

UNDERSTANDING THE CHARITIES COMMISSION

An organisation wishing to attain charitable status in New Zealand must first successfully register with the Charities Commission.

The New Zealand Charities Commission was established on 1 July 2005 and is directed by the Charities Act 2005. The purpose of the Commission is to both establish and maintain a registration and monitoring system for charitable organisations and provide support and education to the charitable sector on good governance and management.

Charitable Purpose

Section 5 of the Charities Act 2005 states that a "charitable purpose" is:

"...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"

A charitable organisation must provide a public benefit, meaning it must be available to the general public, or to a wide section of the public. Any limits placed upon who may benefit must be justifiable and reasonable considering the nature of the charitable purpose.

For instance, an organisation may still satisfy the public benefit requirement if their limiting factor is blood lineage. However the number of potential beneficiaries must be sufficient to constitute a wide enough section of the public. 'Wide enough' is a number defined by the Charities Commission on a case by case basis.

Political purposes are not charitable.

If an organisation has a non-charitable purpose, so long as it is secondary to the charitable purpose it will not disqualify the organisation from registering as a charitable entity.

Why Register?

According to the Charities Commission website successful registration will entitle your organisation to tax exemptions, allow potential donors to access information about your organisation on the Charities Register and will improve public confidence in your organisation.

Initial registration is free. However you do need to submit an annual return, which will cost \$50 if you pay online, or \$75 if you pay by cheque. Annual returns must be submitted within 6 months of your balance date each year. If you do not make annual returns you will lose your charitable status. Returns can be completed online or on a physical form downloadable from the Charities Commission website.

Who can Register?

In order to achieve registration an organisation must fulfil certain requirements set out in the Charities Act 2005, these include, in the case of a trust, the trustees must derive income for charitable purposes or where it is a society or an institution, it must be established and maintained for charitable purposes only, not for private pecuniary profit.

The name of the organisation must comply with section 15 of the Act. A name will comply if it is already incorporated under a statute such as the Incorporated Societies Act 1908, otherwise the Commission must be satisfied that the name is not offensive or liable to mislead the public in any way.

All of the trustees, members, or persons in a position of influence within the organisation must comply with section 16 which disqualifies undischarged bankrupts, people under 16 years of age, anyone convicted of a crime involving dishonesty within the last 7 years, anyone who is prohibited under the Companies Act 1993, disqualified by the Charities Commission itself, subject to a property order under the Protection of Personal and Property Rights Act 1988, or a body corporate which is being wound up, is in liquidation or receivership, or is subject to management under the Corporations (Investigation and Management) Act 1989.

An entity cannot be registered if it qualifies under section 20 or 22 of the Terrorism Suppression Act 2002 or has been convicted of an offence under sections 7-13D of that Act.

To view New Zealand legislation in full visit www.legislation.govt.nz

Registration Process

To apply to register as a charitable entity the following must be completed:

Form 1: Application by entity for registration as a charitable entity

Form 2: Officer Certification Form

And a copy of your organisation's rules and any amendments need to be included. The rules of your organisation outline its purpose, what it does, and how it operates. This helps the Commission to understand your organisation and decide whether your purpose is charitable.

The application process takes approximately 30 working days. If successful, your organisation will be sent a certificate with your unique registration number. If there is something which might result in your application being declined, you will be sent a formal notice, explaining the reasons and providing you with an opportunity to respond. Otherwise, if your application is still unable to be approved, you will be sent a formal notice explaining the reasons.

Most of the information you provide will be available to the public through the Charities Register. The Commission may restrict public access if it believes it is in the public interest to do so. You may request that your information be restricted from the public by sending a written request explaining your reasons.

Responsibilities of Registered Charities

Once registered, organisations must:

- Submit an Annual Return to the Commission within six months of the end of their financial year (balance date); and
- Notify the Commission within three months if certain information changes using a Notification of Change Form.

If these obligations are not met the Commission has the authority to:

- Impose administrative penalties
- Issue warning notices
- Publicise any non-compliance
- Undertake further investigations
- De-register charities that have seriously or repeatedly failed to comply

To obtain the necessary forms or for more information about registration and the Charities Commission:

- Visit www.charities.govt.nz
- Free phone the Charities Commission on 0508 242 748
- To get email updates, send your name, the name of your organisation and your contact details to info@charities.govt.nz

By Susannah Godbaz, Legal Consultant Community Waikato



**COMMUNITY
WAIKATO**

"Supporting strong communities"
Hurahia te whakaaronui

33 Victoria Street, P O Box 391, Hamilton 3204.
Ph: 07 838 1583 Fax: 07 957 1981
www.communitywaikato.org.nz