

Response from the Fundraising Institute of New Zealand (FINZ) to DIA Policy questions: Round 2

- i. FINZ again protests at the tight turn-around required. It is disrespectful of the sector in general and peak bodies in particular who are left with no opportunity to seek either comment or endorsement from their key stakeholders.
- ii. FINZ represents the fundraising industry in New Zealand with membership embracing 2000 paid staff and volunteer fundraising personnel working to assist over 800 charitable and community organisations – spanning all four Tiers of Registered Charities.

Section A: Charities Regulator structure, decision-making and appeals.

- 1.(P1, Q1) FINZ agrees that transparency, accountability, and overall independence of the Regulator is inadequate. The difference in interaction with the sector from when this function was conducted by an Independent Commission and the current arrangement as a function of The Department of Internal Affairs (DIA) is significant. The former operated a model of active participation in sector activities and was visible and contributory in addition to being open to discussion.

Of the options proposed:

- Option 1 (no change) – FINZ disagrees
- Option 2 (clarify current structure and decision-making processes) – this is not desired, although it acknowledges that ‘some’ improvement might be achieved.
- Option 3 (increase requirements under The Act to for accountability and transparency) – such a move might work in theory, but the Devil is in the detail as to the extent that practice runs the risk of minimal response clothed in process of adherence to the ‘letter of the law’ while failing to achieve meaningful change.

- Option 4 (strengthen the independence of the Registration Board) – given that the majority of the Registration Board’s decision-making is delegated, it’s difficult to see how this might make a difference, unless the Registration Board was resourced to handle all registration/deregistration matters. As this option is likely to continue with the employment/engagement of the same people, this option doesn’t necessarily mean improvement.

FINZ does not wish to be disparaging of the intent or efforts of those currently engaged but is concerned if processes continue to operate under the current legislative framework. The risk is simply of creating options which in reality represent the equivalent of portraying baked potatoes, boiled potatoes, mashed potatoes, or chips as being essentially different.

2. (P1, Q2) The risks of continuing with the status quo and doing nothing include:
 - Continuing dissatisfaction with the current model
 - A legalistic rather than a community best practice application of the rules
 - Continued gate-keeping that permits laissez-faire creation of organisations that contribute to a competitive model rather than collaborative model on the one hand and denial of organisations that would otherwise pass a community litmus test of legitimacy on the other.
3. (P1, Q3) FINZ is unsure how ‘clarification’ will address concerns being expressed by the sector. It may help but whether that would solve the underlying concerns renders this question impossible to answer.
4. (P1, Q4) An issue appears to be that all applications are held entirely in private. The rest of the sector has no way of commenting/advising/cautioning on the wisdom of creating yet ‘another competitive mouth to be fed.’ FINZ is not against innovation or giving people choices as to which organisation they support (or access). But with the registration process conducted entirely in isolation does not make sense in this sector. These are organisations that collectively seek contributions of goodwill and when/if they fail, that goodwill goes with them – and can impact on the reputation

of others to the extent of the entire sector. It does not make sense for there to be no mechanism for consideration of impact. It is a very monochromatic approach. It is acknowledged that broader stakeholder input to assist the Regulator would not be simple – but it is likely to be ‘right.’

5. (P1 Q5) One part of the decision-making process needs clarifying more than any other from a FINZ perspective – is the decision-making process driven by simple gatekeeping as to whether a proposed organisation warrants tax exemption status? From a sector-perspective, it needs to be about what’s right for encouraging a vibrant and successful community sector. The suspicion is that it is simply tax status related. If so, that needs to be understood first and foremost, whether that is right or not.
6. (P1 Q6) The answer to that is likely only to be known after the fact.
7. (P1 Q7) This could be an option towards addressing comments offered in (P1 Q4). The question arises as to the selection criteria and mandate. To be effective, the group probably requires some level of responsibility to/for their own sectoral stakeholders; and for some level of rotation to maintain both consistency and refreshment.
8. (P1 Q8) Yes, the ability to speak to the Registration Board through an amended objection process is fully supported.
9. (P1 Q9) The previous answers and the answer to this question raise a key point – ‘structure follows strategy.’ Without knowing the imperatives or drivers of the Regulator, it is difficult to determine what best structure might apply. It is the absence of clarity around the ‘strategy’ that undoubtedly feeds both lack of adequate trust and sense of true independence.
10. (P2, Q1) We agree that the appeals process is Draconian as a single-step option.
11. (P2,Q2) Doing nothing minimises appeals which in turn, minimises what might constitute useful ‘case’ law/precedents/sensibilities.
12. (P2, Q3) Decisions available for appeal should include anything that constitutes actions taken as a result of any decision made by the Regulator.

13. (P2, Q4) FINZ supports a broadened and stepped framework for appeals.
14. (P2, Q5) FINZ supports the creation of a test case litigation fund for appeals that require judicial hearings. In that respect the criteria would/should be based on the costs associated with the forum of the appeal rather than the type of appeal.
15. (P2, Q6) Creation of litigation funds would certainly be justifiable if it:
- represents access to natural justice.
 - assists in the development and evolution of a known (= shared) body of knowledge
 - it is not used tacitly as a mean of pushing appeals into a judicial setting for the sake of it.
16. (P2, Q7/8) Both these options have the potential to be heavy-handed in all but extreme cases. However, accepting that extreme cases will arise, then opportunity to speak to the Board would be an additional preferential option, notwithstanding that a *de novo* appeal may also in rare cases also be appropriate.
- 17.(P2, Q9) FINZ would prefer an appeals panel rather than a tribunal as a step preceding any legal process that may or may not be required.
18. (P2, Q10) The Taxation Review Authority may be appropriate but that depends on the primary driver of the Regulator's decision-making as referred to in our answer to Part1, question 5.

Section B: Charities Regulator compliance and enforcement powers

19. (Q1) The risks of continuing with the status quo and doing nothing are that there will continue to be a perception that the Regulator does nothing unless a complaint/breach is so bad that *Blind Freddy* could not ignore it. This is possibly because the perception is that complaints to Charities Services are not treated as formal complaints unless Charities Services deem them to be 'worthy' of being a complaint.
20. (Q2) FINZ has not directly received support to assist with compliance.

21. (Q3) FINZ supports increasing monitoring both compliance with charitable purpose and the accuracy of performance reporting by both Registered Charities and the accuracy of data uploaded into the database. These all contribute to the perception and reality of the integrity of 'the system' in relation to Parliament's intentions and expectations when the legislation was enacted.

22. FINZ supports the concept and intent of all the potential powers in respect of:

- Registration
- Proactive compliance (intermediate powers)
- Deregistration, disqualifications, prosecutions.

In respect of 'penalties' and indeed across all of the sections above, FINZ does not understand why Charities Services does not utilise the powers already enshrined. It is not understood why any of the options described in Options 3 or 4 require legislative amendment.

Section C: The role of Officers

23. FINZ is aware that the number of people who are currently Officers of Registered Charities is of the magnitude of 175,000+ (around 5% of qualifying adults from the general population at any one time). FINZ has long wondered how Officers know and fully understand their roles and responsibilities ... let alone the 'tips of the trade' as it were. FINZ fully endorses any intention to create a training framework (maybe an on-line tutorial with questions that like NZ Navigator, that builds a body of knowledge for determining risks, knowledge gaps or behaviours) and would be keen to be a party to the development of any endeavours in this area.

24. (P1, Q1) Option 2 of broadening the definition of Officer has the support of FINZ. It would make it clear that organisational decision-making is a collective responsibility of all who are elected or appointed to a governing body, not just that of Office-bearers and/or an Executive or Kitchen-cabinet. We question the legitimacy of including a Chief Executive/Executive Director/General Manager (the person who reports directly to the governing body) because it would/could dilute the responsibility and primacy of that body.

25. (P1, Q2) Likely implications of defining all who participate as part of a governing body in the definition include:
- potential reluctance/reticence to be elected or become an Officer, which is most likely to affect smaller organisations, many of whom struggle under current arrangements, even though the effect/impact may not be of any negative significance and of some positive potential through training.
 - confusion of responsibility/accountability where the Chief Executive/Executive Director/General Manager is included as an Officer, counter-balanced by
 - micro-management by Officers where delegations are not clear or trusted.
 - failure to clarify the specific powers of Officer-bearers and/or hold them to account.
 - attempts to class non-Officers (such as sub-committee participants or independent standards committees or honorary/honoured members (Fellows, Life Members, Patrons, etc) as Officers.
 - inclusion of Administrators/Liquidators, Advisors, Government/Council/Funder appointees being classed as Officers if their role is ad hoc or ex-officio.
- 26 (P1, Q3) There are no identified preferred options.
- 27 (P2, Q4) The quote “a fish rots from the head” is applicable (whether the quote is biologically correct or not) in respect of all organisations. A strong governing body will likely achieve success – a weak one, undoubtedly not. The governance challenges most commonly observed are:
- failure in adequately define organisational primary purpose/cause; failure to continuously use that purpose as the touchstone for decision-making; mission-creep.
 - failure to adequately define the requirements of roles as Officers; to adequately induct; to adequately meld the Officers into an agreed unit for the purpose of meeting organisational need.

- failure to adequately embrace Te Tiriti o Waitangi or cultural imperatives of others, including gender, diversity, and inclusion.
- failure to understand finance reports; to understand contracted liabilities (including rent, leases, supplier terms, particularly beyond any reporting period)
- failure to understand how and when to utilise funds to enable the generation of further sustainable funds over time.
- tendencies to deliver exemplar services and then portray them as having a reach beyond the realities of practice.
- failure to appropriately manage risk (including being excessively risk-averse)
- failure to understand or seek to have clarified, obligations pertaining to relevant legislation.
- failure to ensure that the governing document is fit-for-purpose ... and then adhered to
- failure to maintain adequate policies, procedures, standards and/or codes that are reviewed and kept current and fit-for-purpose.
- poor staff and volunteer management practices and procedures
- failure of funders to assist with the development of alternative funding options that might assist with greater self-reliance over time.
- failure to engage adequately with stakeholders.
- inability through resource limitations or will, to engage in processes that foster collaboration ...

28. (P2, Q5/6) FINZ does not necessarily see Charities Services as leading any work in this space beyond definition and compliance. Having said that, Charities Services could/should undoubtedly have a role, as may other DIA staff (LGB field staff for example). FINZ would prefer a collaborative approach that involves sectoral input as joint participants (design, promotion, implementation, review)

29. (P2, Q7) The proposed duties as stated in this document are both practical and feasible ... and minimal

30 (P2, Q8) The 'duties cannot fall on the entire organisation. They can only fall on the Officers who are the elected/appointed guardians of the entity for the

time being. The role of members is to hold the Officers to account and remove them if there is dissatisfaction that cannot be otherwise resolved.

31. (P2, Q9) The quoted duties could feasibly and reasonably be in legislation but need to be augmented at least with guidelines and/or codes where that is deemed appropriate/necessary.
32. (P2, Q10) Where the 'duties' described in this document tend to conflict or create issues with other legislation, FINZ advocates that the Charities Act have primacy for those organisations that have sought and been granted Charity status
33. (P3, Q11) FINZ agrees that in general terms (subject to our following comments) should be excluded from being an Officer if convicted of
- Fraud
 - Manslaughter
 - Murder
 - Physical Violence
 - Serious Drug offences; and
 - Sexual violation

FINZ also believes that "theft by a person in a special relationship" should be included.

34. (P3, 12) FINZ does have concerns that inclusion in legislation makes all of this black-and-white and one-size-fits-all. An alternative might be that the legislation requires all Registered Charities to specify in their governing document - or a separate approved addendum to be published along with all other formal documents, the exclusions they see as appropriate for their organisation, including any provisos where that might be legitimate; and that the registration process review these through a sanity lens. It is acknowledged that this would likely require a specific application for exemptions to be approved – for that organisation.

It is also acknowledged that this may require alteration to the Officer application form to include any exemption under which their application is being sought for approval. This would also no doubt, require annotation against the individual so that there is no unintended transfer of their status to another organisation that does not have the same approved exemption.

35. (P4, Q13) The option of exemptions in a governing document – or separate approved addendum – may also be a useful mechanism for potential Officers under the age of 16 years. There might also be reasonable provisos, such as exclusion as Chair/President, Treasurer, a signatory to any organisational accounts or as web traffic Moderator. Again, any exemption might require an additional declaration panel in their personal application for approval as an Officer; and again, not transferable to any organisation without an approved exemption.

FINZ would find it difficult to approve anyone under the age of 15 years, as the divide between knowledge, experience and influence would likely be too great.

36. (P4, Q14) The Act already specifies 16 years of age, but to answer the question, the reason for having a potential Officer under the age of 18 years is pertinent to organisations who have those under the age of 18 years as key stakeholders – Schools (BOT student representatives, Canteen, sports groups, Political organisations ...

END.