

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



GREENPEACE OF NEW ZEALAND INCORPORATED

Registration decision of the Charities Registration Board of New Zealand, 21 March 2018

Greenpeace does not qualify as a charity as it promotes viewpoints that are not for the benefit of the public and they are involved in illegal activities.

Key words: Charity, Registration Decision of the Charities Board of New Zealand, Political Purpose, Advocacy

1. In this decision, the Charities Registration Board of New Zealand decided that Greenpeace of New Zealand Incorporated (Greenpeace) does not meet the legal requirements to be registered as a charity in New Zealand. The application of Greenpeace to be registered as a charity in New Zealand was therefore declined.
2. The registration decision arose from an earlier decision of the Supreme Court of New Zealand: see *Re Greenpeace of New Zealand Inc* [2014] NZSC 105. In that decision, the Supreme Court held:
 - A “political purpose” exclusion should no longer be applied in New Zealand: political and charitable purposes are not mutually exclusive in all cases; a blanket exclusion is unnecessary and distracts from the underlying inquiry whether a purpose is of public benefit within the sense the law recognises as charitable, this is a departure from the case law of England and Wales; and
 - Illegal activity may disqualify an entity from registration when it indicates a purpose which is not charitable even though such activity would not justify removal from the register of charities under the statute.
3. The Court then remitted the matter of determining Greenpeace’s charitable status to the Charities Registration Board. In making its determination, the Board decided that Greenpeace did not qualify for registration as a charity on three grounds:
 1. Greenpeace promotes its points of view on the environment and other issues in ways that cannot be found to be for the public benefit. This was an independent purpose which was not charitable.
 2. Greenpeace promotes its points of view on peace, nuclear disarmament and weapons of mass destruction in ways that cannot be found to be for the public benefit. This was an independent purpose which was not charitable.
 3. Greenpeace and its members’ involvement in illegal activities amounts to an illegal purpose which disqualifies it from registration.

4. Although the Supreme Court had held that advocacy for the advancement of a charitable purpose could render a body charitable (at [71] of the Supreme Court decision), it had also cautioned against too wide an application (at [73], [74]):

Advancement of causes will often, perhaps most often, be non-charitable. That is for the reasons given in the authorities – it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable. Matters of opinion may be impossible to characterise as of public benefit either in achievement or in the promotion itself...It may be accepted that the circumstances in which advocacy of particular views is shown to be charitable will not be common, but that does not justify a rule that all non-ancillary advocacy is properly characterised as non-charitable.

5. Greenpeace had made some changes to its stated purposes in response to the Board. However, the issue of illegal purposes was impossible to overcome. The Supreme Court had unanimously dismissed the appeal by Greenpeace against the Court of Appeal's finding that purposes or activities that are illegal or unlawful preclude charitable status. It was held by the Supreme Court that an illegal purpose is disqualifying and that illegal activities may disqualify an entity from registration as a charity when such activities indicate a purpose which is not charitable (at [111]):

It may be accepted that an illegal purpose is disqualifying. It does not constitute a charitable purpose and would mean that the entity is not "established and maintained exclusively for charitable purposes". While illegal activities may indicate an illegal purpose, breaches of the law not deliberately undertaken or coordinated by the entity are unlikely to amount to a purpose. Isolated breaches of the law, even if apparently sanctioned by the organisation, may well not amount to a disqualifying purpose. Assessment of illegal purpose is, as the Court of Appeal recognised, a matter of fact and degree. Patterns of behaviour, the nature and seriousness of illegal activity, any express or implied ratification or authorisation, steps taken to prevent recurrence, intention or inadvertence in the illegality, may all be relevant. On the other hand, we are unable to accept the submission by Greenpeace that only serious offending, such as would permit sanction under the legislation on a one-off basis even if not indicative of any system or purpose, is required before illegal conduct amounts to a purpose of the entity.

6. The Board closely followed this reasoning in its determination on registration (at [85]-[90]). The Board acknowledged that Greenpeace did not have a stated purpose to carry out illegal activity, but said that Greenpeace was involved in illegal activities from which illegal purposes could be inferred (at [90]).
7. Therefore, because Greenpeace had independent non-charitable purposes, and engaged in illegal activities from which illegal purposes could be inferred, it was incapable of being registered as a charity in New Zealand.



This case is under Appeal and its status should be checked before proceeding further.

Beware the charity regulator that asserts that it merely exists to enforce the law as an automaton. The application of the law is uncertain, even when there is a relevant case on the issue. Extensive discretions are at play as to the weighing of evidence in a particular matter, and persons of good faith can differ in their conclusion. The legal framework and outlook underlying a charity regulator's decision making is not a value-free application of legal principles, but a fine balancing act of competing principles and factual assertions. This is why public trust in the regulator is so important if the regulatory process is to be seen as honest and honourable.

Here is an example of the great contest between "purposes" and "activities". When does an activity reach the point of becoming an unstated "purpose" of the organisation?¹ Another way of looking at the contest is that if the formal constitutional objects are charitable, the organisation is still charitable. It has merely strayed from its purpose. The primary task of the charity regulator is to restore the charities activities to sync with its formal purpose. Merely removing it from the charity register does little to protect charitable assets. The folly of a charity regulator that is chiefly an income tax guardian.

The Charities Registration Board's consideration of alleged activities of Greenpeace members that did not result in criminal convictions, in order to establish a purpose of the organisation having an illegal purpose by inference, is a slippery slope. Particularly as the convictions of individual members (note not the crimes of the organisation itself) was of minor scale being trespass, bill-sticking, disturbing a meeting and obstructing a public way. Commercial companies and their directors who commit criminal financial securities frauds are not stripped of their tax deductions. The regulator's focus is on compensating victims, protecting assets for creditors and restoring orderly governance for the benefit of shareholders.

This decision and any following litigation will be closely examined in the Anglo charity law jurisdictions where governments and uncivil society forces are seeking to curb public debate and challenge to the status quo. Is there a divergence of the approach in NZ and Australia given the NZ Supreme Court preference for the Kiefel J High Court minority decision in [Aid/Watch?](#)

Refer Murray, I. (2019). Looking at the charitable purposes/activities distinction through a political advocacy lens: a trans-Tasman perspective. *Oxford University Commonwealth Law Journal*, 19(1). <https://doi.org/10.1080/14729342.2019.1588479>

¹ Also called an "independent purpose" or an "ancillary purpose".

VIEW THE CASE



The Charities Registration Board's decision may be viewed at:

<https://www.charities.govt.nz/charities-in-new-zealand/legal-decisions/view-the-decisions/view/greenpeace-of-new-zealand-incorporated-2>

An appeal from the decision must be filed within 20 working days of the decision.

The prior full NZ Supreme Court decision is available at: <https://www.courtsofnz.govt.nz/cases/re-greenpeace-of-new-zealand-incorporated-1/@@images/fileDecision>

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