

Regulatory Impact Statement: Regulations to enable appeals to the Taxation and Charities Review Authority

Coversheet

Purpose of Document	
Decision sought:	<i>Cabinet policy approval</i>
Advising agencies:	<i>Department of Internal Affairs</i>
Proposing Minister:	<i>Minister for the Community and Voluntary Sector</i>
Date finalised:	<i>12 March 2024</i>
Problem Definition	
<p>Changes to the Charities Act 2005 to improve the process when charities appeal a decision by the Charities Registration Board, or the Chief Executive of the Department of Internal Affairs, come into force on 5 July 2024. Setting regulations for procedural matters and deciding whether to charge a fee to file an appeal is an opportunity to facilitate the changes made to the Charities Act 2005 in 2023, that were intended to make justice more accessible.</p>	
Executive Summary	
<p>The Charities Amendment Act 2023 makes practical improvements to the Charities Act 2005 (Charities Act) following a review. The Charities Amendment Act makes provisions for regulations to support the changes that allow charities to appeal a decision to a tribunal rather than the High Court. The current process of appealing to the High Court is costly and more formal. The changes seek to enhance regulatory decision-making by having a more accessible appeals process.</p> <p>From 5 July 2024, charities will be able to appeal decisions ranging from administrative matters through to substantive decisions related to a charity’s registration status.</p> <p>The Taxation and Charities Review Authority (the Authority) can hear appeals without regulations, as any processes not provided for in the amended Charities Act would follow the District Court Rules 2014 (for example how to file a document and interlocutory steps). However, setting regulations specific to charities appeals is more likely to ensure enhanced and efficient decision-making on appeals under the Charities Act.</p> <p>The Department is proposing regulations to:</p> <ol style="list-style-type: none">1. set a filing fee for charities or associated individuals seeking an appeal; and2. guide several procedural matters for the appeals process such as the criteria for a fee waiver, fee payments and waiver process, and other technical details. <p>The proposed regulations would need to be in place by 5 July 2024 which is the commencement date of recent amendments to the Charities Act.</p> <p>Four fee options were considered against the counterfactual (no regulations to set a fee):</p>	

1. no fee
2. single fee of \$200 with a waiver
3. single fee of \$410 with a waiver
4. single low fee without a waiver

We also considered, but ultimately discarded, two further options:

5. single fee based on a tiered system, with a waiver; and
6. tiered fee based on complexity of the decision being appealed, with a waiver.

These options (options 5 and 6) are complex and not feasible as they cannot be implemented by 5 July 2024. We describe them briefly at paragraph **Error! Reference source not found.**

To support the filing fee, procedural matters would be set in regulations. Only one option – Option A; to set the criteria for a fee waiver, fee payments and waiver process, and other technical details – was considered against the counterfactual (no regulations).

The Department's preferred option is Option 2 – a single \$200 filing fee with provision for a waiver, and Option A (regulations to set the procedural matters that will support the filing fee and other processes). This preference is reflected in the Cabinet paper.

Charities or individuals filing an appeal to the Authority would need to pay \$200 to have their case considered. This may be, for example, appealing a decision made by the Charities Registration Board to de-register a charity. An appellant would be able to apply for the fee to be waived if paying the fee would cause financial hardship (only applies to individuals) or the appeal is in the public interest and is unlikely to commence unless the fee is waived.

The Department prefers this option over the other fee options because it achieves the policy objective, is implementable by the deadline and appropriately reflects the public benefit of charities being able to appeal and the private gain for appellants if successful. It also better reflects the financial and resourcing capacity of most charities in New Zealand than some of the other options considered. This fee is intended to recover some of the operating costs of the Authority which have been estimated at \$15,000 per year for up to 25 appeals. There is some uncertainty about the expected volume of appeals. However, under the current process of appealing directly to the High Court there have been 20 appeals over 15 years (from 2008). The cost for a High Court appeal was estimated at \$130,000 which takes into account fees and legal costs such as the required legal representation.

Charities are also able to object to the Board's intended decision at no cost before potentially needing to file an appeal. Additional costs could be incurred if appellants engaged legal representation for an appeal, but this is not a requirement to accessing the appeals service.

The additional regulations for the procedural matters will ensure the efficient running of the tribunal and promote consistent and transparent decision making for the appeals service.

The Department consulted with the charities sector and other relevant stakeholders on the fees options in November 2023 – January 2024. Submitters generally agreed that regulations might ensure a smooth and accessible appeals process but were divided on how to achieve this and whether a filing fee should be required. Some submitters wanted the appeals process to be free of charge while others thought it reasonable for appellants to contribute to the service. There were also mixed perspectives on setting regulations or following the District Court Rules for appeals proceedings. Some felt that following District

Court Rules would avoid creating unnecessary rules between different jurisdictions, while others were concerned about the appropriateness of the rules being applicable to charities appeals. While only eight submissions were received, the feedback was varied and has informed the Department's assessment.

Limitations and Constraints on Analysis

The analysis has some constraints.

The size of most charities in New Zealand is factored into the analysis

Most of New Zealand's 28,000 charities are small, volunteer-run and approximately one-third have an annual income under \$10,000. While it is beyond the scope of this analysis to try and determine the individual circumstances of potential appellants, the analysis will work on the assumption that many appellants have a low income or limited resources. This approach will assist in analysing the options against the criteria as it can inform the likely affordability of a fee. It will also ensure consistent application of the criteria.

Regulations need to be in place by 5 July 2024 to ensure a smooth appeals process

This timing limited our ability to develop policy for the more complex options. For example, we considered two different tiered systems (option 5 and 6 in the list above). They would not be implementable by the commencement date for the appeals provisions because additional analysis and consultation would be required. For completeness, we included options 5 and 6 in this analysis but they remain out of scope.

Sector engagement on the options was limited

The appeals commencement date also limited the window for consultation with the sector and other relevant groups. Consultation was undertaken during November to January. Consulting over the holiday period was not ideal, however, in total there were 43 working days for feedback.

The small number of submissions received may be because appeals are not part of day-to-day business for charities, and many took part in the extensive consultation during the changes to the Charities Act over the 2019 – 2021 period. The Department received eight submissions. While feedback was valuable and varied, the quantity of submissions means the analysis could not cover some perspectives/diversity of perspectives.

The options are considered in the context of the Charities Act amendments in 2023

The policy intent set in the Modernising the Charities Act 2005 (part of which was to improve charities' access to justice and ensure transparency and high-quality decision making) guides the analysis and justification for the preferred option. Although not a limitation, it is worth noting that the assessment was undertaken based on the regulation-making powers included in the Charities Act.

Responsible Manager (completed by relevant manager)



Jayne Beggs

Acting General Manager Policy Group

12 March 2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Department of Internal Affairs with a panel member from the Ministry of Justice
Panel Assessment & Comment:	<p>The Department's Regulatory Impact Analysis (RIA) panel (the panel) has reviewed the Charities Appeals Regulations RIA (RIA) in accordance with the quality assurance criteria set out in the CabGuide.</p> <p>The panel considers that the information and analysis summarised in the RIA meets the quality assurance criteria.</p> <p>The panel members for this review were:</p> <ul style="list-style-type: none">• Sam Miles, Principal Policy Analyst (Chair)• Louise Walton, Senior Advisor (Member)• Frances Muir, Senior Policy Analyst (Member)• Roanna Grover, Policy Analyst (Secretariat)• Sam Strickland, Policy Analyst (Secretariat)

Section 1: Diagnosing the policy problem

What is the policy problem or opportunity?

Recent changes to the objections and appeals process will improve access to justice

1. The Charities Act 2005 (Charities Act) was amended in 2023 making improvements for a charity or individual to object to intended decisions, or appeal decisions, made by the Charities Registration Board (the Board) or the Chief Executive of the Department of Internal Affairs (CE of the Department).^{1,2} Provisions in the Charities Act, which come into force on 5 July 2024, give charities better access to justice by providing better resolution pathways and an efficient tribunal process.
2. The amendments to the Charities Act expanded an existing tribunal, the Taxation Review Authority, to hear charities appeals as the Taxation and Charities Review Authority (the Authority).³ Charities wishing to appeal to the Authority will face lower costs and less formality than the High Court and will have the ability to self-represent. For example, charities can seek a resolution through an early objections process to an intended decision, and/or an appeal to the Authority in the first instance. Prior to the amendment, appellants could object to an intended decision but could only appeal to the High Court (the cost of appealing through the High Court is estimated to be \$130,000 which includes fees and legal representation costs).
3. See **Appendix A**: End-to-end process for charities appeals for a high-level map of the objections and appeals process.

¹ [https://www.dia.govt.nz/diawebsite.nsf/Files/Charities-act/\\$file/Proactive-Release-Regulatory-Impact-Statement-Modernising-the-Charities-Act.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Charities-act/$file/Proactive-Release-Regulatory-Impact-Statement-Modernising-the-Charities-Act.pdf)

² The Charities Act, as amended by the Amendment Act also seeks to enhance regulatory decision-making to promote transparency and fairness.

³ Note that this document will use 'tribunal/s' when referring to tribunals generally or as part of the tribunal system, and the 'Authority' when referring to the specific tribunal – the Taxation and Charities Review Authority.

Regulations for appeals will ensure the Authority can operate effectively and consistently as part of the recent amendments

4. The Charities Act amendments include provisions for making regulations that relate to appealing decisions by the Board and the CE of the Department. The Charities Act amendments include key provisions around the right of appeal, the Authority's functions and powers, and general procedures.
5. The Charities Act amendments expanded an existing tribunal that is part of the wider tribunals system. Setting regulations is an opportunity to address the operational matters that ensure the Authority's decision making is transparent and consistent with the wider tribunal system. Regulations will also facilitate appropriate use of the justice system.
6. The purpose of a tribunal is to apply the relevant law and find facts in cases where there is a dispute. The decisions of a tribunal are binding, and they usually focus on a specific area (unlike the courts). Tribunals are a faster, more informal, and cheaper avenue for civil resolutions.
7. Regulations would support the functioning of the Authority so that it can deliver the civil justice service. Regulations would be beneficial in two areas:
 - a. **Setting a filing fee** that best distributes the cost of the tribunal between appellants and the public; and
 - b. Regulations for **procedural matters and administration of the fee system**. This ensures charities can engage with the appeals process easily and the process is transparent.

What objectives are sought in relation to the policy problem?

8. The core objective is to facilitate the Charities Act amendments which intended to make justice more accessible for charities wishing to appeal a decision. To achieve this objective, regulations would make sure the process is efficient and the Authority hears charities appeals consistently with the wider tribunal system.
9. Charging a fee to file an appeal, and clear procedural regulations, is not counterintuitive to the objective when done appropriately. Tribunal Guidelines provide a framework for considering fee systems in civil justice processes.⁴ This framework has supported the assessment in this regulatory impact statement by assisting in:
 - a. determining whether it is appropriate to charge a fee given the public and private benefits generated by the tribunal;
 - b. assessing the cost to government of delivering the service;
 - c. identifying a fee that is reasonable and does not act as a barrier to justice;
 - d. structuring a fee system that is simple, fair, and efficient; and
 - e. allowing for transparent monitoring of the fee costs and revenue.

Background to the Charities Act and regulatory system

10. The Charities Act 2005 (the Act) seeks to promote public trust, confidence, and effective use of resources in the charitable sector. The Department of Internal Affairs

⁴ See page 34. <https://justice.govt.nz/assets/Documents/Publications/Tribunal-Guidelines-201904.pdf>

(the Department) administers the Act, which establishes a register of charities that contains the public and searchable record of registered charities.

11. Registration is voluntary. Registration benefits charities because they:
 - a. are income tax exempt and can receive donee status (so that donors can claim tax credits for their donations);
 - b. can receive local government rates reductions; and
 - c. can access grant funding.
12. New Zealand has approximately 28,000 registered charities. These registered charities form part of the wider not-for-profit sector, which totals 115,700 non-profit organisations in New Zealand.
13. Registered charities are divided into four tiers based on their annual expenses or operating payments of their previous two financial years and must report annually.⁵ Tier 1 charities are the largest charities by expenditure and account for less than 1% of all registered charities. Tier 1 charities are responsible for over half (\$12.1 billion) of the sector's annual expenditure. Most charities are small (Tier 4) and volunteer-run. Of these Tier 4 charities approximately one-third have an annual income under \$10,000 (refer **Figure 1**).

Figure 1: Thresholds for registered charities tiers⁶

Tier 1	Tier 2	Tier 3	Tier 4
Over \$30 million annual expenses	Under \$30 million annual expenses	Under \$2 million annual expenses	Under \$140,000 annual operating payments

Two regulatory bodies are responsible for the decisions that charities will be able to appeal to the Authority

14. Alongside the charities register, the Act establishes the regulator for the charities sector. The regulator consists of two bodies – Charities Services (which operates as a business group within the Department) and the independent Charities Registration Board (the Board). The regulator is responsible for monitoring and, where necessary, enforcing charities' compliance with the Act so that entities continue to carry out charitable purposes and provide public benefit.
15. Charities Services maintains the charities register and supports and monitors charities' compliance with the Act. It makes decisions by delegation from the CE of the Department. These decisions relate to:
 - a. amendments to the charities register such as approval of a change of balance date for annual returns;
 - b. changes and corrections to information;
 - c. decisions on, or variations to, exemptions (e.g. being exempted from providing a particular supporting document); and

⁵ The Tiers are established by the External Reporting Board (XRB). The XRB issues reporting standards for accounting and audits across the private, public, and not-for profit sectors.

⁶ The thresholds for Tiers 1 to 3 will change for accounting periods ending on or after 28 March 2024. Tier 1 will change to over \$33 million annual expenses, Tier 2 to under \$33 million and Tier 3 to less than \$5 million.

- d. issuing of warning notices for non-compliance with obligations under the Charities Act.
16. Separately, Charities Services is accountable to the Board for the exercise of decisions delegated from the Board, including:
- a. granting or declining an application for registration;
 - b. removing a charity from the register;
 - c. waiving any disqualifying factor for an officer; and
 - d. publishing details of a possible breach of the Charities Act or serious wrongdoing.

The proposed regulations will affect three main stakeholder groups

17. Appeals are not a day-to-day issue affecting the charities sector. Charities Services and the Board could expect to deal with up to 25 appeals per annum (likely less than this). Individual charities will, for the most part, rarely experience this process. The main stakeholders affected by the regulations are:
- a. charities or individuals who decide to appeal (including their representatives);
 - b. the Charities Registration Board or the CE of the Department, and indirectly Charities Services who have delegation for some decisions; and
 - c. the tribunal (the Authority).
18. Figure 2 lists these three stakeholder groups (and government as a stakeholder) and their interest in regulations.

Figure 2: Overview of stakeholders and their interest

Stakeholder	Interest
<u>Potential appellants</u> <ul style="list-style-type: none"> • Registered charities • Charities that wish to be registered • Individuals associated with these charities • Lawyers (if either party chooses legal representation) 	<ul style="list-style-type: none"> • will be directly affected by the regulations • want an avenue to appeal a decision if unsatisfied with a decision or the outcome of the objections process • expect appeals to be efficient and consider their needs • expect to have quality guidance and information about the process • may represent an appellant or defendant before the Authority (lawyers)
<u>Regulators</u> <ul style="list-style-type: none"> • Charities Registration Board • CE of the Department/Charities Services 	<ul style="list-style-type: none"> • The Board and CE are interested in the regulations as they are respondents to an appeal • expect an efficient, streamlined process that can deal with the estimated volume of cases • expect quality guidance and information to be available to appellants to uphold trust and confidence in the objections and appeals processes
<u>The tribunal</u> <ul style="list-style-type: none"> • The Authority (presiding Judge) 	<ul style="list-style-type: none"> • will have interests in the regulations similar to the Board

<ul style="list-style-type: none"> Ministry of Justice who operate the tribunal system 	<ul style="list-style-type: none"> regulations will impact how efficiently the Authority is run and what guidance decision-makers will have Ministry of Justice oversee the day-to-day running of the Authority
<u>Government</u>	<ul style="list-style-type: none"> has an interest in ensuring the sector does not face barriers to justice has an interest in ensuring the civil justice process for charities appeals reflects the values and principles of New Zealand law

Consultation on the regulations was small scale but valuable

19. Targeted engagement with stakeholders adjacent to or within the sector occurred between November 2023 and January 2024 – a total of eight submissions were received.⁷ The Department consulted on four options: no filing fee, a tiered filing fee, a single filing fee of \$410; and a single fee of \$200. The criteria for a filing fee waiver and other procedural matters were also consulted on.
20. While submission numbers were low, stakeholders provided valuable and varied perspectives that enabled the Department to refine the options in this regulatory impact assessment. Submitters generally agreed that regulations might ensure appeals can be heard and access to justice is improved. Submitters were divided on how to achieve this, in particular whether to charge a filing fee and whether the District Court Rules 2014 sufficiently cover procedural matters. Stakeholder feedback is discussed for each of the sections below.
21. The Department also worked with the Ministry of Justice tribunal operational staff and the chair of the Taxation Review Authority as the proposals were developed to ensure they would be workable. Further information sits in the implementation section.

Section 2: Deciding upon an option to address the policy problem

What scope will options be considered within?

22. We developed the options in this Regulatory Impact Statement within the scope of the recent amendments to the Charities Act for ensuring access to justice (as outlined in section one). The Charities Act provides for the new appeals process and powers to make limited matters in regulations.⁸

The options analysis focuses on fees and procedural matters

23. The empowering provisions in the Charities Act include⁹:

⁷ Submissions were received from: Alzheimers New Zealand, Crown Law (revenue team), Dr Juliet Chevalier-Watts, National Council of Women of New Zealand, New Zealand Law Society, Platform Charitable Trust, Public Trust, and Te Whakakitenga o Waikato Inc (Waikato Tainui).

⁸ The Regulatory Impact Statement related to the Charities Amendment Act 2023 is linked here [https://www.dia.govt.nz/diawebsite.nsf/Files/Charities-act/\\$file/Proactive-Release-Regulatory-Impact-Statement-Modernising-the-Charities-Act.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Charities-act/$file/Proactive-Release-Regulatory-Impact-Statement-Modernising-the-Charities-Act.pdf)

⁹ Taken from the legislation. For more information see: <https://www.legislation.govt.nz/act/public/2023/0034/20.0/LMS757510.html>

- a. providing the procedure for appeals under the Act;
 - b. prescribing the fees to be paid in respect of the filing of an appeal to an Authority under the Act; and
 - c. prescribing the circumstances in which any fees paid or to be paid in respect of the filing of an appeal under the Act may be refunded, remitted, or waived, in whole or in part.
24. Proposals focus on a filing fee (including a fee waiver and associated processes) and other procedural matters. We analyse the filing fee options separately from the procedural matters as we use different assessment criteria.

What options are being considered?

25. The proposals are divided into two parts:
- a. Filing fee options (Options 1 – 4); and
 - b. Procedural matters (Option A).
26. Both parts will be assessed against the counterfactual, outlined below. Stakeholder perspectives are incorporated where appropriate.

Two other options were considered but ultimately ruled out

27. Options 5 and 6 (the filing fee options based on tiered structure) are out of scope of this analysis as they were complex and would not be implementable by 5 July 2024 (the commencement date of the new appeals process). Both options include a fee based on a tier system and a fee waiver. In both cases, establishing a tier system would require further analysis and consultation to determine an appropriate fee for each tier.
28. For example, Option 5, although based on the existing Tier structure established by the External Reporting Board would require additional policy development to incorporate charities and individuals that sit outside the existing Tier system. Option 6 was suggested by a stakeholder during consultation as an alternative to Option 5. The assumption with this option is that some appealable decisions could require more tribunal resources due to complexity (although the cost is difficult to predict).
29. When initially considering which options to analyse further, we determined that while these two options would encourage appropriate use of the justice system, they would not generally be feasible. This decision was due to:
- a. the estimated complexity required to develop, implement, and administer the options; and
 - b. the fee amounts would be arbitrary.

Counterfactual

30. Under the counterfactual, regulations would not be set. No fee to file an appeal would exist and there would be no administrative processes specific to charities appeals.
31. The Authority would be able to hear appeals without regulations. Any processes not provided for in the Charities Act would follow the District Court Rules 2014 (for example how to file and/or serve a document and interlocutory steps).¹⁰ However, regulations

¹⁰ Section 58T of the Charities Amendment Act 2023 states that the District Court Rules apply to the commencement, interlocutory steps and conduct of proceedings in an Authority unless otherwise stated. Interlocutory steps refer to applications, directions or orders that are secondary to the main appeal, and usually relate to the procedure of an appeal.

specific to charities appeals are more likely to ensure decision-making is enhanced and the process is efficient.

32. Feedback from stakeholder consultation indicates mixed opinions on whether regulations should be set or if the District Court Rules should be followed. Some submitters agreed that using existing processes would ensure simplicity and avoid creating unnecessary differences between jurisdictions. One submitter was concerned that the appeals process was made to fit with district court processes and is not suitable for charities appeals. Another submitter noted that the district court rules do not appropriately contain provisions of relevant tikanga and kawa.¹¹

Section 2.A: Filing fee options

What criteria will be used to compare options?

33. We selected the criteria below to assess the options for how well they address the opportunity and meet the overarching objective to facilitate the changes to the Charities Act which seek to improve access to justice. The criteria also align with the Ministry of Justice Tribunal Guidelines (those guidelines are intended to provide coherency across the courts and tribunals system).
34. While we have considered the cost of administering fee payments and waivers (third criterion), other costs of running the Authority are covered via Budget funding (see page 24 for details).

Figure 3: Criteria to assess fee and waiver options

Affordability	The fee is not an undue financial barrier to accessing the tribunal.
Incentivises appropriate use of civil justice system	Limits vexatious or frivolous appeals; does not encourage unnecessary taking or continuation of cases (and therefore encourages the appropriate use of the court and tribunal system).
Fee structure is simple and efficient	The fee structure is predictable, administratively inexpensive, simple, and efficient.
Proportionate to the public/private benefit provided by the appeal	Appropriately considers private and public benefit and balance taxpayer versus user funding. The system is cost-effective for regulated parties and government.

¹¹ These terms are commonly understood to refer to Māori formal protocol.

We have included the public benefit of charities appeals in the criteria as it affects how to distribute costs

35. Tribunals do not fully recover costs. Ministry of Justice Tribunal Guidelines¹² state that the proportion of costs recovered through fees should broadly reflect the balance of private and public benefits that a service generates. Tribunals generate public benefits by maintaining public confidence in the effectiveness of the law, supporting better decision making through interpreting and developing the law, and providing a benefit to the public by being more accessible for resolutions (instead of, for example, the High Court)¹³.
36. Appellants may also receive a direct private benefit from tribunal decisions. For charities appeals, entities, for example, may keep or gain registration status which comes with benefits (income tax exemptions, receiving local government rates reductions, access to grant funding). An individual may appeal a decision related to a warning notice or “serious wrongdoing”, where their reputation may be impacted.
37. We note that the concept of public/private benefit has a different meaning in charities law compared to public benefit in the context of a tribunal fee. Charities exist to provide public benefit. For fees, consideration is primarily given to the public benefits of the appeal (the decision being appealed). The nature of the appellant (or their purpose) is secondary.
38. The Department considers the public benefit of charities appeals carries more weight than any private benefit while acknowledging there is still some private benefit. The proportion of public/private benefit is therefore used as a criterion to assess the filing fee options.

Option 1 – No fee (counterfactual)

39. This option would mean charities appeals remain free (this is also the counterfactual where no filing fee is in place, but we note this differs from the status quo where appellants pay a filing fee of \$540 at the High Court). Charities/individuals wishing to appeal a decision would be able to access the tribunal without paying a filing fee.

Affordability

40. No financial cost means that this option aligns best with the core objective compared to the other options.

Appropriate use of the civil justice system

41. Option 1 does not deter vexatious appeals. While the Authority can strike out an appeal this process will require the Authority to spend time assessing the basis of appeals that might otherwise have not been filed.

Fee structure is simple and efficient

42. Appellants would find this option simpler to navigate as there would be no fee and therefore no fee waiver to apply for and for the Authority to process.

¹² <https://justice.govt.nz/assets/Documents/Publications/Tribunal-Guidelines-201904.pdf>

¹³ Charities by their very nature exist to provide a public benefit. This document’s analysis is assessing a fee for a service and what the service providers, not what the user itself provides for the public.

Proportionate to the public/private benefit provided by the appeal

43. This option assumes that the public benefit is greater than any private gain, therefore the taxpayer covers the Authority's operating costs (estimated at \$15,000 per annum for 25 appeals).¹⁴

Stakeholder views

44. Submitters were split between wanting appeals to be free of charge (3 submissions) and finding it reasonable for appellants to contribute to the service (4 submissions). Those who favoured a free appeals process wanted it to be as accessible as possible for appellants who might need to engage a lawyer to navigate the process. Other submitters thought that a filing fee would be reasonable as a waiver could ensure appeals are affordable for appellants with limited resources.

Option 2 – Single fee of \$200 with waiver

45. This option would set a fee at the relative mid-point between the counterfactual of no fee and the \$410 charged by the Taxation Review Authority for tax appeals.
46. A waiver means that the fee could be waived in full or in part at the discretion of the Registrar¹⁵ responsible for processing appeals. An appellant can request a waiver through requesting a fee postponement (until the waiver application has been decided) or a fee refund (where the fee has already been paid). Fee waivers safeguard access to justice and are common in civil justice processes that charge for services.
47. The decision not to waive a filing fee can also be appealed. This process is consistent with waivers for appeals in other tribunals across the civil justice system. The Crown can also recover a postponed fee if a waiver is declined, or a fee is only partially waived then the appellant must pay the fee before the appeal continues.

Affordability

48. Whether \$200 is considered a small or large amount depends on the means of the appellant. Most New Zealand charities are small (refer to paragraph 13 and Figure 1), but many would likely be able to afford this fee. Unlike in the District Court and the High Court, this would be the only set fee an appellant has to cover.¹⁶ As tribunals are less formal than the courts, an appellant could also self-represent (and forego the costs for legal representation).
49. The fee waiver can ensure that the filing fee does not become a barrier to accessing justice for those appellants unable to afford the fee. Option 2 would likely be more affordable than Option 3, but less affordable than Options 1 or 4.

Appropriate use of the civil justice system

50. This option would likely encourage appropriate use of the civil justice system. Potential appellants would incur some cost for filing an appeal so would be more inclined to

¹⁴ The operating costs do not include the Authority's daily sitting rate, which is estimated at \$876 based on 25 appeals annually and 5 days per appeal.

¹⁵ A Registrar is an officer of the court with powers to make decisions and take actions that are defined in legislation.

¹⁶ In the District Court and High Court a notice of appeal (the document used to start an appeal) is considered an initiating document. The fee for an initiating document in the District Court is \$200 and in the High Court it is \$540. Cases before both the District Court and the High Court will incur additional fees throughout the process (e.g. filing documents or applications, additional hearing days).

ensure their appeal is considered. There is some risk that this effect would be minimal for large and well-resourced charities.

Fee structure is simple and efficient

51. The fee structure is simple as it is a single fee for all appellants.

Proportionate to the public/private benefit provided by the appeal

52. Option 2 recognises a small private benefit to appellants. Ultimately option 2 reflects the public benefit that comes from a charity being able to appeal. This option does not seek to fully recover operating costs which have previously been estimated at \$15,000 per annum for 25 appeals. A \$200 fee would recover approximately one third of the estimated operating costs (not taking waivers into consideration) so taxpayers cover most of the cost.

53. This option provides increased balance of distributing the cost burden between the appellant and the taxpayer compared to options 1 and 4, but not as much as option 3.

Stakeholder views

54. Some submitters thought that a \$200 filing fee would be reasonable given the availability of a waiver for appellants with limited finances and resources. Submitters were generally uncertain about the most appropriate option because the Authority's actual running costs are unknown.

Option 3 – Single fee of \$410 with waiver

55. This option would set a fee at the same amount required when filing a tax appeal with the Taxation Review Authority. It provides for a waiver, which is the same as Option 2. This option is very similar to Option 2 but requires appellants to contribute more to the cost of running the Authority.

Affordability

56. Charities wishing to appeal a decision would cover more of the Authority's operating costs than Option 2. Whether \$410 is a small or large fee is subjective and depends on the appellant's circumstances. This option would be less affordable to some charities than Option 2. This option still aligns with the objective but less than the other options.

Appropriate use of the civil justice system

57. A \$410 fee is most likely to encourage appropriate use of the system as the appellant incurs a higher cost. There is some risk that this effect of encouraging appropriate use would be minimal for large and well-resourced charities.

Fee structure is simple and efficient

58. The simplicity of this option is similar to Option 2 as it is a single fee for all. Most charities are small and would be less likely to be able to afford this fee than option 2.

Proportionate to the public/private benefit provided by the appeal

59. This option does not seek to fully recover the Authority's operating costs which have previously been estimated at \$15,000 per annum for 25 appeals. A \$410 fee would recover approximately two-thirds of the estimated operating costs (not taking waivers into consideration) so the taxpayer carries less of the cost burden than Option 2. This option assumes that appeals provide more private benefit than public as appellants would cover more of the cost.

Stakeholder views

60. One submitter preferred this option because the fee aligns with the tax appeals filing fee. They stated the fee waiver is the best way to assess the public benefit of an appeal instead of assuming that charities' appeals provide a greater public benefit than tax appeals. This submitter also pointed out that (at a maximum) the cost of the filing fee can be awarded to a successful appellant which is not possible for tax appellants.

Option 4 – Single low fee without waiver

61. A stakeholder suggested this option during consultation as an alternative to Options 1 – 3. This analysis does not specify the amount of the low fee, but the amount would be less than the fee proposed in Option 2. Further policy development would be required to determine the exact fee amount.

Affordability

62. Option 4 would not deliver on the objective (access to justice) as even a very low fee can be a barrier. Without a waiver, some charities could not access the process.

Appropriate use of the civil justice system

63. This option may not encourage appropriate use of the system if the fee is set too low. A very low fee may not deter vexatious appeals (this likelihood rises with the more resources that an entity/individual has). With no waiver, this option may also discourage entities from appealing.

Fee structure is simple and efficient

64. The structure is much simpler than other options to navigate (except option one) as it would apply one fee across all appellants. No waiver makes this option easier to administer for the Authority.

Proportionate to the public/private benefit provided by the appeal

65. The cost burden shifts mostly to the taxpayer, but not entirely like option 1. It prioritises public benefit of the Authority but acknowledges that an appellant may receive some small private benefit from an appeal.

Table 1: How do the options for fees and waivers compare to the counterfactual?

	Option One – No fee (counterfactual)	Option 2 – Single fee of \$200 with waiver (preferred option)	Option 3 – Single fee of \$410 with waiver	Option 4 – Single low fee without waiver
Affordability	0 Has the greatest alignment with the main objective compared to the other options	- In alignment with the main objective whether \$200 is considered a small or large amount depends on the means of the appellant, however, the fee waiver ensures that the fee does not become a barrier to accessing justice	-- In alignment with the main objective but less than the other options whether \$410 is considered a small or large amount depends on the means of the appellant, however, the fee waiver ensures that the fee does not become a barrier to accessing justice	- Even a low fee can be a barrier to accessing justice and a fee waiver is an essential component of ensuring access to justice
Appropriate use of the civil justice system	0 Provides no deterrent for vexatious appeals although the Authority can strike out an appeal. However, this process still takes up tribunal resource	+ Likely encourages appropriate use, but well-resourced appellants may find \$200 less of a deterrent than appellants with resource constraints	++ More likely to encourage appropriate use than Option 2	0 Less likely to encourage appropriate use if the fee is set low; this likelihood rises the more resources an entity/person has
Fee structure is simple and efficient	0 Simplest and most efficient option as the step of paying a fee and processing a fee waiver is removed Cost of filing wouldn't be a barrier for any appellant; however, some would be more likely to be able to afford a fee than others Charities can also access a free objections process before an appeal to the Authority	- Simple as is a single fee for all, can still be efficiently administered, but is an extra process step compared to counterfactual. Charities can also access the free objections process, so an appeal is not the only avenue.	- Simple as is a single fee for all but is an extra process step compared to counterfactual. Charities can also access the free objections process, so an appeal is not the only avenue.	- Simple as is a single fee for all, can still be efficiently administered, but is an extra process step compared to counterfactual. Process is simpler than options 2 and 3 as there is no waiver
Proportionate to the public/private benefit provided by the appeal	0 The cost burden shifts entirely to the taxpayer Assumes that the public benefit provided by appeals outweighs any private benefit to the appellant	++ This option distributes some of the cost burden between the appellant and the taxpayer compared to the counterfactual, but not as much as option 3. Assumes some private benefit to the appellant compared to option 1	+ This option provides greater distribution of the cost burden between the appellant and the taxpayer Assumes more private benefit than the other options	+ The cost burden shifts mostly, but not entirely, to the taxpayer Prioritises public benefit of the Authority but acknowledges that there could be some private benefit that an appellant may receive from an appeal
Overall assessment	0	1	0	-1

++ best alignment with criteria ++ better alignment with criterium; + good alignment with criterium; 0 neither aligned nor misaligned; - limited alignment with criterium; -- worse alignment with criterium --- least alignment with criterium

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Fee structure

66. The Department prefers Option 2 – a single fee of \$200 with the ability to waive the fee. Option 2 meets the objective and acknowledges that the appellant may receive some private benefit. It also takes into consideration that the likely appellants have limited resource (based on figures for most charities' income) and would likely be significantly disadvantaged by a higher fee.
67. We think it is appropriate to charge a fee and have the fee waiver process consider the public benefit of an appeal on a case-by-case basis. Establishing the moderate fee proposed in Option 2 would still enable access to justice, just like a 'no fee' approach (Option 1). With both options, the costs are covered more by the taxpayer than appellants.
68. While the Ministry of Justice is funded to set up and operate the Authority¹⁷, a fee acknowledges any private benefits that an appellant may gain from an appeal. The Ministry of Justice's review of civil fees¹⁸ also noted that fees can prompt prospective users to take account of the costs involved in providing court or tribunal services, and to consider whether they wish to initiate or continue a proceeding or seek an alternative means for resolution.
69. Several factors have influenced this recommendation:
 - a. **Statutory timeframe:** The appeals process will commence from 5 July 2024 and regulations will ensure the new process runs smoothly. Options 5 and 6 would require additional analysis and consultation to identify fees for each Tier. (Option 1 – 4 are implementable by the deadline.)
 - b. **Aligning with the policy objective:** Setting regulations seeks to ensure an efficient appeals process that gives effect to the main objective of access to justice. Additionally, most charities are small with revenue under \$140,000, and one-third have annual income under \$10,000. Option 2 is more likely to meet the overarching objective than Option 3.
 - c. **Public / Private benefit:** Deciding the proportion of cost carried by the taxpayer and appellant based on a public/private benefit ratio is challenging as it is difficult to objectively quantify the public and/or private benefits of charities appeals. However, we consider there is some private gain in appealing to the Authority and it is therefore appropriate to charge a fee. Option 2 is most likely to strike a reasonable balance between any private benefit to the appellant and acknowledging limited resourcing of many charities compared to the other options.

¹⁷ Ministry of Justice received funding in Budget 2022 to extend the functions of the Taxation Review Authority to hear charities appeals (\$0.255M for 2023/24 and \$0.235 from 2024/25). Funding covers up to 15 appeals per annum, including one additional Authority member and 2 FTE support staff at the Ministry of Justice. Due to the uncertainty in predicting the number of appeals, cost estimates throughout the RIS are based on 25 appeals per annum, while funding was secured for 15 appeals (which was deemed the more likely number of expected appeals).

¹⁸ www.justice.govt.nz/assets/Regulatory-Impact-Statement-Civil-Fees-Review.pdf

70. The Department’s preference for Option 2 – a single fee of \$200 with the ability to waive the fee - is a standalone decision. We acknowledge that procedural aspects of the waiver process form part of the procedural matters considered next in section 2.B.

Section 2.B: Fee waiver and remaining procedural matters

What criteria will be used to compare options to the counterfactual?

71. To assess the procedural matters that support the appeals process (Option A), separate criteria have been selected. We selected these criteria in line with the objective outlined in section one (to facilitate the changes made to the Charities Act for making justice more accessible for charities). The intent of Option A is to set administrative regulations that will ensure the Authority is consistent with the wider tribunals system and runs efficiently.
72. We base the analysis for Option A on a qualitative assessment against the criteria outlined in Figure 4 below. Option A will not be scored like the filing fee options in section 2.A of this document.

Figure 4: Criteria to assess procedural matters (Option A)

Efficient	Supports the appeals process to be efficient and avoids complicating the process
Transparent	Provides transparency over the process. Appellants would understand what to expect when appealing a decision.
Accessible	Appellants can engage with and navigate the appeals process. This criterion assesses whether the option is functional and can realistically be used.

Options analysis

73. The Department proposes regulations for procedural matters relating to:
- a. Fee waivers. This incorporates the fee waiver criteria, fee payments, and waiver process; and
 - b. Other procedural matters (applicable regardless of filing fee option). This incorporates appellants applying to proceed with an appeal despite missing a case management conference, the definition of “Registrar”, and publication of guidance on bringing proceedings.
74. We also considered fee waivers as part of Options 2 and 3 under filing fee options in section 2.A. Here, we limit the consideration of fee waivers in Option A to procedural matters (including the interaction of fee waiver and filing fee processes). By considering these remaining aspects of fee waivers we ensure that the filing fee option (preferred in section 2.A) can operate. We are not revisiting the appropriateness of a fee waiver, which was considered when analysing the filing fee options in section 2.A.
75. The Department is presenting the proposed regulations as a package (Option A) and assessing it against the counterfactual. The counterfactual, to not set any bespoke regulations for charities appeals would mean filing an appeal is free and procedural matters would default to the District Court Rules, specifically matters relating to case

management conferences and the definition for Registrar. We describe each component of Option A below.

Criteria to decide to waive a fee

76. A filing fee should not create an undue barrier to accessing a tribunal. A fee waiver can safeguard against this risk (see earlier analysis in section 2.A). A decision on whether to waive a fee will be based on each individual waiver application.
77. To assess whether a waiver is applicable, Option A includes criteria that the Registrar must apply when considering waiver applications. The criteria for granting the waiver are:
 - a. Financial hardship: the appellant is unable to pay the fee (and would not commence an appeal) because they depend on a benefit, NZ superannuation, veteran's pension, have been granted legal aid or would otherwise suffer undue financial hardship if they paid the fee; or
 - b. Public interest: the appeal is of 'genuine public interest' and is unlikely to commence or continue unless the fee is waived. An appeal is of public interest if the proceeding determines a question of law that is of significant interest to the public or to a substantial section of the public; or raises issues of significant interest to the public (or a significant section) and is commenced by an organisation that, by its governing enactment, constitution, or rules, is expressly or by necessary implication required to promote matters in the public interest.
78. The waiver criteria are consistent with other tribunals and courts in New Zealand. The financial hardship criterion applies to individuals as entities cannot apply for legal aid or a benefit. The public interest criterion applies to both individuals and entities.
79. The Registrar of the Authority decides whether to grant a waiver. If appellants are not satisfied with the Registrar's decision, they can request a review of the decision. This ability to review the Registrar's decision is common practice for tribunals and the District Court.

Stakeholder views

80. During consultation, stakeholders generally agreed with the proposed waiver criteria. One submitter suggested that an "undue hardship" criterion should be available for entities. Another submitter suggested granting a waiver "in any other circumstances not expressly contemplated by the other criteria and where doing so would be consistent with the purpose of the waiver."
81. While such a "catch-all" provision is not uncommon in legislation, such a broad criterion risks giving the impression (and expectation) that most appellants would meet the waiver criteria. In discussion with the Ministry for Justice, we have therefore decided not to include this criterion.

Fee payments and waiver process

82. Regulations to implement the fee payment and waiver would enable the Authority to:
 - a. **postpone a fee payment** while the waiver (or a review of the waiver decision) is being considered. An ability to postpone the fee means that other processes related to the appeal can continue up to the point of making a waiver decision.

- b. **recover a postponed fee** if a waiver is declined or a fee is only partially waived. The appellant must pay the fee before the appeal continues. The fee will be recoverable as a debt due to the Crown; and
- c. **refund a fee** to an appellant if a waiver is granted.

83. This aspect of Option A aligns with respective regulations for the Taxation Review Authority.¹⁹

Other procedural matters - proceeding with an appeal after failing to attend a case management conference

84. All parties to an appeal usually discuss preliminary issues at a case management conference. If a party fails to attend, the Authority would be able to:
- a. adjourn the case management conference; or
 - b. determine the preliminary issues in the absence of the party; or
 - c. dismiss the appeal if it is the appellant that misses the case management conference.
85. Regulations could enable appellants to apply to the Authority to proceed with the appeal, and provide that the Authority can approve an application if:
- a. the appellant had a good reason for not attending and files their application within 20 working days after the date for the case management conference; or
 - b. exceptional circumstances apply.
86. This process aligns with the process for hearings (section 58K of the Charities Amendment Act 2023). The Ministry of Justice recommended the 20 working days timeframe for the appellant to apply to proceed with the appeal.

Stakeholder views

87. Stakeholder perspectives on this timeframe were divided. During consultation, some stakeholders suggested longer timeframes to ensure that small charities with limited resources can meet timeframes. Others thought it was reasonable or noted that a timeframe was important but did not specify a period.

Other procedural matters - definition for 'Registrar'

88. The Charities Act makes no reference to Registrars. A Registrar is an officer of the court with powers to make decisions and take actions that are defined in legislation. The Registrar will decide on the fee waivers for charities appeals. Defining the term will provide clarity around who can make this decision. Registrar means:
- a. a Registrar or Deputy Registrar of the District Court performing functions under the Charities Act; or
 - b. a person appointed by the Chief Executive of the Ministry of Justice as a Registrar for the Taxation and Charities Review Authority.
89. Stakeholders were not consulted on definitions as we consider it a minor procedural matter.

¹⁹ Taxation Review Authorities Regulations 1998 sections 10A to 10D.

Other procedural matters - publishing guidance for charities appeals

90. All tribunals have a requirement for certain information to be published on a Ministry of Justice website.²⁰ This aspect of the regulations would require information to be published about:
- a. The purpose of the Authority and how to commence a proceeding;
 - b. any requirements that must be met to bring a proceeding; and
 - c. guidelines on how and when parties may obtain information on the progress of their case and when a decision may be expected.
91. Stakeholders were not consulted on this matter.

²⁰ Refer to the Tribunals Powers and Procedures Legislation Act 2018.

Table 2: How does Option A compare to the counterfactual?

Counterfactual = no regulations, appeals process follows the District Court Rules (DCR) unless otherwise stated in the Charities Act. The counterfactual includes no filing fee or waiver processes; a timeframe of 5 working days for applying to reinstate an appeal after missing a case management conference; no guidance related to a filing fee or waiver application; and the definition of Registrar would follow the interpretation in the DCR “Registrar includes a Deputy Registrar”.

Criteria	Counterfactual	Option A (preferred option)
<p>Efficient Supports the appeals process to be efficient and avoids complicating the process</p>	<p><u>Payments and waiver process and waiver criteria</u></p> <ul style="list-style-type: none"> Efficient as Authority does not have to process a filing fee payment or waiver (this includes not having to recover postponed fees or refunding fees). <p><u>Procedure for a missed case management conference</u></p> <ul style="list-style-type: none"> The timeframe for an appellant to apply for reinstating an appeal after missing a case management conference would be 5 working days. Shorter timeframes mean cases can be processed and concluded in a timely manner; however short timeframes could be a barrier for some appellants. <p><u>Guidance for appeals</u></p> <ul style="list-style-type: none"> Information about the Authority and the appeals process may or may not be readily available (although it is unlikely that the Ministry of Justice would not provide appropriate information on their website). Having access to information can ensure that parties to an appeal know the process which in turn makes the process more efficient. 	<p><u>Payments and waiver process and waiver criteria</u></p> <ul style="list-style-type: none"> Slightly less efficient as there would be a fee to process (and recover, refund, etc.). Fee waiver criteria is consistent with waivers in other tribunals and the courts. Setting criteria ensures the Registrar can assess waiver applications through an established framework. <p><u>Procedure for a missed case management conference</u></p> <ul style="list-style-type: none"> ability to apply for reinstating an appeal after the appellant fails to attend a case management conference is additional administrative work but a common process for tribunals/courts. <p><u>Guidance for appeals</u></p> <ul style="list-style-type: none"> availability of information specific to the Authority means fewer questions or issues for tribunal staff to respond to meaning more time available to deliver other aspects of the service.
<p>Transparent Provides transparency over the process</p>	<p><u>Definition of ‘Registrar’</u></p> <ul style="list-style-type: none"> Not defining registrar means it may be unclear who makes decision on fee waivers (and other administrative tasks). 	<p><u>Definition of ‘Registrar’</u></p> <ul style="list-style-type: none"> Provides clarity for appellants on who makes decisions on the fee waivers. This ensures confidence that waivers are made by a suitable person empowered to do so.

<p>Appellants would understand what to expect when appealing a decision.</p>	<p><u>Guidance for appeals</u></p> <ul style="list-style-type: none"> It is likely that information about the process would be available. Having access to information gives all parties transparency as to what steps they must take, who makes decisions, and timeframes for process steps. <p><u>Payments and waiver process and waiver criteria</u></p> <ul style="list-style-type: none"> Under filing fee Option 2 (from Section 2A), a filing fee amount would be set with provision for a waiver. The counterfactual would not set a process for fee payments, and the waiver and associated criteria. Appellants could be confused about the process. The process to pay the fee, or apply for a waiver, would not be transparent. 	<p><u>Guidance for appeals</u></p> <ul style="list-style-type: none"> Publishing guidance strongly supports transparency as appellants understand what will be required of them and how proceedings progress. This also means they have information available for how to seek a review of a decision to not waive a fee, for example (which contributes to the overall objective of facilitating the changes to the Charities Act that seek to improve access to justice). <p><u>Waiver and waiver criteria</u></p> <ul style="list-style-type: none"> Specifying waiver criteria supports appellants to understand how their application to have a fee waived will be assessed. This may also support resolutions outside the Authority if an appellant recognises a waiver would be unlikely (which contributes to efficiency). <p><u>Payments and waiver process</u></p> <ul style="list-style-type: none"> Appellants understand how the fee process is administered and will know what to expect.
<p>Accessible Appellants can engage with and navigate the appeals process</p>	<p><u>Guidance for appeals</u></p> <ul style="list-style-type: none"> It is unlikely that the Ministry of Justice would not publish any guidance in the absence of regulations. Appellants could be directed towards existing information although this may not be bespoke for charities appeals. <p><u>Payments and waiver process and waiver criteria</u></p> <ul style="list-style-type: none"> Under the counterfactual there is no filing fee process and therefore no payments, waivers etc, the absence of additional steps makes it more accessible/easier to navigate for appellants. <p><u>Procedure for a missed case management conference</u></p> <ul style="list-style-type: none"> District Court Rules (DCR) 7.33 covers what happens if a party fails to attend a case management conference. However, the timeframe of 5 working days set out in 7.33(5)(b) could be too short for some charities, especially 	<p><u>Guidance for appeals</u></p> <ul style="list-style-type: none"> Availability of information supports appellants to make the appropriate decisions for their case at each stage of the process. This is closely connected with transparency. <p><u>Payments and waiver process and waiver criteria</u></p> <ul style="list-style-type: none"> Setting the process for this makes the appeals system functional and specific to the Authority. If appellants are unable to interact with the service, then this could act as a barrier to pursuing an appeal which would undermine the main objective as well as accessibility. <p><u>Procedure for a missed case management conference</u></p> <ul style="list-style-type: none"> Having a reasonable timeframe avoids unnecessary logistical barriers.

	smaller ones. Timeframes in general were a concern for stakeholders from consultation.	
Overall assessment	Option A is the preferred option. Additional processes such as the fee waiver and reinstating an appeal after failed attendance at a case management conference could reduce efficiency, and a case-by-case assessment may not always result in equal outcomes. However, these processes ensure appellants can engage with the process and support transparency of decision making, which contributes to the main objective.	

What option is likely to best meet the policy objectives, and deliver the highest net benefits?

92. The Department prefers Option A over the counterfactual. Setting the procedural regulations will ensure clarity over the process for all parties but especially for entities who will navigate the appeal process. A clear process will also ensure that appellants are informed on what to expect from the process.
93. Having transparent processes through regulations also ensures the Authority is accountable for decisions. This contributes to the objective of facilitating the Charities Act changes and ensuring access to justice as appellants have visibility over the decision-making process. Transparency may also support appellants to seek alternative forms of resolution prior to filing an appeal if they are informed about the requirements for filing an appeal.
94. As the Department's preferred fee option is a \$200 fee with provision for a waiver, the fee waiver criteria and associated processes are important for ensuring the appeals process is functional.

Table 3: What are the marginal costs and benefits of the preferred option?

Additional costs of the preferred option (Option 2 and Option A) compared to the counterfactual		
<i>Note: consistent with the rest of this document, this table only considers the additional costs of the preferred option. The table does not consider the costs of policy options already determined and reflected in the Charities Amendment Act 2023 (i.e. the main appeals-related policy for the Authority to hear first appeals rather than the High Court).</i>		
Affected groups	Comment	Impact
Regulated groups: Charities/Individuals (appellants), entities applying to be registered	\$200 filing fee payable by charity/individual to Authority (compared to counterfactual of \$0 if regulations are not in place).	No/low impact
Regulators: Charities Services/the Chief Executive and the Board	Additional cost to the Board is likely none, as we do not anticipate the preferred option to significantly increase the number of appeals made annually above the estimates (when compared to the counterfactual of no fee for filing appeals to the Authority). We expect that a fee will limit any vexatious appeals that would need to be processed (and struck out) and ensures that appeals that are made are thoughtful. ²¹	No/low impact
Others (e.g., wider govt, consumers, etc.) Ministry of Justice	Additional cost on the Authority or MoJ is likely none, as we do not anticipate the preferred option to significantly affect the number of appeals made annually above the estimate (when compared to the counterfactual of no fee for filing appeals to the Authority). We expect that a fee will limit any vexatious appeals that would need to be processed (and struck out) and ensures that appeals that are made are thoughtful.	No/low impact Funding covers up to 15 appeals per annum, including one additional Authority member and 2 FTE support staff at the Ministry of Justice.

²¹ The estimated number of appeals are for appeals accepted by the Authority (and do not include any appeals that may be struck out).

	MoJ received funding in Budget 2022 to extend the functions of the Taxation Review Authority to hear charities appeals (\$0.255M for 2023/24 and \$0.235 from 2024/25).	
Total monetised costs	\$200 filing fee.	\$200 per appellant unless a waiver is granted.
Non-monetised costs	Costs on MoJ for Registrar to process and determine waiver applications (as part of Option 2), and cost on MoJ of procedural matters in Option A (with the main cost for procedural matters likely being the cost of publishing guidance on bringing proceedings).	Low impact
Additional benefits of the preferred option (Option 2 and Option A) compared to the counterfactual		
Affected groups	Comment	Impact
Regulated groups: Charities/Individuals (appellants), entities applying to be registered.	Paying a filing fee deters vexatious appeals that could impact/slow down the hearing of genuine appeals from charities/individuals.	A filing fee likely deters vexatious claims that could impact the Authority's capacity to hear appeals.
Regulators: Charities Services and the Board.	Same as above.	Same as above.
Others (e.g., wider govt, consumers, etc.) Ministry of Justice	Public trust and confidence in the civil justice process is maintained from deterring vexatious appeals.	High
Total monetised benefits	N/A	
Non-monetised benefits	Benefit from deterring vexatious appeals.	Low

Section 3: Delivering an option

How will the new arrangements be implemented?

95. The Ministry of Justice will implement the chosen option (Option 2 for the filing fee and Option A for procedural matters), as part of the overall work on the appeals process and the expansion of the Taxation Review Authority. At the same time, Charities Services (within the Department) is preparing the changes to the objections process.

Ministry of Justice

96. The Ministry of Justice will be implementing the operational changes for the Authority by:
- a. updating ICT technology so tribunal staff can register, update, and record the outcome of appeals filed with the Authority.
 - b. developing business requirements for the Authority case management system (where appellants file their appeal online and make payments).
 - c. developing forms (e.g. the notice of appeal and the notice of defence).
 - d. recruiting staff and developing training material and guidelines for staff to process appeals.
 - e. recruiting and appointing an additional member to support the Authority.
 - f. making website updates.
97. Website updates will include new guidelines for appellants to understand the appeals process.

The Department of Internal Affairs – Charities Services

98. Charities Services is preparing for the operational implementation of the new objections and appeals processes to commence on 5 July 2024. Charities Services is currently developing operational policy to ensure that they can effectively manage the new objections process when it comes into force at the same time as the appeals process.
99. If an entity receives an adverse decision at the conclusion of the objections process, the entity can then appeal to the Taxation and Charities Review Authority (objecting is not a prerequisite to making an appeal).
100. To prepare for the process, Charities Services has been working with Crown Law, The Ministry of Justice, and the Board. Charities Services has also engaged with the Board to discuss the structure and scope of objections meetings, guidance and resources needed to make the process accessible for charities.

How will the new arrangements be monitored, evaluated, and reviewed?

101. The effectiveness of the regulations will need to be reviewed periodically to ensure they are fit for purpose. It is best practice for fee regimes to be reviewed every three years.²²
102. Over time, the Department will monitor, evaluate, and review implementation of the appeals process and its impacts on stakeholders, including:

²² Treasury, Guidelines for Setting Charges in the Public Sector, 2017.

- a. the volume of appeals and what impact this has on the Board and Charities Services; and
 - b. in the long-term, what impact Authority decisions may have on the decision-making by the Board and the Chief Executive/Charities Services.
103. Charities Services will also continue to collect data on registration and deregistration decisions, objections and appeals and other related data. The fee regulations may be subject to scrutiny by Parliament's Regulations Review Committee.

The Department has not identified any obvious risks with setting regulations

104. Setting regulations for charities appeals does not appear to carry any obvious risks. The Department is working closely with the Ministry of Justice to ensure the regulations are workable and efficient.
105. There is some uncertainty about how the appeals provisions (including the regulations) could affect how many appellants would use the Authority. Previous cost estimates set the initial number of appeals around 25 per annum. The Department will be working with the Ministry of Justice to monitor implementation in general and demand for the service specifically.

Appendix A: End-to-end process for charities appeals

The below flow chart maps a high-level end-to-end process from appeal to decision to show where in the process regulations may be needed.

