



Charitable Purpose and sport and recreation organisations

Sport and recreation organisations can qualify for registration as charitable entities under the *Charities Act 2005* if their purposes are charitable in accordance with New Zealand law.

Introduction

Registration under the Charities Act offers a number of benefits (see our information sheet *The Charities Register: benefits for charities* for more details) and the Charities Commission has received applications from amateur sport and recreation organisations that wish to be registered as a charitable entity.

The purpose of this paper is to set out the current legal position on the charitable status of sport and recreation organisations.

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

Sports and recreation organisations can qualify for registration as charitable entities under the *Charities Act 2005* if their purposes are charitable in accordance with New Zealand law.

Organisations whose main purpose is to promote amateur sport are currently eligible for a tax exemption under CW 46 of the *Income Tax Act 2007*. They do not need to register under the Charities Act to qualify for or keep that tax exemption.

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".

While the courts have not recognised the promotion of sport for its own sake as charitable, the law has recognised that sport can be the means by which charitable purposes are carried out.

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:

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

and must also provide a public benefit.

This means that there must be a benefit to the general public, or a sufficient section of the public, that outweighs any harm.

As well as having exclusively charitable purposes, an organisation must not be established with a purpose of providing private pecuniary (financial) profit.

Are sport and recreation organisations charitable?

Over the years, the courts and Parliament have considered whether sport and recreation organisations have charitable purposes.

The courts traditionally viewed that gifts for sporting purposes were not charitable if the main purpose was considered to be the promotion of sports for entertainment, or amusement, or competitive reasons (usually for an individual or group) and not to advance some other recognised charitable object.

However, the courts have recognised that sport can be a way of achieving a charitable purpose.

This can be the case where the purpose is to:

- relieve poverty
- advance education

- “otherwise benefit the community” – for example, promoting health through community participation in healthy sport and recreation
- provide community recreational facilities “in the interests of social welfare” (under section 61A of the Charitable Trusts Act 1957)

Legal position on sport and charitable purpose

Advancement of education

The courts have decided that if sporting purposes are in connection with young people, schools or universities, they may be charitable as “advancement of education”; even where the sporting activities are separate from school or university terms or premises.

The Commission considers that it is consistent with that approach to recognise as charitable the advancement of the physical education of young people not undergoing formal education.

Other purposes beneficial to the community

The Commission also considers that organising sport and recreation or providing sport and recreation facilities could be charitable under the fourth head of charity “purposes that otherwise benefit 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*).

Using this approach, the Commission has considered the current law, including decisions made by the courts and the provisions of the Charities Act and other legislation that declares purposes to be charitable.

It has also considered the modern environment and the underlying spirit and intention of the matters considered to be charitable in the Preamble to the Statute of Elizabeth. In particular, the Commission has recognised the links between participation in healthy physical activity and improved public health.

Sport and recreation organisations may have a charitable purpose if their purposes are to promote health through sport and recreational activity. If participation in the activity can be linked with improved health (and reduced adverse health) for the individuals participating in the activity this can indicate a charitable purpose.

This is consistent with a line of cases where the promotion of community health is considered to be charitable.

Section 61A of the *Charitable Trusts Act 1957*

Any organisation, not only trusts, may have purposes that are charitable in terms of section 61A of the *Charitable Trusts Act 1957*.

That section provides that it is charitable to provide facilities (including organising activities) for recreation and other leisure time occupation if the facilities are provided “in the interests of social welfare”.

The “social welfare” requirement requires that

- the facilities need to be provided with the purpose of improving the conditions of life for those for whom the facilities are primarily intended and
- those people have need of the facilities because of their youth, age, infirmity, disability, poverty, race, occupation, or social or economic circumstances or
- the facilities are to be available to members of the public “at large” or to either the male or female members of the public “at large”.

To be charitable under this provision, the organisation’s purposes must be considered to be for the public benefit.

Requirement to be exclusively charitable

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

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 sport and recreation 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 entity’s purposes as set out in its rules, the Commission must also look at the current and proposed activities to decide whether it has charitable purposes.

This is assessed on a case-by-case basis.

Public benefit

In order for a purpose to be charitable, it must confer a public benefit. This means that the benefits must be available to the public or a sufficient section of the public.

The Commission considers whether purposes are aimed at benefitting the public or a sufficient section of the public.

Factors that count against this include where:

- the members are also the beneficiaries and there are unreasonable or unjustifiable restrictions placed on who may become a member
- providing amusement, entertainment, or social activities for members are primary purposes
- there is an unreasonable risk of injury or harm associated with the activity and this would outweigh any benefit to the public.

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 profit of any individual. As with all charitable entities, this means that the purpose cannot include private profit making.

A charity may carry out profit-making activities as long as any profits go towards its charitable purposes.

For example, a charity that is a community sports club could hire out its clubrooms to other groups for a fee or sell merchandise, such as T-shirts, calendars or sports equipment as long as any profits made were used to further its charitable purposes.

A charity may make payments for the purchase of goods and services to carry out its charitable purposes as long as the payments are reasonable, and based on “arms-length commercial rates”.

For example, a charity that is a community sports club may pay for the services of a coach, employ an administrator and buy sports supplies as long as the payments are at normal market rates.

Summary

Sport and recreation organisations can qualify for registration as charitable entities under the *Charities Act 2005* if they have exclusively charitable purposes.

This means that their purposes must be recognised by the courts as being for one or more of the following:

- relief of poverty
- advancement of education
- advancement of religion
- other purposes beneficial to the community.

Under the *Charitable Trusts Act 1957*, it is charitable to provide community recreation facilities in the interests of social welfare.

In all cases, to be charitable, a purpose must be aimed at the public or a sufficient section of the public and the organisation must not be carried on for private pecuniary (financial) profit.

While the courts have not recognised the promotion of sport for its own sake as charitable, the law has recognised that sport can be the means by which charitable purposes are carried out.

Following this approach, some sporting organisations have been recognised as having purposes that advance education, relieve poverty and otherwise benefit the community.

The Charities Commission looks at the purposes and activities of all organisations that apply to it for registration. It can then make a decision about whether the organisation has exclusively charitable purposes.

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 and contact details to info@charities.govt.nz

