



Charitable Purpose

"Charitable purpose" has a special meaning in law. We use examples to illustrate the treatment of charitable purpose under the Charities Act.

What is a "charitable purpose"?

Section 5(1) of the *Charities Act 2005* says that "charitable purpose"

"... includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community."

The law surrounding charitable purposes is 400 years old. It has been developed over time mainly by judges' decisions in court cases.

"Charitable purpose" has a special meaning in law. It may include some purposes the public would not consider to be charitable and it may exclude other purposes the public *would* consider to be charitable.

If we are considered "charitable" under other legislation, will we automatically be considered charitable by the Charities Commission?

Not necessarily. The definition of "charitable purpose" in the Charities Act is different from that in other legislation, such as the *Charitable Trusts Act 1957*.

How will the Charities Commission decide whether we have a "charitable purpose"?

We will compare the purposes and activities set out in your rules or governing document and the activities listed in your application form against the meaning of "charitable purpose" in section 5(1) of the Charities Act.

We assess each application we receive on a case-by-case basis, with reference to decisions made in earlier court cases, to decide whether the organisation applying has a "charitable purpose".

How will we know whether our organisation has a "charitable purpose"?

In order for a purpose to be charitable, it must —

1. fall within one of the four charitable purposes set out in section 5(1) of the Charities Act (see "What is a charitable purpose?" on page 1) **and**
2. provide a public benefit **and**
3. not be aimed at creating private financial profit.

In some cases, a specific Act of Parliament will state that the purposes of a particular organisation are charitable.

How will we know if our purpose “relieves poverty”?

To be charitable under this category, your organisation’s purpose must —

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

“Poverty” is interpreted broadly in law. People who are in need, aged, or who are suffering genuine financial hardship from a temporary or long-term change in their circumstances are likely to qualify for assistance. Generally, this includes anyone who does not have access to the normal things of life that most people take for granted.

To provide “relief”, the people who benefit should have an identifiable need arising from their condition that requires support. These people should have difficulty in addressing that need themselves.

Courts have found the following purposes to “relieve poverty” —

- caring for the aged, children, or orphans
- caring for the infirm, blind, war veterans, or disabled

- caring for the intellectually disabled, discharged prisoners, or alcoholics
- providing accommodation for elderly people, patients’ relatives, staff at hospitals and emergency shelters
- helping other needy persons (for example, refugees) or providing disaster relief.

How will we know if our purpose “advances education”?

To be charitable under this category, your organisation’s purpose must —

- provide some form of education, and
- ensure learning is passed on to others.

The modern concept of “education” covers formal education, training and research in specific areas of study and expertise. It also includes less formal education in the development of individual capabilities, competencies, skills and understanding. It does not include propagandist or political purposes.

To “advance” education, learning must be passed on to others. If research is to be conducted, it must be in an objective and impartial way and the useful results made available, or accessible, to the public.

Courts have found the following purposes to “advance education” —

- providing education through early childhood centres, schools and universities
- providing scholarships and prizes for academic achievement
- founding and supporting schools, technical colleges, and universities
- providing or improving sporting facilities for schools or universities
- providing museums and libraries
- developing the character of young people (for example some youth groups)
- delivering vocational training
- publishing and selling law reports.

How will we know if our purpose “advances religion”?

To be charitable under this category, your organisation’s purpose must —

- be for the benefit of a religion **and**
- ensure a religious faith is passed on to others.

The term “religion” includes many different faiths and belief systems (for example, Christianity, Judaism, Islam, Hinduism, and Buddhism).

Generally, to be religious there needs to be -

- a belief in a supernatural being, thing, or principle, and
- an acceptance of conduct in order to give effect to that belief.

To “advance” religion, the faith must be passed on to others by promoting it, spreading its message, or taking positive steps to sustain and increase the religious belief.

For example, a court has said that religion is not advanced by an entirely enclosed religious order where the activities consist only of **private** prayer. (Alternatively, a court has said that offering **public** prayers for the soul of a deceased person gives benefit to all who hear them.)

Courts have found the following purposes to “advance religion” —

- celebrating religious services in public
- conducting foreign missionary work
- providing and maintaining grounds and buildings to be used by churches or other religious organisations
- maintaining cemeteries or burial grounds for a particular religion

- providing superannuation schemes for the retirement of ministers of religion
- supplying religious literature
- providing religious education through Sunday schools, theological colleges, and conducting religious retreats.

How will we know if our purpose “is another matter beneficial to the community”?

Not all organisations which have purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable.

To be charitable under this category, the organisation’s purpose must be —

- very similar to the spirit and intent of those purposes listed in the Preamble to the Statute of Elizabeth (see the box alongside) or very similar to a charitable purpose as decided by the courts **and**
- beneficial to the community.

The *Statute of Elizabeth* (otherwise known as the *Charitable Uses Act 1601*) was passed in England to protect and prevent the misuse of charitable funds.

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
- 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.

Over the years, courts have recognised many new charitable purposes that are very similar to those categorised in 1601, acknowledging that what is accepted as a “charitable purpose” must change to reflect current social and economic circumstances.

The courts have considered whether:

- the new purpose is very similar to a purpose previously accepted as charitable, and whether it satisfies the requirement that the purpose benefits the public.

Courts have found the following purposes to be “beneficial to the community”:

- promoting public health (such as providing education, counselling, and rehabilitation services)
- providing public works and services (such as building roads, maintaining a water supply, and providing cremation or burial services)
- providing public amenities and recreational facilities (such as public halls, libraries, museums, statues, fountains, playing fields, gymnasiums, swimming pools, parks, and botanical gardens)
- protecting the environment (such as revegetation, afforestation, and conservation)

- protecting human life (such as providing emergency rescue services)
- preventing cruelty to, and protecting the welfare of, animals (such as providing animal shelters or sanctuaries)
- facilitating social rehabilitation (such as integrating people back into the community who have a disability or some form of deprivation)
- promoting the efficiency of the armed forces.

As well as development of the law through the Courts, section 61A of the *Charitable Trusts Act 1957* says that it is charitable to provide, or help to provide, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare, and there is a public benefit.

“In the interests of social welfare” means that:

- a. the facilities must be provided to improve the conditions of life for the people for whom the facilities are primarily intended **and**
- b. either:
 - those people need those facilities because of their youth, age, infirmity, disability, poverty, race, occupation, or social or

economic circumstances; or
- the facilities are available to all members of the public, or to all male or all female members of the public.

Among other things, this applies to providing facilities at public halls, community centres, and women’s institutes, and to providing and maintaining grounds and buildings to be used for recreation or leisure-time activities. It also extends to the organising of any activity. There must always be a public benefit from any of these activities.

The Courts have said that it is not necessary to establish that the facilities are primarily intended for people who are socially disadvantaged in some way in order to be “in the interests of social welfare”.

It is enough that the facilities are provided with the aim of improving the conditions of life for members of the community in general.

How will we know whether our organisation provides a “public benefit”?

To provide a public benefit —

- there must be an identifiable benefit and
- the benefit must be available to the general public, or to a wide section of the public.

Benefit

Your organisation should be able to clearly identify its public benefit.

Indirect benefits (where the benefit extends beyond the immediate beneficiaries) as well as direct benefits, may be taken into account in assessing whether you provide sufficient benefit to the public. For example, a court has said that assisting nurses in promoting efficient nursing services provides an indirect benefit to patients.

If your purpose is illegal or, if taking into account all the relevant facts and circumstances, there is a benefit that is outweighed by a greater harm to the community, no benefit will result.

You must not have a **primary** purpose which is political because it is not possible to judge whether a proposed change in the law will, or will not, provide a benefit to the public. A “political purpose” means any purpose directed at furthering the interests of any political party; or securing or opposing any change in the law or in the policy or decisions of central or local government, whether in this country or overseas.

For example, a court has said that a society seeking to prevent changes to the law advocated by another group will be political. Refer to “What happens if we have purposes that are not charitable?” on page 6 and to our information sheet - *“Advocacy” and the Charities Act.*

Public

Your benefit must be to the general public, or to an appreciable section of the public. Beneficiaries may be defined by charitable needs, a particular geographical area, or other criteria provided the resulting number of beneficiaries is sufficiently open in nature. If it is difficult to describe your beneficiaries using objective and impersonal terms, this may indicate that your organisation is established for private rather than public benefit.

Consider the following:

- If your organisation’s benefits are available to anyone who needs them and chooses to take advantage of them, it provides benefit to all the public, even though in some cases the number of actual beneficiaries may be quite small.
 - Any limits placed upon who benefits must be justifiable and reasonable given the nature of the charitable purpose.
 - Section 5(2)(a) of the Charities Act says that if beneficiaries of a trust or members of a society or institution are related by blood, this will not, of itself, prevent you from satisfying the public benefit requirement. This applies to all trusts, societies, and institutions.
- You may charge fees that cover more than the cost of the services or facilities you provide, unless the charges are so high that they severely limit the members of the public who can afford them.
 - If your organisation provides or maintains facilities for the benefit of the public, any restrictions on public access must be reasonable and appropriate in the circumstances.
 - Courts have tended to more easily recognise public benefit (both direct and indirect) where the charitable purpose is the relief of poverty.
 - Where your members are also the beneficiaries, any restrictions placed on who may become a member must be reasonable and justifiable in the circumstances. Benefits must still be provided to a wide section of the public, whether they are members or non-members. Courts have found that providing amusement, entertainment, or social activities for members of an organisation are private rather than public benefits.

How will we know if our organisation is aimed at creating private financial profit?

The Commission must be satisfied that all money and benefits flowing from your organisation are directed towards advancing your charitable purposes.

You may meet this requirement by including clauses in your rules that ensure that the payment of money, advantage, or benefit (including salaries and wages) is directed at achieving your charitable purposes.

If you are a trust wishing to make a payment or benefit to a trustee, your rules (trust deed) must clearly allow this payment.

If there is a clause in your rules relating to winding-up your organisation, this must state that any remaining assets, after debts and liabilities have been settled, must be directed to a charitable purpose (or to another organisation with charitable purposes). For more details about rules see our information sheet – *Your rules and the Charities Act*.

Usual good governance rules apply. This includes the requirement for people not to be involved in decisions where they have a personal interest, financial or otherwise.

What happens if we have purposes that are not charitable?

Section 5(3) of the Charities Act says that having a non-charitable purpose will not prevent an organisation from qualifying as a charitable entity if the non-charitable purpose is **ancillary** (secondary) to a charitable purpose of the entity. Section 5(4) clarifies that a non-charitable purpose must be:

- "(a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution **and**
- (b) not an independent purpose of the trust, society, or institution."

If your non-charitable purposes are simply inevitable or unintended consequences of the primary purpose, they will be considered to be ancillary. However, if your non-charitable purposes are significant in themselves, they will not be considered to be ancillary. For more information, refer to our information sheet - "*Advocacy*" and the *Charities Act*.

Further information

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

You can also call the Charities Commission on 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



This information sheet was first published in September 2006 and updated in October 2009. Please refer to www.charities.govt.nz for any new developments or updates.