

Registration decision: Whitianga/Coromandel Peninsula Commercial Fishermen's Association

The facts

1. The Whitianga/Coromandel Peninsula Commercial Fishermen's Association (the Applicant) was registered as an incorporated society under the Incorporated Societies Act 1908 on 19 August 1980. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 5 October 2007.

2. The Applicant's objects are set out in clause 2 of its Rules:

"2. OBJECTS: To represent the views and wishes of members actively engaged in commercial fishing, related seafood industries and users of the marine resources for commercial gain. e.g. charter boat operators, (hereafter referred to as associate members).

To represent members in negotiations with processors and suppliers to the fishing industry.

To collect and circulate information relating to the fishing industry.

To carry on all such activities as may be necessary or convenient in the interest of the Association."

3. The Commission analysed the application and on 2 May 2008 sent the Applicant a notice that may lead to a decline on the basis that the Applicant's purposes did not satisfy the charitable purpose requirements of the Act as they were focussed on advancing the commercial interests of its members and did not provide an identifiable public benefit.

4. The Applicant responded in a letter dated 22 May 2008, advising that "As well as representing the views and wishes of members actively involved in the commercial fishing industry, the organisation passes on information to students of local schools for educational purposes." The Applicant enclosed letters of support from two school teachers and a Spirit of New Zealand co-ordinator.

The issues

5. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issues for consideration are:

- (a) whether the Applicant is established and maintained exclusively for charitable purposes as required by section 13(1)(b)(i) of the Act; and

- (b) if the Applicant has non-charitable purposes, whether those purposes are ancillary to a charitable purpose.

The law on charitable purposes

6. Section 13(1)(b)(i) of the Act provides that to meet the essential requirements for registration, a society or institution must be established and maintained exclusively for charitable purposes.
7. Section 5(1) of the Act provides 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". Section 5(3) of the Act provides that any non-charitable purpose must be merely ancillary to a charitable purpose.
8. Also, to be charitable at law, a purpose must be aimed at benefiting the public or a sufficient section of the public and it must not be aimed at creating a private pecuniary profit.
9. In *IRC v Oldham Training and Enterprise Council*¹, the Court held that promoting the interests of individuals engaged in trade, commerce or enterprise and providing benefits and services to them conferred private benefits on those individuals, regardless of any public benefit. The remoteness of any public benefit disqualified the Council from having charitable status.
10. In *Inland Revenue Commissioners v Yorkshire Agricultural Society*², the Court stated:

"There can be no doubt that a society formed for the purposes of merely benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated ... or whatever the object may be, would not be for a charitable purpose, and if it were a substantial part of the object that it should benefit its members I should think that it would not be established for a charitable purpose only."

Charities Commission's analysis

11. The Applicant's first object in clause 2 of its Rules is to "represent the views and wishes of members actively engaged in commercial fishing, related seafood industries and users of the marine resources for commercial gain ...". The Commission considers that this purpose is one of advocacy for the members of certain occupations, which does not provide a public benefit and therefore is not charitable.
12. The Applicant's second object, "To represent members in negotiations with processors and suppliers to the fishing industry", indicates an

¹ [1996] STC 1218.

² [1992] 1 NZLR 570.

intention to procure a private pecuniary profit for its members, and thus cannot be considered charitable.

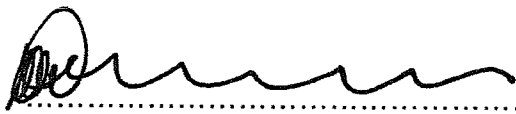
13. The Applicant's third object, "To collect and circulate information relating to the fishing industry", indicates a charitable purpose by way of advancing education.
14. The Applicant's fourth object, "To carry on all such activities as may be necessary or convenient in the interest of the Association", is considered ancillary to the first three objects.
15. The Commission considers that the first two objects of clause 2 are main purposes of the Applicant. These purposes are not charitable and cannot be considered ancillary to the charitable purpose set out as the third object in clause 2.

Charities Commission's determination

16. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. The Applicant's main purposes include advocacy and procuring a private pecuniary profit for its members, which are not charitable and are not ancillary to a charitable purpose.

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



Trevor Garrett
Chief Executive

4/9/08
Date