

Legal update - Charitable purposes and political activity

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The Supreme Court has broadened the scope of "charitable purposes" for the purposes of registration as a charity in New Zealand.

An opportunity has arisen for non-profit organisations engaged in campaigning activities to register as charities. We are currently assisting a number of organisations now seeking registration as a charity in circumstances where registration has previously been refused.

Previous position

To be eligible to register as a charity, an applicant has to show that its purpose and activities meet the definition of a "charitable purpose" set out in the Charities Act 2005 - relieving poverty, advancing education or religion, or other things beneficial to the community.

Until now, New Zealand courts have imposed an exclusion from registration for organisations which are considered to have "political purposes", political advocacy having long been established by case law as non-charitable on the basis that in order to assess the public benefit of a particular purpose, a court would have to take sides in a political debate. Only if a political purpose was ancillary to a charitable purpose, and not an independent purpose, could an organisation still be charitable.

The decision of the majority of the Supreme Court in *Re Greenpeace of New Zealand Inc* [2014] NZSC 105, handed down on 6 August 2014 has confirmed however that the political purpose exclusion should no longer be applied in New Zealand.

The Greenpeace decision

Greenpeace's application to be registered as a charity was declined on the basis that its objects were viewed as political and therefore non-charitable. The alleged non-charitable objects were the promotion of nuclear disarmament and peace; and the promotion of legislation supporting its other objects.

However, in a long court battle that recently concluded in the Supreme Court, it has been held that political and charitable purposes are no longer mutually exclusive if the political purpose is itself charitable.

The majority noted that the law of charity changes in response to social conditions, and that in the circumstances of modern participatory democracy and modern public participatory processes in much decision-making, there is no satisfactory basis for a distinction between general promotion of views within society and advocacy of law change.

This decision will be welcomed by many as it affords organisations with political purposes an opportunity to seek the benefits that charitable status can bring.

Scope for retrospective registration?

Charities Services has invited organisations that have been unable to register as a consequence of the scope of their activities to now apply for registration, including those that had previously been declined registration on the basis of political advocacy. It intends to consider any applications received in the light of its yet to be released guidance as to the application of the *Greenpeace* decision.

However, Charities Services has unequivocally stated that "the Court's decision does not invalidate the independent Charities Registration Board's previous decisions to decline to register any applicant, or to deregister any previously registered charity, on the basis of political advocacy. Those decisions were made applying the law as the courts interpreted it to be at the time". It is expected that some organisations may challenge this stance.

What next?

The decision in *Greenpeace* is unlikely to be the last word on the scope of the political purposes exclusion. It remains to be seen how Charities Services will apply the Supreme Court's decision. Any attempts to limit its scope may lead to further litigation, which may be helpful in setting parameters around the Supreme Court's decision. It is also open to any future government propose legislation codifying the changes.

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