

# 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.



## Registration Decision: Nelson Grey Power Association Incorporated

New Zealand Charities Registration Board, Decision No: 2020-1, 21 May 2020

Whether a society that advocated on a broad range of issues in relation to the needs of people over 50 was charitable.

**Key words: Charity, New Zealand, Advocacy, Independent Purpose, Age**

1. Nelson Grey Power Association Incorporated (the Society) applied for registration as a charity under the Charities Act 2005 (the Act). The criterion to apply for membership to the Society was that a person be 50 years old and over. The Society was also an affiliate of the Grey Power New Zealand Federation (the Federation).
2. The Federation is a national umbrella organisation with the purpose to advocate on any legislation and policy issues that affect older people, including by regularly making submissions to parliament and meeting with MPs and government agencies. It had applied for charity status, but withdrew its application after indications by the Registration Board that it did not meet requirements due to “political advocacy purposes”.
3. The Society’s stated purposes at the time of application were to:
  - advance, support and protect the welfare and wellbeing of older persons in New Zealand, either directly or in conjunction with other organisations or bodies with similar aims or purposes;
  - better the lives of all older persons through service, advocacy, and education, and to investigate problems affecting their well-being; and
  - promote and achieve the widest possible identification of the Federation and the Association in New Zealand as the most appropriate and effective representation of older persons and their special concerns.
4. The Board informed the society that it did not meet registration requirements because its purposes were not exclusively charitable. Its purposes to promote particular points of view on issues affecting older people were independent, non-charitable purposes.
5. This prompted the Society to propose new stated purposes, which were to:

- advance, support and protect the welfare and wellbeing of older persons;
- educate older persons to help them maintain their independence;
- encourage and support older persons to retain their involvement within the greater community as useful citizens with the ability to contribute to the common good;
- make the wider community aware of the value of older people and their importance in society as a whole;
- educate and inform organisations, institutions, other bodies and the public of the needs of older persons and their ability to contribute to the community;
- cooperate with any other organisation carrying out charitable work similar to that of Nelson Grey Power.

## **Age**

6. The Board accepted that people over the age of 70 have been held to fall into the category of persons who are considered to need relief because of their age (a charitable purpose). However, a purpose to benefit people aged at least 50 is unlikely of itself to indicate an intention to relieve the “aged”. People who do not fall into the “aged” category may nevertheless have other needs such as disability and poverty that would qualify as a charitable purpose.

## **The Federation**

7. Federation policies were developed with input from all Grey Power Associations in New Zealand at the Federation’s AGM, of which the Society was a member. The Board considered that promotion of the Federation by the Society was an independent purpose and did not advance charitable purposes.
8. The Society argued that it made relevant contributions at the Federation AGM, and agreed to, or declined to, support ideas of other Grey Power associations (based on the views of the Society’s members).
9. The Board pointed out that the Society’s website summarised the Federation’s policies, with no indication of which specific policies it did or did not support. Further, there was a \$5 capitation fee as a levy to the Federation, which represented 30% of the Society’s spending.
10. The Board considered that because the Federation was not a registered charity, and did not have exclusively charitable purposes, a purpose to support the Federation was not charitable.

## **Society’s Advocacy Purpose**

11. While the Board found that the Society did undertake some activities that were supportive of charitable purposes to relieve the needs of the aged, promote social cohesion and advance education, there were other non-charitable activities that were the main focus of the Society. The Society, in the view of the Board, promoted its viewpoint on any matters that it considered to be in the interest of its members, not all of whom were necessarily in poverty or other charitable need. This included matters where charitable public benefit could not be determined.
12. Examples identified and cited at [40]:

...free or reduced-cost health services for national superannuants and older beneficiaries, such as free dental hygiene services, subsidised pharmaceutical medication prescribed by a doctor, and free screening and treatment for macular degeneration...

would be charitable provided they were aimed at those in charitable need, rather than **all** people over 50 years of age, or all people entitled to National Superannuation.

13. The Board did not consider seeking government appointment of an Ombudsman for older people charitable as it was difficult to determine charitable public benefit in the appointment of particular governmental positions as a specific means to relieve the needs of older people.

14. Presenting a submission to the Nelson City Council advocating for withdrawal of a neighbourhood reserve as a designated freedom camping site because of concerns brought to the Society by elderly residents of the surrounding area was also not charitable. The issue did not relate specifically to relieving a need related to age, such as health, social isolation, or poverty.

15. The Board considered that the Society's activities indicated a focus on advocacy for particular viewpoints on a broad range of issues that the Society considered affected older people. The Society described itself on its website as a lobby organisation "promoting the welfare and well-being of all citizens over the age of 50".

16. The Board found that (at [22]):

...the Society's activities indicate, first, that it has an independent non-charitable purpose to support the Federation; and secondly, an independent, non- stated purpose to broadly advocate on any issue that the Society considers affects older people, which includes promoting its own or its members' point of view on specific policies and legislation. This broad advocacy is not restricted to supporting older people in charitable need or advancing any other charitable purpose.

17. The registration was refused.

## IMPLICATIONS



It is instructive to compare this decision with that of [Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-Profits Commission](#) [2021] AATA 3313 which appears to take a wider view of the law regarding charity advocacy.

Where one draws the line on a criterion of age for the charitable purpose of 'relief of the aged' is an ongoing issue for regulators. With advances in health provision and growing life expectancies in the developed world, should the cut-off point be rising?

Further, the Board opined that (at [14]):

...a wealthy older person would not be in need of financial assistance, and a purpose to provide for old people to learn to skydive, or to drive racing cars does not relate to the needs of those people that stem from their age.

Riding for the disabled and similar activities are commonly regarded as charitable, and if older people wanted to keep dementia and senility at bay by indulging in risk-taking behaviours, and it was evidence-based, a different outcome might ensue.

This decision also illustrated the growing use by regulatory authorities of an organisation's website and other public websites for information about the applicant's activities. The Board gave the applicant notice of the use of this information in its decision and offered the ability to respond. For all sorts of reasons, an organisation's website might not reflect a balanced view of the organisation's activities or purposes. It is becoming increasingly important for organisations to ensure their website accurately reflects their view of their charitable purposes and activities.

## VIEW THE CASE



This case may be viewed at <https://www.charities.govt.nz/assets/Uploads/Nelson-Grey-Power-decision-paper.pdf>

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