

Iwi / Māori organisations and the Charities Act

The registration of charities under the Charities Act has some significant implications for Māori. This fact sheet outlines the reasons why you need to be aware of this new legislation and the changes it brings.

Introduction

To continue to be eligible for income and estate and gift duty tax exemptions, charitable organisations must register under the Charities Act 2005. These existing tax exemptions on the grounds of charitable purpose will end if a charitable organisation has not registered with the Charities Commission by 1 July 2008.

The Charities Act has some implications for Māori. In particular, there are two new provisions:

1. Under the Charities Act, organisations that provide benefits to a group with common ancestry, such as **hapu** or **iwi**, may be considered charitable.
2. **Marae** may be accepted as having a charitable purpose if the marae is physically located on land that is a **Māori reservation** (and other requirements described in more detail below are met).

What is the Charities Act?

The Charities Act established the Charities Commission as an autonomous Crown Entity to ensure charitable organisations continue to receive public trust and support.

Under the Act, the Commission's main functions are to provide:

- a registration and monitoring system for charitable organisations
- support and education to the charitable sector on good governance and management.

Registration with the Charities Commission is voluntary and began in February 2007, when the Commission opened the Charities Register.

Why is it relevant to Māori?

Many Māori are active social service providers. If you are involved in an organisation whose purpose is entirely charitable, your organisation could benefit from registration under the Charities Act.

Organisations must be registered by 1 July 2008 to preserve existing charitable tax exemptions based on charitable purpose.

How will you know if your organisation has tax exemption on charitable grounds?

If your organisation has exemptions from income tax and estate and gift duty, you are likely to have a letter of approval from Inland Revenue, which sets out those exemptions. To continue those tax advantages after 1 July 2008, you will need to register under the Charities Act.

Inland Revenue have published an Operational Statement *Interaction of tax and charities rules, covering tax exemption and donee status* (OS 06/02), which explains the things charitable organisations must consider to qualify for tax exemptions on an ongoing basis. You can get a copy from www.ird.govt.nz or by calling Inland Revenue on 0800 377 774.

What are the other benefits of registration under the Act?

Apart from tax exemptions, the details of all organisations registered under the Charities Act will be publicly available on the Charities Register. In time, the Charities Register will

become a useful source of information for Crown funding agencies and others, as it will clearly identify a registered charity's services and who benefits from them, as well as financial and other information.

Charitable purpose

To qualify for registration under the Charities Act, your organisation must have a charitable purpose and meet other requirements. See *Fact Sheet 5 – Charitable purpose*.

Charitable purpose has a special meaning in the law that is more limited than the meaning people generally give to those words.

In addition to meeting at least one of these four heads of charity:

- advancement of education
- advancement of religion
- relief of poverty
- other benefit to the community

the purpose of your organisation must also be directed towards the public benefit. This means that it must be for a benefit that is clearly identified and defined, and must be available to a wide section of the public.

It is helpful to us when considering your application if your charitable purpose is clearly stated in your organisation's rules or governing document or trust deed.

Section 5 of the Charities Act acknowledges that the purpose of an organisation may still be charitable and may satisfy the public benefit requirement, even if the beneficiaries or members are related by blood.

Under earlier legislation, organisations whose charitable purposes were focused on providing benefits to a group tied together by common ancestry, such as hapu or iwi, were not accepted as being charitable.

Marae and charitable purpose

Marae can be accepted as having a charitable purpose:

- under the existing trust provisions of the Charities Act; and also
- if the marae is physically located on land that is a Māori reservation, and some other requirements set out in the Charities Act are met:

5(2)(b) *a marae has a charitable purpose if the physical structure of the marae is situated on land that is a Māori reservation referred to in Te Ture Whenua Māori Act 1993 (Māori Land Act 1993) and the funds of the marae are not used for a purpose other than:*

(i) *the administration and maintenance of the land and of the physical structure of the marae:*

(ii) *a purpose that is a charitable purpose other than under this paragraph*

(3) *To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.*

It would help us in considering your application if you supply the name of the reservation, or the legal description of the land, or a copy of the *Gazette* notice. You can find the *New Zealand Gazette* at all public libraries and at <http://online.gazette.govt.nz> for notices issued after 1993.

If you don't have a copy of your *Gazette* notice, we will review the terms of your trust deed, which may qualify you for charitable purpose.

Please note that the officers you certify must be the **trustees** of the marae (not the marae committee members), and the trust deed you provide must be the **marae** trust deed (not your marae charter).

Trusts under Te Ture Whenua Māori Act

Trusts established under Te Ture Whenua Māori Act may be able to be registered under the Charities Act, if they can also clearly show they have a charitable purpose.

An order of the Māori Land Court under Te Ture Whenua Māori Act won't be automatically accepted as eligibility for registration under the Charities Act. The terms of the order and the trust deed will be reviewed in relation to the definition of "charitable purpose" in the Charities Act.

The Commission will assess every organisation's application on a case-by-case basis to decide whether it has a charitable purpose.

Māori Trust Boards Act 1955

Māori Trust Boards that have had declarations of trust approved as charitable by the Commissioner of Inland Revenue under section 24B of the Māori Trust Boards Act will already have a charitable purpose. In these cases, the Charities Commission will use:

- the evidence provided by the Trust Board as part of its application to confirm the trust's name, and
- its officers' certification under the Charities Act

to decide if that trust can be registered under the Charities Act.

Māori governance

The Commission recognises that Māori are adopting new structures to manage their fisheries resources and Treaty settlements. The range of purposes of these organisations may be wider than just being purely charitable. However, within these organisations there may still be functioning charities, (often as trusts), that could be separately registered under the Charities Act.

Further information

For more information, please also read our publications:

- *Guide to the Charities Act 2005 (available in Māori)*
- *Fact Sheet 5 - Charitable purpose*
- *Fact Sheet 6 - Your rules and the Charities Act*
- *Fact Sheet 7 - The name of your organisation*
- *Fact Sheet 8 - Officer certification*

For more information about the Charities Commission or registration under the Charities Act, please visit www.charities.govt.nz

You can also call the Charities Commission on free phone **0508 242 748**.

To get updates by email, please send your name, the name of your organisation and your contact details to info@charities.govt.nz

This fact sheet was published in March 2007. Please refer to www.charities.govt.nz for any new developments or updates.