

Commissioner's Policy Statement: Reviews and Appeals

This Commissioner's Policy Statement is issued under the authority of the Commissioner and should be read together with the [ACNC Policy Framework](#), which sets out the scope, content and definitions common to our policies.

Policy Statement

1. This Commissioner's Policy Statement gives guidance on the reviews and appeals process under the ACNC Act.
2. The Commissioner has powers under the ACNC Act to make decisions affecting charities and their responsible persons. These powers are delegated to the two Assistant Commissioners, who have in turn authorised officers to make decisions on their behalf.
3. There is a formal reviews and appeals process for certain decisions (Part 7-2). These decisions must be internally reviewed by another ACNC officer, before an applicant may apply for review by the Administrative Appeals Tribunal (AAT) and/or appeal to a court. Other decisions may be directly appealed to a court for judicial review.
4. If a charity or responsible person seeks internal review of a decision (known as an 'objection' under the ACNC Act), an ACNC officer that did not make the original decision will review the decision and decide whether it should be changed ('objection decision').
5. The objection decision will be made within 60 days if the ACNC officer has not requested further information from the charity or responsible person. If further information is required, the objection decision will be made within 60 days of the ACNC officer receiving that further information.
6. Reviews and appeals will be dealt with according to the principles set out below.

Decisions the ACNC must review under the ACNC Act

7. Under the ACNC Act, a charity can seek an internal review of the following ACNC decisions:
 - refusal to register the charity (section 30-35)
 - revoking (or not revoking) the charity's registration (section 35-20)
 - directing the charity to do (or not do) something, changing such a direction or not changing or removing a direction after 12 months (section 85-25), and
 - refusing to remit part or all of an administrative penalty if the remaining penalty is more than 2 penalty units (section 175-60(3)).



8. Under the ACNC Act, a responsible person can seek an internal review of the following ACNC decisions:
 - suspending the responsible person from a position or changing the time a suspension of the responsible person ends (section 100-10(10)), and
 - removing the responsible person from a position (section 100-15(7)).
9. Applications for internal review must be made on the approved notice of objection form within 60 days of the original decision. If the time period has passed and the charity still wishes to seek internal review, it must request an extension of time in writing and set out the reasons for not meeting the timeframe. The Commissioner may or may not agree to the request.
10. Other decisions may be added to this list in Regulations.

Review by the Administrative Appeals Tribunal

11. If a charity or responsible person is unhappy with the ACNC's decision on review, they can apply for further review by the Administrative Appeals Tribunal (AAT). An application to the AAT must be made within 60 days of the review decision. If the ACNC did not agree to accept a late review application, the AAT can also review that decision.
12. An AAT decision can be further appealed to a court.
13. Decisions not covered by the ACNC Act's formal reviews and appeals process cannot be reviewed by the AAT.

Appeal to a court

14. The charity or responsible person can appeal these review decisions directly to a court within 60 days of the review decision.
15. The grounds of a review application to the AAT and appeal to the court may be limited to the charity or responsible person's reasons for reviewing the original decision.
16. Decisions not covered by the ACNC Act's formal reviews and appeals process can only be appealed to the court if the decision-making process was unlawful.

Principles

Principle 1: Independent decision-making

17. The ACNC officer reviewing a decision (ACNC review officer) will follow the administrative law principles outlined in the [Decision-making policy](#).
18. The ACNC review officer may seek further information to make the objection decision, including the advice of other ACNC staff. However, the original decision maker will not influence or direct the ACNC review officer.
19. The ACNC review officer may reach the same decision as the original decision maker, or the objection decision may differ in part or in whole from the original decision.
20. The ACNC will provide written reasons for the objection decision, in accordance with the [Decision-making policy](#).

Principle 2: Discretion and public interest consideration

21. The Commissioner has discretion as to the effect of the original decision if an internal review is being conducted.
22. The ACNC will have regard to public interest considerations in exercising this discretion.
23. Public interest considerations include, but are not limited to, the following:
 - any benefit or detriment to the public
 - whether public trust and confidence is endangered
 - the effect on members of the charity
 - the welfare of members of the community who may rely on the charity's services, and
 - the effect on funds and contributions made to the charity
24. For decisions that adversely affect a charity or responsible person's existing interests, the ACNC will have regard to the potential impact of publishing the decision on the charity or responsible person balanced against the public interest in maintaining a current and accurate Register that the public can rely on. Where a decision is published, the ACNC will include a note indicating that the relevant 60 day objection period applies and that the decision may be overturned on review. If an objection has been made by the charity, the ACNC will also indicate that the decision is currently the subject of a review.

Principle 3: Promoting effective decision-making and internal review mechanisms

25. In order to work effectively with the charity sector, the ACNC considers it important to avoid, to the greatest extent possible, costly and time-consuming court processes.
26. Decision-making will follow the [Decision-making policy](#).
27. Robust internal review processes may also help the ACNC to understand and identify problem areas in its decision-making, and address these issues to continuously improve its decision-making.

References

[Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#)

[Decision-making policy](#)

| Version | Date of effect | Brief summary of change |
|----------------------------|----------------|---|
| Version 1 - Initial policy | 03/12/2012 | Initial policy endorsed by the Commissioner on 06/12/2012 |
| Version 2 – Revised policy | 28/07/2014 | Revised policy to take into account display of revoked charities on Register |
| Version 3 – Revised policy | 27/11/2017 | Revised policy to remove the 'Decisions the ACNC will review otherwise' (mirror review) section |