

Organisational Review: Options Paper

Introduction

1. Cystic Fibrosis Association of New Zealand (**CFNZ**) is facing declining membership of its Branches and of CFNZ (through a decline in the number of Branches).
2. This raises several issues for the effective governance of CFNZ and exposes CFNZ to operational and, potentially legal, risks.
3. These issues were considered critical in an organisational review in 2021 but remain unresolved. In addition, CFNZ's constitution (**Constitution**)¹ was last reviewed in 2015 and may need to be amended to reflect the current environment.
4. In response, this Paper sets out options for CFNZ's Branches and the wider community to consider regarding the structure and Constitution of CFNZ.
5. Ultimate decisions on these options will need to be made by the Branches, as CFNZ's voting members. The purpose of this Paper is to assist Branch members and the community in their thinking. The issues and options presented are not intended to be exhaustive, and the community are encouraged to engage on any aspect. The Board is seeking this feedback by 21 July 2022, in advance of a face-to-face meeting on 23 July 2022, to discuss the matters raised in this Paper. The full target timeline is set out in the document 'Shaping our Path Forward', circulated in advance of this Paper.
6. Based on the feedback received, a recommendations paper is intended to be presented to the Branches for decision in the September 2022 annual general meeting (**AGM**).
7. At the core of these options, as with everything CFNZ does, is the cystic fibrosis (**CF**) community. These options are guided by the four themes identified by the 2021 organisational review:
 - People with CF and their families/whānau are central to what we do;
 - People with CF and their families/whānau interact with CFNZ in multiple ways;
 - Processes and compliance need to be streamlined; and
 - We speak with one voice.
8. The Board notes that some of the matters raised in this Paper are complex in nature and encourages the community to reach out with questions, either in writing or at the face-to-face meeting on 23 July 2022.

¹ A copy of the Constitution accompanies this Paper.

CFNZ's Structure

9. A full overview of CFNZ's legal and constitutional structure is set out in **Appendix A**.
10. In summary, CFNZ is a charitable society with its members incorporated as a board under the Charitable Trusts Act 1957 (**the 1957 Act**). It is not (as has been commonly understood) an 'incorporated society' under the Incorporated Societies Act 1908. The implications of this are discussed further in **Appendix A**. However, the key consequence is that the structure of CFNZ and the requirements for how it is governed and makes decisions (including the role of Branches) is set out primarily in the Constitution, rather than legislation.
11. The Constitution apportions powers to Branches, which are the voting members of CFNZ. Under the Constitution, the Branches have the ability to nominate and appoint Board members, amend the Constitution, and determine the distribution of assets if CFNZ is wound-up (which could include any changes to its legal structure). Branches also have administrative and financial responsibilities under the Constitution.
12. The Board, meanwhile, is comprised of six individuals nominated and elected through the process above, including one adult with CF (two further Board members can be co-opted temporarily). Under the Constitution, the Board is responsible for the direct governance of CFNZ.

Issues

13. In 2019, a report (the Fischer Report) identified several issues facing the charity sector and CFNZ in particular. This identified loss of membership to be a key threat to membership based organisations, such as CFNZ.
14. This is reflected in the current reality of CFNZ. Of the original 12 Branches, there are now seven, with only six operational (which, together, only cover a portion of people with CF). In addition, Branches themselves face declining membership, with only 123 individual (being either a single person or a family registered together) members across all Branches in 2020 (against a population of 562 individuals with CF in New Zealand in 2020/2021).
15. Of the Branches that remain, it appears likely that only three Branches (Auckland, Hawkes Bay and Nelson) meet the criteria set out in **Appendix A** for a Branch to qualify as a voting member of CFNZ (by having at least ten financial members etc.)
16. The interest in membership (of Branches and CFNZ) does not appear to be high. In the results of the recent CFNZ Insight Survey, only 11% of people with CF and 34% of their parents and whānau expressed interest in having a say in what CFNZ does through belonging to a Branch. This compared unfavourably with

participation through means such as surveys, with 56% and 68% support respectively. The full Insight Survey results are provided with this Paper.

17. These developments raise several significant institutional and governance issues for CFNZ, including the following:

- (a) Decisions are made by Branches, but given the decline in membership within these Branches, these decisions may not represent the views of the community (which is the purpose of members in a membership based organisation).
- (b) The low number of functional Branches means that key decisions are made in a geographically limited model, with a strong skew towards main centres in the North Island. This means key decisions are made by a limited representative spread.
- (c) The definition of Branches which are able to vote under the Constitution, means that they must:
 - (i) consist of at least ten financial members (unless the Board has waived this requirement for any given Branch);
 - (ii) include at least three CF families; and
 - (iii) perform the functions of a Branch.

As above, it appears few Branches will meet this definition. This may mean that Branches are participating in decisions when they do not have the ability to do so under the Constitution. This raises the possibility that some decisions made during AGMs have been, or will be, non-compliant. This presents an operational, and potentially legal, risk.

- (d) If the number of Branches (and their members) continues to fall, the organisation will be exposed to a gap in decision-making. Meaning, some decisions could not be made at all. For example, if there were only two Branches able to vote, decisions requiring a two thirds majority could not be compliantly made. This includes key matters such the appointment of Board members, any amendments to the Constitution and any asset-based decisions in the event of a wind-up. This also exposes CFNZ to operational, and potentially legal, risks.

18. As such, there is a source issue to address, which is the formal role of Branches/members in the structure and governance of CFNZ. The Branches provide a direct line of community influence and accountability and are comprised of skilled, energetic and passionate people. Their function and contribution is not an issue, rather their role in CFNZ's formal governance structure.

19. This has been discussed with the Branch Chairs previously and we welcome any additional feedback from the Branches and community on the nature and extent of these issues. The Insight Survey has been provided to assist with preparing this feedback.
20. There are several options for addressing these issues as currently framed, as well as functional changes to the Constitution which should be made regardless of the more substantive issues. These are discussed below.

Options

Legal Structure

21. As in **Appendix A**, CFNZ is governed by the 1957 Act. Given the 1957 Act is largely silent on the role of members, this is mostly determined by the Constitution rather than legislation. That being said, there is an option to change CFNZ's legal structure, rather than amending the Constitution.
22. First, as in **Appendix A**, CFNZ has the option to re-register as an incorporated society and to comply with the regime under the Incorporated Societies Act 2022 when registrations commence under that Act. The Board has reservations about this option in terms of addressing the present issues. It may be something to consider as part of a separate process.
23. The reason for the Board's hesitancy here is that, although re-registration may not require any transfer of assets or novation of contracts and employment arrangements, it would involve extensive upfront and potentially ongoing work in relation to compliance with more prescriptive constitutional and other requirements. It would also not necessarily solve the issues above.
24. Another option would be to transfer CFNZ's operations to a different legal structure, e.g. a board of trustees incorporated under the 1957 Act (rather than the current society/membership based structure). However, the Board also has reservations about this option, as it would involve a total departure from a membership based structure and, in addition, would require the transfer of assets and the novation of contracts and employment arrangements. Regardless, this option is presented below as Option Five.
25. The other options relate only to changes to the Constitution, not CFNZ's legal structure.

Options

26. Generally, there appear to be five broad options to address the issues identified above (with analysis to follow):
- (a) **Option One:** Retain the current structure and initiate a membership drive to reinvigorate Branches in order to ensure that there is broad representation and that constitutional requirements are met.
 - (b) **Option Two:** Retain the current structure but reduce the compliance threshold for Branches. This would entail reducing the number of members required to constitute a Branch, which would also theoretically increase the number of Branches.
 - (c) **Option Three:** Retain a formal membership structure but transfer voting rights to individual members – on a person or family basis (rather than Branches). In this case, individual members could still organise as Branches but voting would be on an individual basis. This would effectively spread the voting function more broadly.
 - (d) **Option Four:** Amend the Constitution to remove the formal decision-making role of Branches, while remaining a membership based organisation. This would entail transferring the formal decisions of Branches to the Board. This would include: nominating and electing Board members (with a process to be determined, for example, nominations by Branches and the Board and decisions by an independent committee); amending the Constitution; and making asset disposal decisions on any wind-up. Under this model, the Board members would be the ‘voting members’. The Branches would continue to exist as non-voting members, similar to associate and individual members under the current framework, which would allow them to still contribute to key decisions of the Board through AGMs. Branches would continue to be provided with reports and accounts. Formal accountability of CFNZ/the Board would be achieved through the regulatory regime (e.g. complaints can always be made to the Charities Service).
 - (e) **Option Five:** Change the structure of CFNZ under the 1957 Act to a non-membership based organisation. Similar to Option Four, all decision-making authority would sit with the Board but under this Option, Branches would only be provided with informal opportunities to engage. As above, accountability of CFNZ/the Board would be achieved through the regulatory regime.
27. In all of these options, Branches could continue to exist and perform most of the same functions as they do currently (if they wished) – including fundraising; local initiatives; maintaining their own budgets; and holding CFNZ and the Board to account. In all cases, CFNZ and the Branches would continue to work with and support one another. The options proposed address the formal role of,

and requirements on, Branches. Further detail on how Branches might be defined in the Constitution and what their specific function would be will depend on the option selected.

28. Below is a brief Options Analysis. As above, the points included are intended to assist Branch members' thinking. They are not exhaustive and Branch members are encouraged to provide feedback as widely as they choose (including through suggesting additional options).

Option	Pros	Cons
<p>One: Retain structure and push for Branches and members of Branches</p>	<p>Avoids administrative requirements for implementing changes</p> <p>Formally recognises the strong contribution Branches can make to decision-making</p> <p>Provides an opportunity to re-engage members of the community</p>	<p>Until additional Branches/Branch members can be sourced, CFNZ risks non-compliance</p> <p>If Branch members can only be sourced for active Branches, this does not solve the spread of representation</p> <p>Continues administrative requirements on Branches</p> <p>Does not reflect the preference of community members as expressed in the Insight Survey</p>
<p>Two: Retain structure but lower membership requirements</p>	<p>Formally recognises the important role for Branches in decision-making, while reducing or removing the risk of non-compliance</p>	<p>If Branch members can only be sourced for active Branches, this does not solve the spread of representation</p> <p>Continues administrative requirements on Branches</p> <p>Does not reflect the preference of community members as expressed in the Insight Survey</p>

<p>Three: Retain Branch structure but make membership of CFNZ individual</p>	<p>Enables CFNZ to be led more directly by its community</p> <p>Reduces or removes risk of non-compliance</p> <p>Spreads voting more broadly which may enable a greater spread of representation</p>	<p>Does not reflect the preference of community members as expressed in the Insight Survey</p> <p>Relies on generating enough interest, particularly considering members will have some obligations</p> <p>If few individuals attend and vote at AGMs, then this presents the requirement for attendees to make important decisions</p> <p>Introduces complexity around decision-making processes and increases administrative hurdles (maintaining databases, managing AGMs etc.)</p>
<p>Four: Remove formal decision-making role for Branches but retain a membership structure</p>	<p>Removes risk of non-compliance</p> <p>Enables CFNZ to be more agile</p> <p>Ensures Board members are appointed solely on a skills and experience basis</p> <p>Enables the continued role of Branches while removing their administrative and compliance requirements</p> <p>Appears to be more in line with community preference as set out in the Insights Survey</p> <p>Enables Board decision-making without administrative changes required by changing legal structure (such as under Option Five)</p>	<p>Removes the formal role of Branches in decision-making</p> <p>Removes the formal role of Branches in ensuring accountability to the community</p>

<p>Five: Change the structure of CFNZ to a non-membership based organisation</p>	<p>Removes risk of non-compliance</p> <p>Enables CFNZ to be more agile</p> <p>Ensures Board members are appointed solely on a skills and experience basis</p> <p>Removes Branches' administrative and compliance requirements</p> <p>Appears to be more in line with community preference as set out in the Insights Survey</p>	<p>Removes the formal role of Branches/members altogether (although this could be provided for informally)</p> <p>Removes the formal role of Branches in ensuring accountability to the community</p> <p>Involves considerable administrative hurdles – including transferring assets and contracts</p>
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29. As above, depending on the option selected, changes to the Constitution would likely be required.
30. As above, the decision to progress with any option that involves amending the Constitution (Options Two, Three and Four) will be for the Branches (who meet the criteria in the Constitution), two thirds of which will need to agree at the AGM or special general meeting (**SGM**). As in **Appendix A**, Branch votes are weighted. Option Five likely also requires the Branches to decide.
31. The Board will assess, as part of the recommendations paper, what options are available if there are insufficient Branch numbers available to make these decisions, or in the event a stalemate is reached.

Functional Changes to the Constitution

32. Irrespective of the above, the Board considers that changes should be made to the Constitution from a workability perspective. These are based on potential issues with the current drafting of the Constitution, which are set out in **Appendix A** below. While the exact details of the changes would depend upon which of the above options is pursued, workability changes might include the following (as well as any other non-substantive changes that are picked up):
 - (a) Change to the definition of members to remove confusion and circularity (i.e. clarifying that 'Branch members' means individual financial members of Branches – not 'members' as defined under the Constitution, which loops back to the definition including Branches).

- (b) Change to the quorum definitions to clarify that online meetings qualify as meeting quorum requirements (as opposed to in-person attendance only).
 - (c) Changes to clarify that majority Branch decisions at AGMs or SGMs mean a majority of voting rights, as opposed to a majority of individual Branches.
 - (d) Changes to clarify that if the Branches are unable to make a decision despite an AGM or SGM being held, the Board is capable of making that decision. This may seem to be a more substantive suggestion. However, it is important to have a backstop regardless of which option is selected, so that CFNZ is not immobilised if a key decision needs to be made which cannot, for whatever reason, be compliantly reached by an AGM. This is already provided for to an extent in the Constitution.
 - (e) Changes to clarify the use of DHB as a defining feature for Branch votes in view of the Pae Ora amendment package (although this may not be required yet).
33. In addition to the substantive options, the Board requests feedback on these suggested functional changes, which as above, may vary slightly depending on the overall option selected. Details of any of these proposed changes will be presented at the September 2022 AGM for qualifying Branches' consideration and approval.
34. If any Branch has concerns as to whether it qualifies as a 'Branch' under the Constitution, it is encouraged to get in touch with the Board before the AGM, as the Board may have the power (as above) to admit Branches with fewer members for voting purposes, in certain circumstances.

Appendix A: Overview of CFNZ's Legal and Constitutional Structure

CFNZ's Structure

35. Cystic Fibrosis Association of New Zealand (**CFNZ**) is a charitable society of which the members are incorporated as a board under the Charitable Trusts Act 1957 (**the 1957 Act**).² Therefore, it is not (as has been commonly understood) an 'incorporated society' under the Incorporated Societies Act 1908.
36. There are several consequences of this:
- (a) CFNZ is subject to the 1957 Act, rather than incorporated society legislation;
 - (b) In light of this, the role of CFNZ's members is primarily set out in its constitution (**the Constitution**) (not legislation); and
 - (c) CFNZ has the option of transitioning to the new Incorporated Societies Act 2022 when registrations under that Act commence in late 2023 – however, it is not compelled to do so, and can remain subject to its current requirements under the 1957 Act.
37. The Constitution apportions powers to Branches (called 'ordinary members'), which are the voting members of CFNZ. The Constitution also apportions some power to members that are not Branches, but to a lesser extent. These members can be 'associate members' (businesses and other organisations that support the aims of CFNZ) or 'individual members' who are prepared to work towards the objectives of CFNZ.³
38. Under the Constitution:
- (a) Branches are 'groupings of interested people' with a minimum financial membership of ten, including at least three cystic fibrosis families (**CF families**), which fulfil the responsibilities of Branches (discussed below).
 - (b) Branches that have fewer than ten financial members may be admitted as an ordinary member at the Board's discretion. The Board cannot admit Branches as ordinary members where they have less than three CF families or are not performing the functions of a Branch.

² For income tax exemption and donation tax incentive purposes, CFNZ is also registered as a charitable entity under the Charities Act 2005.

³ There are few associate members or individual members at present.

- (c) The definition of 'financial member' is 'members' who are not more than two calendar months in arrears of their annual subscription. Given the definition of 'members' includes Branches (which cannot be members of themselves), on a strict reading, this must be interpreted to mean that Branches require ten of either associate or individual members of CFNZ who have not fallen behind on their annual subscriptions.
- (d) On a more purposive reading, 'financial members' could be interpreted as meaning that Branches require at least ten paying individual Branch members. In any case, the circularity of the definitions of 'member' under the Constitution is technically problematic.
- (e) Branches are required to: maintain membership records; hold annual general meetings (**AGMs**); provide audited (when required) or full accounts to CFNZ; provide representation at CFNZ AGMs; and act responsibly towards the purposes of CFNZ.
- (f) Branches that meet the criteria above are the voting members of CFNZ.
- (g) Branches, therefore, have the ability to (among other things): elect the President and members of the Board for the ensuing year; elect honorary auditors; receive the Board's statements and reports; and alter the Constitution.
- (h) Branches exercise these powers through the CFNZ AGM (or a special general meeting (**SGM**), if a request for one is made in writing by three or more Branches). The level of consensus and voting requirements for Branch decisions varies. For example, nominations for Board members can only be made by Branches and must be signed by two office holders from a Branch. Voting to elect (along with other decisions) then requires a majority of Branches present (although this is not clearly stated), with Branches having either one, two or three votes, depending on how many people with CF live in the DHB area covered by that Branch.
- (i) By contrast, amendments to the Constitution require a two thirds majority of Branches (it is not clearly stated if this means Branches or Branch votes – which as above are weighted).
- (j) If CFNZ is wound up – which could be triggered through changing legal structure – the Branches (by majority) can determine the disposal of CFNZ's assets (provided this is for a charitable purpose).
- (k) The quorum for an AGM or SGM is two thirds of the Branches who meet the criteria set out above.

39. The Board is comprised of six individuals nominated and elected through the process above, including one adult with CF. Under the Constitution, the Board:
- (a) elects a Chairperson;
 - (b) can co-opt an additional two Board members (provided the maximum number on the Board is eight), and may co-opt an adult with CF if no interest is expressed;
 - (c) appoints a clinical advisory panel;
 - (d) may appoint a Medical and Scientific Advisory Panel, or any other panel that may assist in carrying out CFNZ's purposes; and
 - (e) superintends and conducts the business and affairs of CFNZ.
40. The quorum for the Board is three members present in person.