

# What makes a not-for-profit

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LEGAL MATTERS



Not all not-for-profit entities are charitable; however, there are some important benefits to registering as a charity with Charities Services if your entity meets the applicable criteria.

To be registered as a charity, an entity must have a charitable purpose, such as: the relief of poverty, the advancement of education, the advancement of religion, or anything else that benefits the community.

The charitable purpose must also provide a legally recognised benefit to the public. This benefit should be available to the public generally, or at least a sufficiently large section of the public. Sometimes a not-for-profit entity can fall down here because although it has a charitable purpose, the section of society that it benefits is too narrow.

#### TAX EXEMPTION

Registered charities do not have to pay tax on income they earn, because of the benefit they provide to the public.

This is what is known as "tax

exempt status" and generally occurs automatically when Charities Services approves registration of a charitable entity.

#### CHARITIES REGISTER

When a charity is registered, its information shows on the Charities Register, which is public and searchable. This transparency helps the public to gain trust and confidence in a charity, and can be helpful when applying for funding or seeking donations.

Each charity is given a unique registration number which proves its charitable status. Charities Services has an ongoing role in monitoring compliance of registered charities.

A registered charity will have some ongoing compliance requirements, including:

- Updating the Charities Register whenever there is a change of officers. This is something that is quite often neglected which can mean that a charity's information on the register is out of date.
- Filing a new version of the governing document (such as trust deed or constitution) whenever it is amended. In this case Charities Services will reassess the new rules to make sure that they still meet requirements, and if not further amendments may be needed.



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#### ■ Filing annual financial returns. REMOVAL AS A CHARITY

A charitable organisation can ask to be removed from the Charities Register. Commonly, Charities Services will remove or deregister a charity for one of several reasons:

- If it has changed its purposes and activities, and no longer

qualifies for charitable status because these are outside of the Charities Act 2005.

- If it has persistently or significantly failed to meet its obligations under the Charities Act 2005 (for example by not filing annual returns) or any other legislation.
- If it engages in "serious wrongdoing".

Once de-registered, the entity will become subject to income tax because its tax exemption status will cease. Sometimes this can be backdated to when the entity became non-compliant, rather than the date of de-registration, which

can have serious implications in terms of any overdue tax. It is very important to get the right advice if this situation applies.

If you are wondering whether your not-for-profit entity could register as a charity, or if you need some advice about an existing charity, talk to your legal advisor about your particular situation.

■ Column courtesy of RAINEY COLLINS LAWYERS, 0800 783 494, raineycollins.co.nz.

■ If you have a legal inquiry you would like discussed contact aknowsley@raineycollins.co.nz.

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