

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.

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		X	
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		X	
Mandatory public reporting requirements on the regulator.		X	
Requirement for Charities Services (CS) 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		X	
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			
<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?	We absolutely agree with this problem statement. In our original 2019 submission, we raised our concerns about the transparency of the regulator, and the inconsistencies we observed in their decisions around charitable purposes and advocacy. That submission also raised our concerns as a Christian charity of potential intolerance to our worldviews and mission from the regulator in modern Aotearoa. This lack of transparency, real or perceived, does garner trust in the wider charities sector. That is why in our original submission, we submitted that an independent body such as the Law Commission was better suited to undertake this review, rather than the DIA.

Option 1: no change (status quo)

Question	Comment
2. What are the risks of doing nothing and continuing with the status quo?	There would be growing concerns and distrust about the regulator and consequently a growing disconnection between the regulator and the actual charities.

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?	Clarification is always helpful here. But taken as a whole, a mixture of measures covered in these discussion papers will also lead to greater clarification for charities. What does this further clarification look like? And how cost-effective will it be. We submit these measures must be cost effective and the impacts measured well to ensure it is a good use of public money.
4. How could we make the decision-making process more transparent?	Separate branding mentioned in the discussion document is helpful. Other measures include wide promotion and publication of decisions, regular updating of the sector about key decisions, providing names/people to contact rather than faceless numbers, and giving more in-depth information to the public who seek it.
5. What parts of the decision-making process need clarifying in the Act to reduce confusion and reduce inconsistency?	Currently, only Board decisions are published. We believe the decisions from the CS should be published as well to ensure their decision-making is transparent. This is even more important given that the majority of applications come to them. Also, the parts of the Act governing the escalation of cases between CS and the Board should be refined to ensure there is transparency in the flow of information here e.g. why has CS declined the application and escalated this to the Board? Who are the officials involved in this process?

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?	We strongly support this. Measuring the impact, and not just the performance, of the Regulator's work is crucial.

<p>7. What could be the benefits of formalising the Charities Sector Group and expanding their role?</p>	<p>There could be some benefit here of formalising this group. But caution is needed also. For example, the role of the members of this group to represent the sector, and not their organisation, is vital to ensuring there is ongoing trust and support of the Group. Furthermore, ensuring there is broad membership is important. We note for example that the NZ Council of Christian Social Services (NZCCSS) is not a part of the core group in the Charter (although religion is referenced in the 'invited stakeholders' section). We submit with all the work that Christian charities undertake in Aotearoa (e.g. Presbyterian Support, Methodist Mission, St Vincent De Paul, The Salvation Army and many others), if the Sector Group is formalised, then having a peak body from Christian charities should be included in the core group.</p> <p>Beyond these concerns, there is still value in this kind of group providing perspectives and feeding that back to the wider sector. The discussion paper suggests formalising and expansion. Without clearer definition of what this actually looks like (particularly expansion), we will reserve our views. Expansion will be helpful if there are clear impact measurements and ongoing transparency from this group.</p>
<p>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?</p>	<p>We strongly support this idea. Charities that have been 'escalated' from the CS to the Board should have the chance to speak on record about this process <i>before</i> going to the Courts. There are precedents for this in other non-court tribunals. Still, this needs to be managed well so that it is about the key legal issues at hand and not personal attacks back and forth between the escalated charity and the Board.</p>

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?	<p>We are still unconvinced about the need to have two bodies in this regulator model. But if this model persists, we recommend: increasing the transparency and performance obligations on the Board discussed above; ensuring a right for applicants to speak directly to the Board; bringing on more Board members with diverse backgrounds and perspectives (please note we discussed in our original submission our concern as a Christian organisation about our views and mission being marginalised in an increasingly secular NZ and our observations that other charities with similar views, or strong advocacy components, like Greenpeace and Family First, have been through intense legal processes with the Board). Tolerance is a two-way street and we believe more Board members from diverse backgrounds and viewpoints can greatly help the perceived lack of independence.</p> <p>Furthermore, we are interested in how and why cases are escalated from CS to the Board. Having more info about this process is important.</p>

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?	We agree strongly with the problems identified in the document. All aspects mentioned in the document, especially the huge expenses involved in taking appeals to the High Court, and the inability to challenge decisions from the CS, are elements we strongly resonate with.

Option 1: no change (status quo)

Question	Comment
2. What are the risks of doing nothing and continuing with the status quo?	Growing lack of transparency for the regulator; distrust of the regulators role and functions; concern within the sector that only certain types of charities are being 'pursued' by the regulator.

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 types of decisions outlined in the document.
4. Should these decisions be appealed to the High Court, or are any of the remaining options a more appropriate mechanism for these decisions?	Having the option of appealing to the High Court remains useful, but hugely expensive. Some of these decisions can be handled within an internal-type of process. But even this difficult as we wonder what the independence is like for charities facing deregistration from the Board. We are unsure about other possible mechanisms that could play a key, yet affordable role, in this process. Maybe there is an existing ombudsman scheme that appeal decisions could be taken to that bring more independence to these cases?

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?	We support the criteria detailed in the document.
6. If this new funding were to be available for the sector, is this the best use of it?	Yes. The appeal from Family First taken to the High Court in 2015 (and now Supreme Court from government) is a critical test case about charitable purposes, conservative viewpoints and advocacy. The Board notified Family First that the Board <i>considers that the Trust's opinion(s)... are fairly described as controversial in contemporary New Zealand society</i> ". These are views shared by many charities, and many New Zealanders. Using new funding to contribute to a Test Case fund would help clarify critical issues. Any new funding should not solely be for this fund, but can contribute to it.

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?	
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?	Yes, we support the hearings de novo approach.

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?	Yes, The Salvation Army would support this, as long as it is cost-effective and does not create new layers of bureaucracy that hinder the appeals process. We have discussed the possibilities of in-house appeals and an existing ombudsman scheme that could play this role.
10. Is the Taxation Review Authority the most appropriate existing Tribunal to hear Charities Act appeals?	Possibly. But the clear focus on tax-related issues might be problematic given some of the current critical issues are around values, charitable purposes and advocacy. We are unsure if this authority has the capacity to hear and decide on broad issues beyond tax.
11. Should the current Registration Board remain alongside an Appeals Panel?	We recommend that if a new appeals body was established, then the Board should be disestablished. That means the transparency of the CS becomes even more critical as they would be the primary body involved in registration and deregistration. Again, the independence of any new body (if that is the best option) is non-negotiable.

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

Question	Comment
12. Which option would you prioritise?	<ul style="list-style-type: none">- Strengthen and increase transparency and performance/impact measurements on CS- Disestablish the Board and establish a new appeals authority to hear appeals from CS decisions- Keep the line to High Court appeals as a last resort
13. Which options do you think work best together?	

Feedback form: compliance and enforcement powers of the charities regulator

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

Options

Option 1: no change (status quo)

Question	Comment
1. What are the risks of doing nothing and continuing with the status quo?	Potentially have an inefficient and toothless regulator.

Option 2: Increase education and support for compliance

Question	Comment
2. Have you received support from Charities Services to help you comply with your obligations under the Act? What additional support would be useful?	<p>We have not received direct support. But The Salvation Army is always willing to engage with the regulator on questions/issues we have.</p> <p>The supports listed in this discussion document are positive and we support them. We prefer the focus on education, rather punitive approaches. With non-compliance being the most significant issue, we recommend a campaign-type education awareness approach for compliance. We assume this approach will help smaller charities with less resources to be aware and alert to their compliance obligations. Simplifying the compliance requirements, and awareness-raising campaigns, could help increase compliance.</p> <p>We wonder also if charity to charity connections or even mentorship is a possible option. Bigger charities might be able to offer guidance and support to smaller ones around compliance. Furthermore, there might be options to get further support from the corporate sectors in terms of pro bono financial and legal advice.</p>

<p>3. Would you support Charities Services increasing resource in practice monitoring and/or charitable purpose reviews? Why/why not?</p>	<p>We support this to some extent. This proactive compliance is crucial to the sector as long as the relationships are robust between CS and the charity, and the monitoring is not invasive.</p> <p>However, how will the charities that come under this proactive investigation be selected? How does CS ensure it is a broad group of charities being reviewed, and not just charities that have views that don't align to CS or the Board (if it remains)? Fairness is absolutely crucial here and we recommend a broad group of charities be worked with under this option. Maybe the initial group of charities that can be reviewed are those who have long histories of non-compliance. Or charities themselves could volunteer to be reviewed and also be proactive. This might work well with the flag or star kind of certification alluded to in the document e.g. "This charity has been reviewed by CS in XXXX" mark.</p> <p>Additionally, what happens to the completed reviews? Is there a timeframe where the charity in question can address any issues that have arisen?</p> <p>We urge a good, fair balance is sought here between proactively supporting charities and not targeting or being too invasive or onerous on the charity's work.</p>
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Option 3: amend new powers and **Option 4:** new powers

Question	Comment
<p>4. Are warnings generally viewed as an effective tool? Why/why not?</p>	<p>Yes and no. For charities in difficult situations or in turmoil, the warnings are likely to be ineffective as they deal with the issues at hand. But for other charities, the warnings process can be very helpful.</p>

<p>5. What option or approach to addressing failure to file would best support compliance?</p>	<p>- Enabling CS to publish investigation outcomes - Additional incentives to support compliance e.g. flags. Certification etc</p> <p>We generally support all the options listed in the discussion document. The 2 options listed above are 2 we highlight can have some good impact. But the proactive approaches (with good fairness and balance) and early attempts to work with the charity in question are in our view the best options.</p>
<p>6. What could be the unintended consequences of additional decline powers?</p>	<p>Some people might be too nervous/worried to start new and/or innovative charities if the obligations are deemed onerous.</p>
<p>7. Apart from powers to suspend or remove officers, what steps could Charities Services take to work with charities and protect charitable assets before deregistration action is taken?</p>	<p>Are there options to freeze the trust's assets before deregistration? Or the assets or accounts of the officer in question? This might be possible under the principal Act, or under tax law. But this is important to protect the assets from dodgy officers.</p>

Technical changes

Question	Comment
<p>8. Please provide any comment on the technical changes proposed in the document.</p>	<p>The technical areas seem to be straight-forward. But we are unsure about the ability for the Board to not be bound by the IRD decisions on charitable purpose. If the Board is disestablished, then this is a moot point. We believe greater clarity is needed here, especially if the Board is not disestablished.</p>

Feedback form: role of officers

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

Definition of officer

Option 1: no change to the definition of officer (status quo)

Option 2: broaden the definition of officer by removing the reference to trustees of trusts

Question	Comment
10. If your charity is a trust, or you work with charities that are trusts, what would option 2 mean for you?	Broadening the definition is positive. The Salvation Army is a large organisation and so the number of people that will fall under a broader officer definition would be quite large. It is important to define what is 'significant influence over the management and administration' because larger charities will have many people that fit under a literal interpretation.
11. Do you see any implications with the options?	As above, a broader definition would mean more people fall within the definition for larger charities. This can become problematic around employment contracts and so on. But this is negligible.
12. Are there any alternative options that would better address the problem?	

Governance duties of officers

Option 1: no change to officer duties (status quo)

Option 2: add four explicit duties for officers of charities into the Charities Act 2005

- Duty to act in good faith and the charity's best interests
- Duty to act with reasonable care and diligence
- Duty to ensure the charity's financial affairs are managed responsibly
- Duty to manage any perceived conflict of interest

Option 3: more comprehensive guidance and support for existing duties (duties are not explicitly set out in the Charities Act)

Question	Comment
<p>13. In your experience, what are the key governance challenges for charities, if any?</p>	<ul style="list-style-type: none"> - Passionate people, but time-poor and sometimes not effectively trained in governance best practices - Preparation of board papers, admin etc is challenging for operational staff, especially in smaller organisations - People not truly understanding what governance is - Refreshing boards and getting younger people in volunteering here - Providing remuneration for Board members
<p>14. Which of the options would best address the problem? Why?</p>	<p>A mixture of options 2 and 3 are preferable. Option 3 is good, but as long as these guidelines are simplified and helpful. The development of other tools similar to Australian models is positive. But we also note there is good work in NZ happening around governance in the NFP sector (e.g. CSI's National Strategy for Community Governance) that should be supported and involved in this discussion too.</p>
<p>15. Are there any alternative options that would best address the problem?</p>	<p>Maybe CS could provide targeted funding around improving governance in charities. This could be done with CSI, or other partners.</p>
<p>16. Are the proposed duties practical and feasible for charities?</p>	<p>We believe they are practical and feasible.</p>
<p>17. Should duties fall on the officers of charities, or the entity itself?</p>	<p>Interesting question. Other legislation places the emphasis on the officers/trustees. We believe this is a discussion that should be pursued more as there are pros and cons for each approach.</p>
<p>18. Should officer duties be in legislation, a code or in guidance?</p>	<p>We believe several other pieces of legislation, and the principal Act, offer some good guidance already. We recommend trying to simplify and consolidate all of this into a code or guiding document so there is one place charities can refer to.</p>
<p>19. Does the wording of the duties create any issues with other legislation?</p>	

Disqualifying factor – criminal convictions

Option 1: no change to the criminal convictions that are disqualifying factors for officers (status quo)

Option 2: disqualifying factors includes serious criminal offences

Option 3: all criminal convictions to be disclosed to the regulator who has the discretion to disqualify an officer when there is a significant risk to the charity or its beneficiaries

Question	Comment
20. Which option would best address the problem? Why?	We support a mixture of options 2 and 3.
21. Are there any alternative options that would better address the problem?	

Disqualifying factor – minimum age of officers

Option 1: no change – keep the qualifying age to hold an officer position at 16

Option 2: raise the qualifying age to hold an officer position to 18

Question	Comment
22. Are there any alternative options that would better address the problem?	We prefer option 2.
23. Why might we want to have officers who are under 18? Are there any implications of this?	