



Charitable organisations feel the pinch from Internal Affairs

Since responsibility for charitable organisations shifted from the Charities Commission to the Department of Internal Affairs earlier this year, Trust Management, and specialist lawyers in the charitable field have noticed how much harder it is for genuine charitable organisations to register.

The shift, which was highlighted in a recent media article, has meant that charities are coming under more scrutiny than ever before, as Internal Affairs cracks down on charitable organisations making profit. This has led to claims that the department is being overzealous in their efforts.

Goodbye sausage sizzles?

Under the law, charities can run profitable events only if they are 'ancillary' to their purpose. This has led to concern that profitable events such as sausage sizzles could be stamped out as Internal Affairs becomes fixated on the potential profitability of charitable organisations.

Internal Affairs says that \$280m is lost to the charitable sector through fraud each year and that is where the department's attention needs to go, but many charities doing genuine good work are feeling the pinch nonetheless.

Smaller organisations can't appeal charitable status decisions

In the year to September 2012, 1251 charities were registered in New Zealand and 327 had their charitable status declined. It is difficult to know how many of these declined applications were genuine charities, however since 2005, 9 cases have gone before the High Court with organisations trying to appeal the denial of their charitable status – only one lost their appeal.

While the larger charitable organisations can appeal declined applications, smaller charities often lack the resources to appeal the decision through the courts.

How are the profits utilised?

Many charitable companies and trusts exist to make surpluses so they can fund their charitable purposes. These charities are just mature versions of school bake sales or the local sausage sizzle, and under Internal Affairs, these fundraising sources are coming under increasing pressure.

From time to time, charities may also need to retain part of the profit to provide working capital to the business. However, this should not concern Internal Affairs as the key element of a charity's charitable status is how the surpluses are utilised and whether any residual assets are distributed to a charitable purpose in the event that the charity winds up its activities.

Trust Management's view is that it is imperative that entities which are charitable are allowed to be profitable; the two shouldn't have to be exclusive.

When considering the registration of charitable entities, Internal Affairs seems to be confusing a requirement that there be "no private pecuniary profit" with a requirement that there be "no profit" at all, which can be problematic for charities and their ability to operate sustainably.



Get advice on charitable matters

Internal Affairs says it is trying to reduce the time it takes to work through charitable status applications, with delays of up to six months now coming down to about two months.

However, the department says it is still constrained by the law which is explicit about charity organisations that make a profit.

While the changes to charitable organisations are creating unnecessary stress for some, the best action to take if you are currently trying to get registered for charitable status is to get professional advice on how to go forward so you can keep doing charitable work in the community.

Trust Management is New Zealand's only dedicated charitable trust and not-for-profit management team, so we understand the challenges and philosophies that guide your charitable organisation. We can discuss some of the issues our clients have experienced in this area, the steps they took to resolve those issues, and put your charity in contact with specialist legal advisors.

If you think your trust or charity would benefit from talking to a charitable trust expert about how to ensure you are registered, Trust Management has a team of knowledgeable and helpful advisors who can help you through the process.

Please get in touch at info@trustmanagement.co.nz or give us a call on 09 306 2530.

Reference:

1. Stuff.co.nz "Internal Affairs cracks down on charities" 23.09.12