

What is the best structure for the agency(s) that administer charities' legislation in New Zealand?

Summary of co-design sprint workshop #1 held on 26 November 2020

Charities

LAW REFORM

AOTEAROA NEW ZEALAND

Workshop #1

What is the best structure for the agency(s) that administer charities' legislation in Aotearoa New Zealand?

Purpose: To undertake a [co-design sprint process](#) focussed on designing the ideal structure for the agency(s) that administer charities-related legislation in Aotearoa New Zealand.

Long term goal: A system which strengthens the for-purpose sector, facilitates charitable work and maximises the potential of charities in Aotearoa New Zealand.

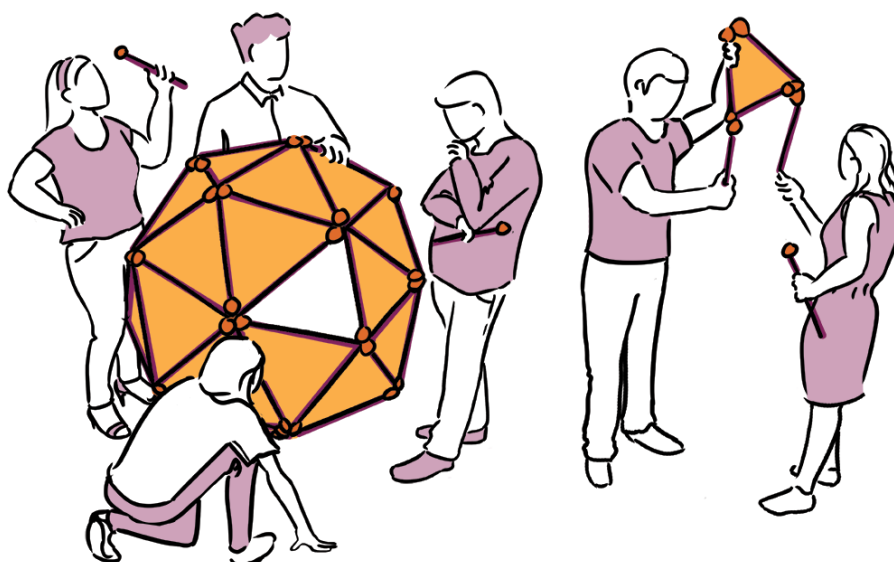
BACKGROUND

What? A workshop was held to co-design the best structure for the agency(s) that administer charities' legislation in Aotearoa New Zealand. The workshop also looked at how to strengthen the not-for-profit sector voice in its interactions with government.

When? Thursday 26 November (in-person) and Friday 27 November 2020 (Zoom).

Why co-design? Co-design sprints provide an effective and inclusive way of working together focused on action. They allow for a group of people with a diverse range of skills and experiences to come together to collectively problem-solve and create solutions.

Who? 12 sprint participants plus 15 challengers all with a broad range of experience in the for-purpose sector, including charities, umbrella bodies, government, academia, the legal and accounting professions and others.



THE SPRINT

DAY ONE

Step one: personas

Participants began the day by discussing 5 personas who interact with the charitable sector. Challenges and long-term aspirations of personas ranging from a registration analyst from the Department of Internal Affairs, to a volunteer, to a CEO of a large charity, were identified. This process underlined differing needs required to be met within a charities and wider for-purpose sector system.

Step two: designing an ideal structure (in groups)

Sprint participants were then split into different groups to discuss what needs to feature in an ideal structure for the agency(s) administering charities' legislation in Aotearoa New Zealand. Each group designed an A3 image of their ideal structure.

Step three: designing an ideal structure (with everyone)

Each group presented their ideal structure and explained key components eg a registration body or a body representing the sector. Together, commonalities were drawn out and the sprint participants collectively co-designed their preferred structure to present to challengers.

Step four: challengers

A sprint participant presented their ideal structure to 15 challengers who attended by Zoom. They then asked questions of the proposal, such as:

- "What are the current activities that Charities Services do well, that we would want to retain?"; and
- "How many people would be on the sector group?"

DAY TWO

Step five: refining an ideal structure

Having reflected on the challengers' questions overnight, the sprint participants met by Zoom the following day to continue discussion about the ideal structure. They went into breakout rooms to answer challenger questions and then collectively landed on a final ideal structure to administer charities legislation.

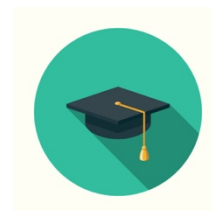
Step six: next steps and final report

Next steps and action points were discussed, including a smaller team that would work on this report, and seeking further input.

THE OUTCOMES

IDENTIFIED NEEDS

There was a surprising degree of commonality among the proposals presented. Sprint participants collectively identified and agreed on the following key features for the wider ecosystem in which charities' legislation is administered:



1. An independent charities and voluntary sector body is required to administer charities legislation:

- 2/3 of people who submitted in the government's review of the Charities Act wanted an independent commission reinstated;
- participants agreed with the original February 2002 determination of the Working Party on Registration, Reporting and Monitoring of Charities that an independent body was the only way to address concerns about undue government interference in charities and to ensure the confidence of the sector.

2. We need a better appeal system, with oral hearings:

- the system needs to be accessible;
- oral hearings of evidence should be enabled.

3. There needs to be a stronger sector voice – which is well resourced:

- umbrella bodies need to be better resourced;
- a body which focusses specifically on the role of the sector and its relationship with government would be useful.

4. There is a need for research on the sector:

- no one is leading research on the sector in New Zealand – this needs to change;
- we need to capture data on the value of the sector and its impact.

5. There is a need for education:

- education is needed in areas such as: governance, best practice, funding, volunteering etc, as well as raising awareness about the charities register itself and key fundamentals of charities law;
- education could be carried out within the sector (through a stronger sector voice) and by the proposed government agency (see below for detail), through a greater focus.

SUGGESTED STRUCTURE

Sprint participants fleshed out more detail of the structures underpinning this ecosystem and collectively agreed on the following ideal agency structure:

A. Independent Charities & Voluntary Sector Registrar

An Independent Charities and Voluntary Sector Registrar (“**ICVS**”) would administer charities’ legislation. There would be 7 members, appointed by the Minister, by Māori, and by the community and voluntary sector. ICVS would have 3 core divisions:

- (i) A **registration unit**, which would administer the publicly-available register of charitable entities. It would also incorporate a monitoring unit that would monitor existing charities for compliance with the duties to file annual returns and notify changes, as well as to address any instances of serious wrongdoing. It would also monitor, for example using data from the charities register, the wider environment in which charities operate.
- (ii) A **legal services unit**, providing specialist legal advice on charities law issues.
- (iii) An **education and advisory unit**, which would have 3 key divisions:
 - (A) **research**: recognising that there is a lack of research on the for-purpose sector, research would be encouraged by ICVS.
 - (B) **problem-solving**, which would incorporate general and individual advice as well as education sessions.
 - (C) **capacity-building**, which would incorporate enhancing the charities environment and public information.

Underlying all of this is **accountability** of ICVS, which was identified as a critical factor. ICVS would report directly to Parliament. There would also be a strengthened appeals mechanism, as discussed further below.

Difference to current system? ICVS would be independent of government and have sufficient status and independence to gain the support and sense of ownership required from the charitable sector. Its role would be clearer and it would more accountable for the decisions it makes. In turn, the costs of monitoring and enforcement are likely to be less as the sector would support and have confidence in the organisation.

B. Māori Advisory Committee

A Māori Advisory Committee would be established, comprised of 3 people of mana with expertise in tikanga. ICVS must refer to the Māori Advisory Committee any registration or administration decision that raises or may raise a matter of tikanga. The Māori Advisory Committee can make policy statements on matters relating to tikanga which statements are binding on ICVS and on any hearing authority hearing an appeal of a decision of ICVS. The binding nature of the policy statements was a key outcome of consultation with tikanga experts. The Māori Advisory Committee can also provide advice to ICVS to assist it to give effect to its



obligation to recognise and respect the principles of Te Tiriti o Waitangi and tikanga principles. ICVS must have regard to that advice.

Another role for the Māori Advisory Committee might be in determining whether a charity could be recognised on the charities register as a kaupapa Māori organisation and/or a Treaty-based organisation.

Difference to current system? A Māori Advisory Committee would ensure that decisions relating to tikanga are made by those with expertise in tikanga and would facilitate a process whereby we might infuse tikanga principles into New Zealand charities law.

C. Charities Tribunal

A specialist appeal authority - a **Charities Review Authority** – would be established (which could be achieved by allowing an existing authority, such as the Taxation Review Authority, to wear a different “hat”). The Charities Review Authority would be a more informal appeal forum than the High Court with: relaxed rules of evidence; an ability for charities to appear themselves without being represented by a lawyer; no risk of an adverse costs award (except in egregious circumstances); the ability for the authority to travel rather than the charity always having to come to Wellington; but most importantly with the ability to convene an oral hearing of evidence if either party so requests.

Charities would be provided with a choice of taking their case to this more informal appeal forum, or to the High Court, as is currently the case with taxpayers and the Taxation Review Authority.

Difference to current system? Access to a specialist, informal tribunal would facilitate access to justice, and in turn enable a mechanism whereby the definition of charitable purpose might be able to evolve to keep pace with changes in society. Ability to access an oral hearing in appropriate circumstances is fundamental to natural justice and would enable a robust evidential platform from which to make decisions. It is essential if the definition of charitable purpose is to be determined by the common law. A side effect of this change is that ICVS would be able to appear actively in defence of its decision and able to appeal a decision it doesn't agree with.

D. Sector Group

The consensus of the workshop was that there needs to be a stronger sector voice that is well resourced. A peak “sector group”, appointed by the sector but (at least in part) funded by government, would have 3 core functions:

- (i) bringing the sector together;
- (ii) advocating for the sector on high level issues, particularly to the Minister (who needs to be inside Cabinet); and
- (iii) communicating with and between sector organisations.

It would also have a role in co-ordinating research in relation to the sector and working with the sector and ICVS to build capacity.



The optimum number of people for the sector group is a question for the sector to determine, but a starting suggestion was that a 15-member group could capture the diversity of the sector while being workable. It would enable a stronger sector voice and, through working groups, would enable sector-wide issues to be more effectively examined and managed.

Difference to current system? A peak representative body would provide easier and more consistent access to the Minister for the Community and Voluntary Sector. Alongside existing umbrella bodies, it would be better resourced – providing capacity and coherency to the sector.

A proposed structure of these two agencies is outlined in the attached diagram.

CONSULTATION

We want to hear your views on the above proposal, in particular:

Consultation questions:

- What is working and not working with the current structure that administer(s) charities legislation (the Department of Internal Affairs - Charities Services Ngā Rātonga Kaupapa Atawhai and the Charities Registration Board Te Rātā Atawhai)?
- What feedback do you have on the suggested 2-entity structure of an Independent Charities & Voluntary Sector Registrar and a Sector Group?
 - o How many people should be on the Sector Group? (9, 12, 15, other?)
 - o How should appointments be made?
- What other roles might a Māori Advisory Committee have?
- What is your view on a specialist Charities Tribunal?

Please contact us via www.charitieslawreform.nz by **30 June 2021** with any thoughts/comments/suggestions you might have.