

Deregistration decision: The Food and Agribusiness Market Experience Alumni Trust

The facts

1. The Food and Agribusiness Market Experience Trust (the Trust) was registered as a charitable entity under the Charities Act 2005 (the Act) by the Charities Commission (the Commission) on 8 January 2009, with registration backdated to 30 June 2008.
2. The Trust's purposes and functions are set out in clauses 3 and 4 of the trust deed:

3 **PURPOSES**

The Trust is established for the advancement of education, in particular for the purpose of assisting with the identification and funding of research themes related to the New Zealand agribusiness sector and the marketing of New Zealand agribusiness products globally, and in order to do so will carry out the Functions set forthwith in clause 4.

4 **FUNCTIONS**

The trust shall have the following Functions:

- 4.1 *to promote research associated with the Purpose;*
- 4.2 *to work with and assist Fame Course operators (at the date of this Deed being Lincoln University, Massey University and the University of Otago) in promoting the current Fame programme and identifying research opportunities;*
- 4.3 *to arrange networking events for the Fame Network including the attendance of guest speakers;*
- 4.4 *to sponsor and fund candidates for future Fame Network courses who could not otherwise attend;*
- 4.5 *to act as spokesperson for the Fame Network;*
- 4.6 *to promote any other activities designed to benefit New Zealand agribusiness in the areas of education and relationships; and*
- 4.7 *to raise funding from government agencies, sponsorship and membership levies for the Functions set out in clause 4.1 to 4.6.*

3. Clause 1.1 of the deed defined the "Fame Network" as:

means those persons who participate and/or contribute to the development in courses to which this Deed relates.

4. On 21 February 2011 the Commission received a notice of change amending the name of the entity from "The Food and Agribusiness Market Experience Trust" to "The Food and Agribusiness Market Experience Alumni Trust". This change prompted the Commission to review the Trust's eligibility for registration.
5. On 24 March 2011, the Commission sent the Trust a letter under section 50 of the Act, requesting information about the Trust's name, purposes, activities and accounts.
6. The Trust provided the following responses in a letter dated 5 May 2011, which was received by the Commission on 9 May:

Please inform the Commission how the entity has identified and funded research themes relating to the New Zealand agribusiness sector and marketing of New Zealand agribusiness products globally in the last 3 years, as stated in clause 4.0 of the trust deed.

The Trustees go through a process of identifying speakers and topics for the conferences which are relevant to the agribusiness sector and the issues that are pertinent to the timing of the conference. We tend to bring speakers who are making a difference in the agribusiness world to inspire members of the Alumni with ideas. The resulting discussions have the effect of Alumni members taking ideas back to their respective businesses and entities.

How has the entity assisted Fame Course operators in promoting the current Fame programme in the last 3 years, as stated in clause 4.1 of the trust deed?

The Trustees in what is now known as the Food and Agribusiness Market Experience Alumni Trust have been active in the formation of the new Food and Agribusiness Market Experience Trust. The new Trust has been formed in Partnership with the universities to govern the program, and will be made up of representatives from the Universities and the Alumni Trust. The FAME Alumni Trust has 2 members on the governance Trust. As in the past, when the next FAME program is set the Alumni Trustees will take a role in actively seeking suitable people to attend the next course.

The Trustees have been active in communicating with the Alumni which now consists of more than 60 members. The other Alumni members will all have a network of people from which to draw prospective FAME members from.

Please inform the Commission what networking events the entity has provided for the Fame Network in the last 3 years, as stated in clause 4.3.

I have attached agendas for the three networking events that have taken place since the inception of our Trust. The conferences are designed to stimulate thought and discussion on marketing topics related to agribusiness and provides a learning opportunity for Alumni.

Please inform the Commission how many candidates have been sponsored to attend Fame Network courses, by the entity in the last 3 years. Please inform the Commission how much sponsorship the entity provided to each candidate.

The aim is to put up two candidates each time. This has been written into the Trust Deed. The Alumni have invited interested participants to the past two conferences to engage them in what FAME is all about.

Please inform the Commission how the entity has promoted other activities designed to benefit New Zealand agribusiness in the area of relationships in the last 3 years, as stated in clause 4.6.

Alumni members have been encouraged to go to other agribusiness conferences and bring back the learning to the Alumni for future discussion. Members of the Alumni are encouraged to apply for Nuffield Scholarships to further their study and also for those who wish to partake in further study, to take on post-graduate scholarships. The universities involved are able to advise on credits which may be gained by reporting on FAME activities.

...

In the background of the resolution to change the entity's name it states, 'The trustees of the trust have, at the request of the proposed Food and Market Experience Trust (the proposed trust) considered whether to amend the name of the trust so that it includes the word "Alumni" and therefore be distinguishable from the proposed trust.' Please inform the Commission what the relationship is between the 'proposed trust' and 'The Food and Agribusiness Market Experience Alumni Trust? What will be the differences in activities between the 'proposed trust' and the Food and Agribusiness Market Experience Alumni Trust?

The changes have been made to develop a more formal approach between the Universities and the Alumni. The Alumni Trustees have two positions on the new trust which will allow the Alumni to have input into future FAME programs to ensure that the academic programs being designed are relevant to the needs of agribusiness.

On the website <http://fame.massey.ac.nz/LatestNews.aspx> it states, 'FAME has initiated a substantive restructuring process to an improved FAME structure that better meets these changing participant and industry needs. We want to ensure FAME Alumni can continue their professional development by providing them with the opportunity to attend additional international modules, as well as keep the course relevant and fresh for new participants.'

Please inform the Commission if these 'substantive restructuring process' will amend this entity's activities and in what way the activities will be amended.

The substantive restructuring process is not designed to amend the activities of the Alumni Trust. The changes have been made to develop a more formal approach between the Universities and the Alumni. AGMARDT were instrumental in providing the initial seed funding for the inaugural FAME program and have been involved in helping set up the governance trust. The Alumni Trustees have two positions on the new Trust which will allow the Alumni to have input into future FAME programs to ensure that the academic programs being designed relevant to the needs of agribusiness.

The Accounts provided to the Commission indicate that the entity has a conference expense of \$5,951 in 2010 and \$13,608 in 2009. Please provide more information regarding this conference, including who was able to attend, speakers, subject matter etc. Evidence of these conferences are required, such as brochures etc.

The conference expenses are payments made to speakers and for venues, catering and in some cases bus transport for site visits.

Please provide information regarding the trustees expenses of \$1,571 in 2010 and \$494 in 2009.

Trustees are able to claim for the cost of getting to the meetings and any incidental expenses. Not all trustees do, and while it is a voluntary group it is intended that no-one should be out of pocket by undertaking their duties as a Trustee.

The accounts indicate that the entity received \$342 in 2010 and \$7,778 in 2009 in subscriptions. Please provide more information regarding who is able to subscribe to the entity, and what the members receive for their subscription.

Alumni members are able to subscribe to the Trust. The subscriptions provide some funding to pay any expenses incurred by Trustees in holding meetings and planning the conferences.

7. The Trust also provided programmes for three of the Trust's conferences held in 2008, 2009, and 2010.
8. On 27 June 2011, the Commission sent the Trust a notice of intention to remove the Trust from the register on the basis that it was not established and maintained for exclusively charitable purposes.
9. On 25 July 2011, the Trust responded to the notice stating:

I wish to advise that I will not be submitting an objection to the removal of the Food and Agribusiness Market Experience Alumni Trust.

The issue

10. The Commission must consider whether the Trust is, or is no longer, qualified for registration as a charitable entity under section 32(1)(a) of the Act. In this case, the key issue for consideration is whether the Trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.

The law on charitable purpose and deregistration

11. Section 13 of the Act sets out the essential requirements for registration. Under 13(1)(a) of the Act, a trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
12. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.¹ This means that the purpose must be directed to benefiting the public or a sufficient section of the public.
13. Courts have held that in order to be charitable, an entity must have exclusively charitable purposes. Thus, in *McGovern v Attorney General*,² Slade J states:

The third requirement for a valid charitable trust is that each and every object or purpose designated must be of a charitable nature. Otherwise, there are no means of discriminating what part of the trust property is intended for charitable purposes and what part for non-charitable purposes, and the uncertainty in this respect invalidates the whole trust.
14. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for charitable status.
15. Courts have also held that the activities of an entity must be considered in relation to its purposes in order to conclude whether it is, in fact, established and maintained for exclusively charitable purposes.³
16. Section 32(1)(a) of the Act provides that the Commission may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.

¹ See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

² [1982] 1 Ch. 321, 341. (See also *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688, 691.

³ See *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 194; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] at para 29.

Charities Commission's analysis

17. In order to determine whether the Trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, the Commission has considered the Trust's stated purposes and functions, information provided by the Trust, other publicly available information about the Trust, and the relevant case law.
18. The Commission considers that clause 4.7 is ancillary and the remaining purposes and functions in clauses 3 and 4 do not indicate an intention to advance religion. These clauses have therefore been considered in relation to the relief of poverty, the advancement of education and "any other matter beneficial to the community".

Relief of poverty

19. To be charitable under the relief of poverty, a purpose must be directed at people who are poor, in need, aged, or suffering genuine hardship, and it must provide relief.
20. The law interprets "poverty" broadly so a person does not have to be destitute to qualify as poor.⁴ People who are in need, aged,⁵ 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 will include anyone who does not have access to the normal things of life that most people take for granted.⁶ To provide "relief", the people who would benefit should have an identifiable need arising from their condition that requires alleviating and these people should have difficulty in alleviating that need from their own resources.⁷
21. The purpose in clause 4.4 is:

to sponsor and fund candidates for future Fame Network courses who could not otherwise attend;
22. Information provided in its letter of 5 May 2011 indicates that the Trust aims to sponsor two candidates each time to attend the Fame Network courses.
23. The Fame website states:

*FAME offers **emerging leaders in the food and agribusiness sectors a unique professional development opportunity** in a course offered jointly by three leading New Zealand universities: Otago, Lincoln and Massey. This has been initiated by AGMARDT who have a commitment to developing leadership talent and capability for tomorrow's global markets.*

⁴ *Re Bethel* (1971) 17 DLR (3d) 652 (Ont: CA); affirmed sub nom *Jones v Executive Officers of T Eaton & Co Ltd* (1973) 35 DLR (3d) 97 (SCC) referred to in *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342. See also *re Pettit* [1988] 2 NZLR 513.

⁵ *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

⁶ *Inland Revenue Commissioners v Baddeley* [1955] AC 572; [1955] 1 All ER 525, applied in *re Pettit* [1988] 2 NZLR 513 and *Re Centrepoin Community Growth Trust* [2000] 2 NZLR 325.

⁷ *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch D 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

The full immersion course, which begins in New Zealand and extends to modules based offshore, offers a wide range of topics covering all aspects of the supply chain from farm gate to retail outlet.⁸ [Emphasis added]

24. The Application form for the course states:

UNDERTAKING

There are limited places on this programme. Out of deference to the unsuccessful applicants and in the best interests of the successful ones, the following undertaking is to be signed and honoured;

- i. If selected for the Food & Agribusiness Market Experience, I undertake to attend the four modules and complete any module projects required.*
- ii. On my acceptance into the FAME programme I acknowledge that I am required to then pay the cost of the course of **\$25,000 NZD plus GST** by Monday 30th March, 2009.⁹ [Emphasis added]*

25. The Commission notes the specialised nature of the Fame Network courses, the restrictions on who can attend, and the high cost of the course. The Commission considers that the people assisted to attend the course under clause 4.4 will not necessarily be those who do not have access to the normal things in life that most people would take for granted. The Commission therefore concludes that this is not charitable under the relief of poverty.

Advancement of education

26. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. The modern concept of "education" covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding, as long as there is a balanced, and systematic process of instruction, training, and practice.¹⁰ In order to advance education, learning must be passed on to a broad section of the public.¹¹
27. Under advancement of education, research must be carried out in an objective and impartial way and the useful results must be made available, or accessible to the public, further it must meet some minimal standard.¹²

⁸ <http://fame.massey.ac.nz/> [last accessed 14 September 2011].

⁹ <http://fame.massey.ac.nz/files/File/APPLICATION%20FORM%202008.doc> [last accessed 14 September 2011].

¹⁰ *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

¹¹ See *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010]; *Re New Zealand Computer Society Incorporated* HC WN CIV-2010-485-924 [28 February 2011].

¹² In New Zealand, in *Re Collier (deceased)* [1998] 1 NZLR 81. p92 Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:

28. Clauses 3 and 4.1, 4.2, 4.3, and 4.5 state:

3 PURPOSES

The Trust is established for the advancement of education, in particular for the purpose of assisting with the identification and funding of research themes related to the New Zealand agribusiness sector and the marketing of New Zealand agribusiness products globally, and in order to do so will carry out the Functions set forthwith in clause 4.

4 FUNCTIONS

The trust shall have the following Functions:

- 4.1 to promote research associated with the Purpose;*
- 4.2 to work with and assist Fame Course operators (at the date of this Deed being Lincoln University, Massey University and the University of Otago) in promoting the current Fame programme and identifying research opportunities;*
- 4.3 to arrange networking events for the Fame Network including the attendance of guest speakers;*
- ...*
- 4.5 to act as spokesperson for the Fame Network;*

Clauses 3 and 4.1

29. The Fame website states:

Over the past 5 years, FAME has successfully graduated three classes and delivered over 80 young leaders back to the NZ agri-food sector¹³

30. In its letter of 5 May 2011 the Trust stated:

Please inform the Commission how the entity has identified and funded research themes relating to the New Zealand agribusiness sector and marketing of New Zealand agribusiness products globally in the last 3 years ...

The Trustees go through a process of identifying speakers and topics for the conferences which are relevant to the agribusiness sector and the issues that are pertinent to the timing of the conference. We tend to bring speakers who are making a difference in the agribusiness world to inspire members of the Alumni with ideas. The resulting discussions have the effect of Alumni members taking ideas back to their respective businesses and entities ...

'It must first confer a public benefit, in that it somehow assists with the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value.'

¹³

<http://fame.massey.ac.nz/LatestNews.aspx> [last accessed 14 September 2011].

The Trustees have been active in communicating with the Alumni which now consists of more than 60 members.

31. The Commission does not consider that identifying speakers and topics for conferences which are available to approximately 60 alumni members who have completed an exclusive course of study will amount to objective research which is accessible to the public. Therefore the purposes in clauses 3 and 4.1 are not charitable under the advancement of education.

Clause 4.2

32. In its letter of 5 May 2011 the Trust stated:

How has the entity assisted Fame Course operators in promoting the current Fame programme in the last 3 years, as stated in clause 4.1 of the trust deed?

The Trustees in what is now known as the Food and Agribusiness Market Experience Alumni Trust have been active in the formation of the new Food and Agribusiness Market Experience Trust. The new Trust has been formed in Partnership with the universities to govern the program, and will be made up of representatives from the Universities and the Alumni Trust. The FAME Alumni Trust has 2 members on the governance Trust. As in the past, when the next FAME program is set the Alumni Trustees will take a role in actively seeking suitable people to attend the next course.

The Trustees have been active in communicating with the Alumni which now consists of more than 60 members. The other Alumni members will all have a network of people from which to draw prospective FAME members from.

33. The Trust's response indicates that a new trust, with the Trust's original name, is now governing the programme with the three universities and the Alumni Trust is simply "seeking suitable people to attend the next course". The Commission does not consider that such an activity is charitable under the advancement of education because the specialised nature, the restrictions on who can attend, and the high cost involved, will preclude the public from attending the Fame Network courses.

Clauses 4.3 and 4.5

34. The Commission does not consider that arranging networking events for the Fame Network and acting as a spokesperson for the Network in clauses 4.3 and 4.5 can be considered charitable under advancement of education. This is because these purposes do not involve a balanced, and systematic process of instruction, training, and practice.

Other matters beneficial to the community

35. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the *Charitable Uses Act 1601* (the Statute of Elizabeth) ¹⁴, which are as follows:

- 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. ¹⁵

36. In *Inland Revenue Commissioners v Yorkshire Agriculture Society*¹⁶ the court determined the improvement of agriculture was held to be charitable where it was for the benefit of the public at large. However, Lord Hanworth made it clear that the promotion of agriculture for private profit or benefit would not be charitable.

37. Similarly in *Hadaway v Hadaway*, the court held that benefits to individuals involved in agriculture would not provide sufficient public benefit to be considered charitable:

*The promotion of agriculture is a charitable purpose, because through it there is a benefit, direct or indirect, to the community at large: between a loan to an individual planter any benefit to the community the gulf is too wide. If there is through it any indirect benefit to the community, it is too speculative.*¹⁷

¹⁴ *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304, 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

¹⁵ *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304, 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

¹⁶ [1928] 1 KB 612.

¹⁷ [1955] 1 WLR 16 (PC).

38. Clause 4.6 states:

to promote any other activities designed to benefit New Zealand agribusiness in the areas of education and relationships;

39. The Commission considers that supporting New Zealand businesses involved in food production (agribusiness) may be charitable under “other matters beneficial to the public” if this provides a public benefit, rather than a private benefit for business owners.

Conclusion

40. The Commission concludes that the function in clause 4.6 may be charitable, but the purposes and functions in clauses 3 and 4.1 to 4.5 are non-charitable. The Trust’s non-charitable purposes and functions are not ancillary to a charitable purpose.

Section 61B of the Charitable Trusts Act 1957

41. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the *Charitable Trusts Act 1957* however, can operate in two situations to “save” a trust that has both charitable and “non-charitable and invalid” purposes.

42. The first is where the entity’s **stated** purposes include charitable and non-charitable purposes (in which case the non-charitable purposes may be “blue pencilled out”). The second is where the stated purposes are capable of both a charitable and a non-charitable **interpretation** and the primary thrust of the gift is considered to be charitable (in which case the purposes could be deemed to apply only in terms of the charitable interpretation).¹⁸

43. In *Re Beckbessinger*, Tipping J held:

*In the case of designated and identifiable organisations it may well be necessary to have evidence as to whether or not they are charitable to determine the flavour of the gift. The Court cannot in my judgment say, ... that because a gift might have been applied for charitable purposes, s 61B can be used to save it. The testator must be shown to have had a substantially charitable mind but to have fallen foul of the law of uncertainty by including either actually or potentially a non-charitable element or purpose.*¹⁹

44. The Commission has analysed the wording of the Trust’s purposes, surrounding context, and activities (as directed by section 50(2) of the *Charities Act 2005*). The Commission does not consider that these provide evidence of “a substantially charitable mind” with an intention to create a charitable trust, but which was not conveyed by the drafting.

45. On this basis, the Commission considers that the Trust’s purposes are not substantially charitable and therefore section 61B of the *Charitable Trusts Act 1957* cannot operate to validate the trust.

¹⁸ *Re Beckbessinger* [1993] 2 NZLR 362, 373.

¹⁹ *Re Beckbessinger* [1993] 2 NZLR 362, 376.

Public interest


46. Section 10(1)(a) of the Charities Act obliges the Commission to promote public trust and confidence in the charitable sector. The Commission considers that public trust and confidence in registered charitable entities would not be maintained if entities which did not meet the essential requirements for registration remained on the register.

Charities Commission's determination

47. The Commission determines that the Trust is not, or is no longer, qualified for registration as a charitable entity because it is not a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.
48. The decision of the Commission is therefore to remove the Trust from the Register, pursuant to section 31 of the Act, with effect from 27 September 2011.

For the above reasons, the Commission determines to deregister the Trust as a charitable entity by removing the Trust from the Register.

Signed for and on behalf of the Charities Commission



Trevor Garrett
Chief Executive

27 / 09 / 11

Date