



Charitable purpose and community and economic development

To be eligible for registration as a charitable entity under the *Charities Act 2005* a community or economic development organisation must have purposes that are charitable in accordance with New Zealand law and must not be established for private profit.

Introduction

The purpose of this paper is to set out the current legal position on the charitable status of community and economic development organisations.

Organisations (including societies, institutions and trustees of trusts) can qualify for registration as charitable entities under the *Charities Act 2005* if their purposes are charitable in accordance with New Zealand law.

The Commission looks at the purposes and activities of all organisations that apply to it for registration. It then decides whether the organisation has exclusively charitable purposes.

Registration under the *Charities Act* offers a number of benefits (see our information sheet *The Charities Register: benefits for charities* for more details). Among those benefits is eligibility for tax exemptions under Income Tax legislation on charitable purpose grounds.

Local and regional promotion bodies that are currently eligible for a tax exemption under CW 40 of the *Income Tax Act 2007* do not need to register under the *Charities Act 2005* to qualify for or to keep that tax exemption.

CW40 provides a tax exemption for the income of **some** associations or societies established mainly to:

- (i) advertise, beautify, or develop a city or other district so as to attract population, tourists, trade, or visitors: or
- (ii) create, develop, or increase amenities for the general public in a city or other district..

For information about tax exemptions under CW 40 (and CW 41 and CW 42 relating to charities) visit www.ird.govt.nz or call Inland Revenue on **0800 377 774**.

Background

The *Charities Act 2005* establishes three essential requirements for registration as a charitable entity.

An organisation's name and its officers must meet the requirements set out in the *Charities Act*, and it must have exclusively "charitable purposes". The legal interpretation of the term "charitable purpose" has been developed through the courts and in some legislation.

Our information sheet *Charitable Purpose* summarises the overall position with regard to charitable purpose.

In brief, to be charitable a purpose must fall into one of the four established legal categories of charitable purpose - that is, it must be to:

- advance education
- advance religion
- relieve poverty
- otherwise benefit the community

It must also provide a public benefit. This means that the organisation's purposes must be aimed at benefiting the public or a sufficient section of the public and the purposes cannot be for private profit.

Are community and economic development organisations charitable?

In all cases, whether an organisation has a legally recognised charitable purpose will depend on its rules and the activities it undertakes. Community and economic development organisations are most likely to be considered in terms of the following categories of charitable purpose:

- **relief of poverty** (for example, if they provide financial assistance or housing for those in need) or

- **advancement of education** (for example, if they provide training or skills development for the public), or
- **other purposes beneficial to the community** (for example, if they provide public works and services or public amenities and recreational facilities).

Legal position on economic and community development and charitable purpose Relief of poverty

In order to be charitable under this category, a purpose must:

- be directed at people who are poor, in need, aged, or suffering genuine hardship and
- provide relief.

A purpose is likely to be charitable under this category if it directs economic assistance towards the disadvantaged members of a community,¹ or if the community as a whole is considered to be disadvantaged.

Advancement of education

In order to be charitable under this category, a purpose must:

- provide some form of education and

- ensure that learning is advanced.

Education does not include advertisements for particular goods or services or the promotion of a particular point of view.

Other purposes beneficial to the community

To be charitable under this category, a purpose must be:

- beneficial to the community and
- within the spirit of the matters listed as charitable in the *Preamble to the Statute of Elizabeth Act 1601* (otherwise known as the *Charitable Uses Act 1601*).

The preamble to the *Statute* contained the following list of purposes considered charitable at that time:

- relief of aged, impotent, and poor people
- maintenance of sick and maimed soldiers and mariners
- schools of learning
- free schools and scholars in universities
- repair of bridges, ports, havens, causeways, churches, sea banks, and highways
- education and preferment of orphans
- relief, stock or maintenance of houses of correction

¹ *Re Central Employment Bureau for Women and Students' Careers Association Inc* [1942] 1 All ER 232.

- marriage of poor maids
- supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed
- relief or redemption of prisoners or captives and
- aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.

In making an assessment under this category the Commission will consider the spirit and intention of the purposes listed in the Preamble to the Statute of Elizabeth, relevant decisions made by the courts, and the current social and economic circumstances.

Courts have held purposes relating to the development of a community to be charitable in the following cases:

- providing essential services for rural, remote, or disadvantaged communities²
- promoting public health (such as providing education, counselling, and rehabilitation services)
- providing public works and services, such as building

² *Re Tennant* [1996] 2 NZLR 633 and *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation* (2005) FCA 439. .

roads³ and maintaining a water supply⁴

- providing public amenities and recreational facilities,⁵ such as public halls,⁶ libraries, museums,⁷ statues,⁸ fountains, playing fields, gymnasiums, swimming pools, parks and botanical gardens⁹
- protecting the environment, such as revegetation, afforestation and promoting the permanent preservation of places of beauty or historic interest for the nation¹⁰

To be charitable under this category, it is necessary to show that real, tangible, benefits will result for the community.

Requirement to be exclusively charitable

To be registered under the Charities Act, an entity must be exclusively charitable.

³ *Morgan v Wellington City Corporation* [1975] NZLR 416 (CA)

⁴ *Kaikoura County v Boyd* [1949] NZLR 233 (SC and CA).

⁵ *Commissioner of Inland Revenue v Wellington Regional Stadium Trust* [2006] 1 NZLR 617 and *Re Chapman* (High Court, Napier, CP 89/87, 17 October 1989, Greig J)

⁶ *Re Cumming* [1951] NZLR 498

⁷ *Murdoch v Attorney-General* (1892) 11 NZLR 502.

⁸ *Grant v Commissioner of Stamp Duties* [1943] NZLR 113; [1943] GLR 119.

⁹ *Morgan v Wellington City Corporation* [1975] NZLR 416 (CA)

¹⁰ *Re Bruce* [1918] NZLR 16; [1918] GLR 26 (CA)

In the case of a **trust**, this is because the law requires that charitable trusts are for purposes that are only charitable.

In the case of **societies and institutions**, the Act is clear that these must be established and maintained exclusively for charitable purposes.

This requirement will apply equally to community and economic development organisations, wishing to be registered as charitable.

This means that the rules of the organisation need to clearly limit the purposes to charitable purposes. The rules must also make it clear that on winding up, any remaining assets will go to a charitable purpose.

In addition to looking at an organisation's purposes as set out in its rules, the Commission must also look at the organisation's current and proposed activities to decide whether it has charitable purposes.

Each application for registration is assessed on a case-by-case basis.

Public benefit

In order for a purpose to be charitable, it must provide benefits to the public, rather than to private individuals.

Any private benefits arising from the organisation's purposes and activities must only be a means of achieving an ultimate public benefit

and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.

Courts have sometimes found the promotion of industry and commerce to be charitable where this has been for the benefit of the public.

In *Commissioners of Inland Revenue v Yorkshire Agricultural Society*,¹¹ the improvement of agriculture was considered to be charitable where it was for the benefit of the public. However, the judge made it clear that the promotion of agriculture for private profit or benefit would not be charitable.

In *Crystal Palace Trustees v Minister of Town and Country Planning*¹² the management of a public place for education and recreation and for the promotion of industry, commerce, and art was held to be charitable because there was no intention to further the interests of individuals engaged in trade or industry or commerce.

In *Hadaway v Hadaway*¹³ the Privy Council held that assisting persons carrying on a particular trade or business or profession would not be charitable unless there was a condition that this assistance could

only be made for a purpose which was itself charitable. In that case the court held that any eventual benefit to the community from the purposes would be too remote:

In *Commissioners of Inland Revenue v White*¹⁴ the court held that the promotion of industry or commerce could be charitable provided that the purpose was to benefit the public and not merely the promotion of the interest of those engaged in the manufacture and sale of their particular products.

In *Commissioners of Inland Revenue v Oldham Training and Enterprise Council*,¹⁵ the Court considered whether promoting the interests of individuals engaged in trade, commerce or enterprise in order to make them more profitable so that employment prospects would improve in their area was a charitable purpose.

The court held that the purposes would confer private benefits on the business owners regardless of any beneficial consequences for employment. The purposes were therefore held not to be charitable because any benefits to the community would be too remote.

Private pecuniary profit and profit making activities

To meet the requirements for registration under the Charities Act, a society or institution must not be carried on for the private pecuniary (financial) profit of any individual. As with all charitable entities, this means that the charity cannot have private profit making as one of its purposes.

A charity can still carry out profit-making activities and can pay people for the purchase of goods and services as long as all of its activities are to further its charitable purposes and not to further the private financial interests of individuals. Payments must therefore be reasonable and based on “arms length commercial rates”.

Further information

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

You can also call our free information line **0508 242 748**.

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



¹¹ [1928] 1 KB 611.

¹² [1951] 1 Ch 132.

¹³ [1955] 1 WLR 16 (PC).

¹⁴ (1980) 55 TC 651.

¹⁵ (1996) 69 TC 231; STC 1218.

This information sheet was published in September 2009. Please refer to www.charities.govt.nz for any new developments or updates.