Do you agree with the problems identified in the document? Why or why not?	Yes, feedback we have received from our members identify similar problems to those identified in the document.

Option 1: no change (status quo)

Question	Comment
2. What are the risks of doing nothing and continuing with the status quo?	The charities sector needs a simple, cost-effective solution to fulfilling their regulatory obligations in order to flourish and support the community in New Zealand as intended. A simple and cost-effective appeals system is an important part of this solution.

Option 2: Expanding decisions available for appeal

Question	Comment
3. Do you think the decisions outlined in the document are appropriate for appeal, and are there any other decisions you believe should be included in this list?	We support the proposal to expand the decisions available for appeal. We have not identified any further decisions in addition to those included the list under option 2.
4. Should these decisions be appealed to the High Court, or are any of the remaining options a more appropriate mechanism for these decisions?	See our response to Q5 below.

Option 3: Creation of a Test Case Litigation Fund

Question	Comment
5. Do you agree with the proposed criteria in the document? Is it too narrow? Why?	No comment
6. If this new funding were to be available for the sector, is this the best use of it?	No comment

Option 4: Appeals heard at the High Court as hearings de novo

Question	Comment
7. Is this preferable to the status quo where only appeals that are dismissed by the High Court can be appealed, unless the Attorney-General is involved?	No comment
8. If applicants and charities had the opportunity to speak to the board (if the objection process was expanded as provided for in option 3 in part 1), would a de novo appeal be necessary?	No comment

Option 5: Introduction of a new appeals body prior to the High Court

Question	Comment
9. Would you prefer an Appeals Panel or an expansion of an existing Tribunal?	Feedback we have received from our members supports the establishment of an appeals panel
10. Is the Taxation Review Authority the most appropriate existing Tribunal to hear Charities Act appeals?	No comment
11. Should the current Registration Board remain alongside an Appeals Panel?	In our previous submission in response to the consultation on “Modernising the Charities Act 2005”, we suggested considering whether the Registration Board could be repurposed to consider appeals on deregistration decisions made by Charities Services. We reiterate our previous suggestion here.

Which option, or group of options, would best address the problem?

Question	Comment
12. Which option would you prioritise?	Subject to our response to question 11 above, we suggest the establishment of a separate appeals panel.
13. Which options do you think work best together?	No comment