

Registration decision: Interplast Australia and New Zealand

The facts

1. Interplast Australia and New Zealand (“the Applicant”) was registered as an Australian Public Company on 20 April 2000. It is not incorporated in New Zealand.
2. The Applicant applied to the Charities Commission (“the Commission”) for registration as a charitable entity on 11 October 2010.
3. Clause 4.1 of the Applicant’s rules document sets out the Applicant’s purposes as:

4.1 The predominant object of the Company is to relieve the sickness and suffering of indigent persons living within Australia and countries that the Minister for Foreign Affairs has declared to be developing countries by:

- (a) supplying the resources whereby duly licensed professional persons may provide sophisticated rehabilitation by modern surgical techniques;*
- (b) providing training in modern techniques of rehabilitation surgery and paramedical care to interested individuals of the countries in which the Company operates; and*
- (c) to seek contributions of money or otherwise from other persons and from the State and Commonwealth governments, government authorities or other government bodies which can only be applied to achieve the predominant object.*

4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects in this clause; and*
- (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).*

4. The Commission analysed the application and on 8 December 2010, sent the Applicant a notice that may lead to decline on the basis that it did not have sufficient connection to New Zealand and that its rules did not provide for surplus assets to be distributed solely for charitable purposes on winding up.

5. On 1 February 2011, the Commission received a response from the Applicant dated 21 December 2010, which stated:

Thank you for your letter on 8 December 2010, noting that the application of Interplast Australia & New Zealand (Interplast) appears to not meet the requirements to be registered as a charitable entity. Interplast is a registered charity in every state and territory in Australia and a signatory to the Australian Council for International Development (ACFID) Code of Conduct that defines standards of best practice for international development organisations and represents our active commitment to conduct activities with integrity and accountability.

Interplast wishes to submit further information to lend support to our application particularly in the area of our connection to New Zealand and our winding up provisions.

Connection to New Zealand

Company Name

In March 2007 the company name changed from Interplast Australia (as registered in 1983) to Interplast Australia & New Zealand to more appropriately reflect the support of New Zealand medical volunteers and Rotarians.

The official charity of the New Zealand Association of Plastic Surgeons

In March 2007 Interplast became the official charity of the New Zealand Association of Plastic Surgeons as well as the Australian Society of Plastic Surgeons. Interplast has subsequently become the official charity and charity of choice for a number of other organisations that conduct business in Australia, New Zealand and the Asia Pacific region.

Medical Volunteers reside in New Zealand

Interplast sends teams of fully qualified volunteer plastic and reconstructive surgeons, anaesthetists, nurses and allied therapists to our neighbouring developing countries. Our surgical volunteers must be a Fellow of the Royal Australasian College of Surgeons. All other medical volunteers must be registered, qualified and working in either the New Zealand or Australian health system.

Registered with the New Zealand Intellectual Property Office

Both our company name and logo have been registered with the New Zealand Intellectual Property Office.

Support from Rotarians and Rotary Clubs and Districts

Rotarians from Clubs and Districts throughout Australia and New Zealand are part owners and supporters of the work of Interplast. Interplast has been given approval from Rotary International to use the Rotary Logo with the following clarification "Interplast Australia & New Zealand is a project actively supported by Rotarians in Clubs and Districts throughout Australia and New Zealand."

Previous Support from New Zealand Based organisations

Over the past 27 years Interplast has received funding from a few New Zealand based organisations for our charitable activities in developing countries.

Winding up provisions

We note your comments and suggested amendment to our rules that would assist us in meeting the winding up provisions required for registration with the New Zealand Charities Commission.

As noted above Interplast is a registered charity in Australia, the Constitution of Interplast as a company limited by guarantee has been approved and registered with the Australian Securities Commission (ASIC). The winding up provisions meet the requirements of ASIC and we would be unable to include reference to legislation in New Zealand. As Interplast is a registered charity and with ASIC, upon winding up we would be unable to transfer assets to an organisation which did not have charitable purposes similar to the objects Interplast operates under. We would be pleased if you could reconsider this aspect.

Interplast relies on the passionate support of fully qualified medical volunteers to deliver programs of aid and development to our neighbouring developing countries. We look forward to your support and advice.

The issues

6. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* (the Act). In this case, the key issue for consideration is whether the Applicant:
- is constituted in New Zealand; and/or
 - has a very strong connection to New Zealand,
- (such that in either case the Commission is able to exercise its monitoring and enforcement functions and powers).

Charities Commission's analysis

7. The Commission is of the opinion that the purposes set out in clause 4 of the Applicant's rules are likely to be charitable under the head of relief of poverty and the winding up clause is sufficient to meet registration requirements.

Constituted in New Zealand or strong connection to New Zealand?

8. The Commission considers that only entities that are constituted in New Zealand and/or have a very strong connection to New Zealand are eligible for registration under the Act. One of the key functions of the Act is to require the compliance of registered entities with the various obligations set out under the Act. All of the Commission's non-compliance prosecution powers are territorially limited to New Zealand. The Commission does not consider that it could carry out its monitoring and investigation functions with an entity based in another country, as the entity would be outside the jurisdiction of New Zealand law.

9. In order to be **constituted** in New Zealand the Applicant would need to be established as a body corporate under a New Zealand Act. The number provided on the Applicant's application form (006155193) is the Applicant's Australian Business Number (ABN) on the Australian Securities & Investments Commission's companies register. The Applicant does not appear to be incorporated under New Zealand legislation.
10. In assessing whether an overseas applicant has a **strong connection** with New Zealand, the Commission considers factors including:
 - whether the applicant has a centre of administration in New Zealand;
 - how many of the applicant's officers are resident in New Zealand;
 - how much of the applicant's property is held in New Zealand; and/or
 - if the applicant has any other strong connection with New Zealand.
11. The Applicant's contact details and addresses are based in Melbourne, Australia, and its website, <http://www.interplast.com.au/>, is an Australian website.
12. From information on the Applicant's website, all of its eleven officers are resident in Australia,¹ as are all eleven members of the management team.²
13. There is no evidence to suggest that any of the Applicant's property is held in New Zealand.
14. In its letter of 21 December 2010, the Applicant stated:

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¹ <http://www.interplast.com.au/Board>

² <http://www.interplast.com.au/Staff>

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15. Clause 4.1 defines the Applicant's purpose as to "relieve the sickness and suffering of indigent persons living within Australia and countries that the Minister for Foreign Affairs has declared to be developing countries...". There are no references to New Zealand in this clause.
16. On the "Areas of Operation" section of its application form, the Applicant did not select any New Zealand regions. In addition, the Applicant's website does not contain any references to activities carried out in New Zealand.³
17. As noted above, the Applicant is established as a body corporate under Australian legislation. The Applicant's rules contain numerous references to Australian legislation such as the *Income Tax Assessment Act 1936 (Cth)*, the *Income Tax Assessment Act 1997 (Cth)* and the *Corporations Act 2001 (Cth)*.
18. In its letter of 21 December 2010, the Applicant stated, "[t]he winding up provisions meet the requirements of ASIC and we would be unable to include reference to legislation in New Zealand."
19. The Commission does not consider that having "New Zealand" in its name, having its name and logo registered with the New Zealand Intellectual Property Office, and receiving donations and other support from New Zealand, demonstrate that the Applicant has a sufficient connection to New Zealand.
20. For the reasons given above, the Commission does not consider that the Applicant is constituted in New Zealand or has a very strong connection to New Zealand, such that the Commission is able to exercise its monitoring and enforcement functions and powers.

³ <http://www.interplast.com.au/where-we-have-worked>

Charities Commission's determination

21. The finding of the Commission is that the Applicant has failed to meet the essential requirements for registration as a charitable entity in that the Applicant does not have a sufficient connection to New Zealand.

For the above reasons, the Commission declines the Applicant's application for registration as a charitable entity.

Signed for and on behalf of the Charities Commission

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Trevor Garrett
Chief Executive

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Date