

Registration decision: Arab-New Zealand Global Council For International Relations

The facts

1. The Arab-New Zealand Global Council For International Relations ("the Applicant") applied to the Charities Commission ("the Commission") for registration as a charitable entity on 12 July 2011. The Applicant was incorporated as a board under the *Charitable Trusts Act 1957* on 21 January 2011.
2. Clause 2 of the Applicant's trust deed sets out the purposes of the Applicant as:

2. OBJECTS

The objects of the ANZGCIR shall be:

- a. *To acknowledge and promote the importance of the historic and cultural ties which link all the peoples and countries of the world, including Arabs and the people of New Zealand.*
- b. *To promote closer ties between the Arab world and New Zealand, incorporating the principles of respecting cultural diversity and other factors that enrich and differentiate between the two regions, with emphasis on full respect for the rights and cultures of both peoples.*
- c. *To contribute to activating scientific, cultural, media, technical and economic awareness between New Zealand and the Arab world, as well working towards greater rapprochement and cooperation between various aspects of society, media and communication in both regions to promote the exchange of knowledge including research information and to encourage joint initiatives in all areas.*
- d. *To promote, foster and develop ongoing interaction between these two groups to achieve excellence in all fields including science, medicine, culture, the arts, media and education through conferences, scholarships, exchange programmes, twinning of educational institutions, and other ventures. In doing so, ANZGCIR will also combat false stereotypes of the Arab world created by the media, simply by establishing positive experiences and building relationships between similar sectors of both societies.*
- e. *To determine, raise and receive money by subscriptions, sponsorship, donations, fees, levies, from investment of funds within New Zealand, and from other sources including individual, corporate or governmental donations from outside New Zealand.*
- f. *To plan future strategic directions and to promote consultative coordination between the parties, for the benefit of both peoples.*

- g. *ANZGCIR has been formed exclusively for charitable purposes as set out in this Trust Deed. No Member of the Trust, the Administrative Council or any other Council shall benefit financially in any way from any Trust Funds, except as employees or under legitimate commercial contracts with the Trust.*

3. Clause 4 defines the structure of the Applicant:

ANZGCIR shall consist of a governing body ("Administrative Council") as umbrella organisation overseeing the operation of individual councils (the "Councils") established and this Deed or by the Administrative Council from time to time.

The initial Councils established under this Deed are:

- 1. The arts and culture council*
- 2. The communications and information council*
- 3. The education and sciences council*
- 4. The business and economics council*
- 5. The sport and youth council*
- 6. The tourism council*
- 7. The medical and scientific research council*
- 8. The international relations and humanitarian sciences council*
- 9. The council for women's and children's affairs and advancement*

4. The Applicant's website states:

The Arab NZ Global Council for International Relations aims to reinforce the status of Arabs as a renewed and multi-cultural nation, and we will work to encourage all efforts that open channels of communication and mutual understanding and cooperation between the Arabs and New Zealand, sending a message of love and peace to all mankind targeted at clarifying the image of the modern Arab in the world.¹

...

ABOUT THE COUNCIL

The Arab NZ Global Council for International Relations is a non-profit organization, and specializes in strengthening the New Zealand World-Arab relationship, in all areas of scientific, cultural, historical, economic and educational knowledge, to achieve the concept of coexistence which will benefit the members of society. The Council does not belong to any ideological or sectarian membership, and does not have any political link to any State.

The Council is licensed under New Zealand law for the establishment of non-profit boards, and the Council has adopted the city of Auckland as its base. It has considered the founder of the Council, Mr. Fahed Fraij, to be the Chairman of the Board and Head of the selection of sub-councils, managers and members of the Council.

¹ <http://www.arabglobal.org.nz/>.

OBJECTIVES OF THE COUNCIL

1. *Defining Arab identity*
 2. *Contributing to the presence of scientific, cultural, media, technical and economic cooperation between Arab countries and New Zealand.*
 3. *Intensifying cooperation and exchange of professional expertise among the Arab countries and the country of New Zealand.²*
5. On 2 November 2011, the Commission sent the Applicant a notice that may lead to a decline on the basis that the purposes were not exclusively charitable.
6. On 21 November 2011, the Applicant asked for a time extension to respond to the notice that may lead to a decline, stating:

ANZGCIR is a charitable enterprise set up to benefit NZ and Arab society, to break down the mistrust and misunderstandings between our two societies through the exchange of ideas and information, and to build on that foundation of friendship further as our members and those attending the events hosted by ANZGCIR network with similar people in other countries, which will naturally create business ventures and generate employment in both regions. This is emphatically NOT an organisation set up to benefit particular individuals but society as a whole. Polarisation into "us" and "them" is the first step towards war. Before allowing yourself to attack someone else, you dehumanise them. Interaction and forming relationships between the two groups precludes that prejudiced view, and this is the basis of ANZGCIR's desire to co-ordinate meetings and help form friendships between members of the Arab world and the NZ community.

7. On 14 December 2011, the Applicant responded to the notice that may lead to a decline, stating:

The Trust Deed was written with the assistance of a solicitor who was fully instructed in ANZGCIR's aims and goals, however it appears that it and/or the website give you concern. ANZGCIR is willing to rephrase any part of the same to your satisfaction in order to clarify the intentions of ANZGCIR, which are absolutely and wholly charitable.

First, I wish to confirm that all income earned by the Trust and all donations will be used exclusively for charitable purposes and that ANZGCIR will not be mixing any of its funds with any commercial venture.

ANZGCIR has exclusively charitable goals and purposes, which are worked towards through a variety of means. It is the brainchild of Fahed Fraij, developed over the course of more than a year with much consultation and discussion to find effective and practical methods of achieving its goals, a strict but workable system of financial safeguard and reporting, and a structure which spreads the workload for maximum effectiveness but ensures that everyone's efforts are co-ordinated and adhere to the goals and principles of the Trust.

² <http://www.arabglobal.org.nz/about.html>.

*Despite recent problems of violence against foreign students, tourists and immigrants, New Zealand is still fairly unprejudiced and free of bigotry. Kiwis are internationally renowned as friendly and open. We are also a peace-loving country. ANZGCIR is building on that basis of openmindedness and peaceable friendliness, facilitating relationships between individuals, businesses and even educational / medical institutions in New Zealand and the Arab world with one ultimate goal: **world peace.***

Your letter mentions that the promotion of international relationships or understanding is not a charitable purpose, and I can certainly see that in the case of a particular society such as Alliance Francaise or the Goethe Society, that would be the case. Those societies are set up for the purpose of cultural interaction between individuals for the benefit of those individuals. That is not the case with ANZGCIR. Interaction and relationships are a means of achieving our end: a safer, happier world to live in.

Is there any more laudable purpose, anything which will benefit our citizens more, than world peace? It is not achieved by politicians on first-class jaunts to heavily guarded, excessively pompous meetings where they recite the speeches written for them and have their photos taken shaking hands. Peace is achieved by positive interactions between many, many ordinary people from two cultures. The opposite of this is the demonisation and dehumanisation of another culture through propaganda in preparation for waging war, eg. The dirty Hun eats babies for breakfast. Obviously if you had breakfasted with a few German friends recently, you'd know that was not true and you could not then be tricked into hating and fighting them. You would know them as people the same as you: worried about paying the mortgage, what time their teenagers got home last night and whether it will be fine this weekend.

Propaganda abounds on the Internet these days, where the content or source of photographs can be absolutely misrepresented and there are no controls on hate-mongering. This misinformation can only be countered by personal experiences.

ANZGCIR is specifically established to facilitate the development of relationships between individuals within NZ and the Arab world, as we believe this is the only way to achieve world peace – getting ordinary people interacting with each other, one region at a time. Once the Trust is running smoothly in New Zealand, it is anticipated that it will be used as a model for setting up the next inter-regional exchange.

Interaction will take many forms, such as the exchange of knowledge in the areas of scientific research or art, and events where people from both areas can meet, as well as exchange programmes and scholarships. By introducing many business people to each other, we anticipate that business relationships will also be developed between the two areas, as well as possible joint ventures between those businesses. However ANZGCIR will not profit in any way from these enterprises. Its role is that of an instigator, an organiser, an initiator. It will bear the cost of the meetings, promotion and speakers, etc out of funds donated for those specific purposes in order to create the opportunities for people to form these links.

The events being sponsored will be open to all members of the community being focussed on, whether scientific, medical, business or the wider public. The same applies to scholarships and exchange programmes, although these may be directed to a specific group of students as is normal practice.

ANZGCIR will not be promoting the interests of individuals engaged in trade, merely introducing them to each other and encouraging them to consider doing business as a way of fostering relationships for better understanding of each other.

Unlike the example you quoted of the CDC, public benefit IS the primary purpose of ANZGCIR's objects and operation. Any advantage achieved by individual businesses or additional jobs generated as a result is a fortuitous by-product of those people's decision to be involved in this effort towards world peace. It is purely incidental to ANZGCIR's goals.

ANZGCIR will not be restricting the businesses taking part at any event for the promotion of business between the areas. Our aim is to introduce as many individuals and businesses as possible from both areas, because the more relationships that are developed, the more effect will be had in lessening international tension and achieving a better understanding of each other. ANZGCIR is certainly NOT undertaking promotion of business and economic development for the private benefit of individuals. The business introductions and fostering will be open to all legitimate businesses with the exception of alcohol and tobacco sales (as the Trust adheres to the principle of a drug-free lifestyle), brothels and gambling establishments, as these latter are often involved with organised crime and do not, in any case, enhance New Zealand's reputation abroad.

Relationships will be developed business-to-business, artist-to-artist, person-to-person, scientist-to-scientist, university-to-university and hospital-to-hospital. ANZGCIR's role is simply to facilitate these relationships as we believe this is the only realistic way of avoiding further wars.

*Your letter queries which of the community's needs is being met: New Zealand's need for a better economic environment and the Arab businesses' desire to offer goods in new markets are both incidental. Encouragement of business ties is simply one of the tools being used to develop relationships between individuals within our communities, to gain ANZGCIR's ultimate purpose of a peaceful world where we all respect each other and get along. **That is the community's need being addressed: the desire to live in a peaceful, secure environment with decreased international tension.***

The intention of the Tourism Council is to raise awareness of each other's countries as a possible destination, for the exact same reason: If you travel in someone else's country, you develop relationships and come home with happy memories of those people. You are unlikely to then turn around and attack them.

The wording on the website is not ideal. It was written by a website designer who is not familiar with the Trust, based on information given by a person whose English is adequate but lacks finesse. The tone of the section about tourism is misleading, and the mention of investment opportunities which appears there belongs with the area discussing co-

operation between businesses. As English is one of the services that I provide to the Trust, I was asked to review the website but never completed the review – obviously I should have done and will be doing so early in the new year.

In summary, there is no financial benefit to the trustees or specific individuals from any of ANZGCIR's activities. ANZGCIR will not be engaged in any commercial ventures. All events are for one ultimate purpose which benefits us all: to reduce international and intercultural tension and promote world peace by enabling many members of both societies to interact in a variety of ways and thus form lasting friendships and professional relationships which preclude bigotry and aggressive behaviour.

The issues

8. The issue the Commission must consider is whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* ("the Act"). In this case, the key issue for consideration is whether the Applicant is a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.

The law on charitable purposes

9. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(a) of the Act, a trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
10. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.³ This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
11. Courts have held that in order to be charitable, an entity must have exclusively charitable purposes. Thus, in *McGovern v Attorney General*,⁴ Slade J states:

The third requirement for a valid charitable trust is that each and every object or purpose designated must be of a charitable nature. Otherwise, there are no means of discriminating what part of the trust property is intended for charitable purposes and what part for non-charitable purposes, and the uncertainty in this respect invalidates the whole trust.

³ See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

⁴ [1982] 1 Ch. 321, 341. (See also *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688, 691.

12. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for charitable status.
13. In considering an application, section 18(3)(a) of the Act requires the Commission to have regard to:
 - i) *the activities of the entity at the time at which the application was made; and*
 - ii) *the proposed activities of the entity; and*
 - iii) *any other information that it considers is relevant.*
14. Courts have also held that the activities of an entity must be considered in relation to its purposes in order to conclude whether it is, in fact, established and maintained for exclusively charitable purposes.⁵

Charities Commission's analysis

15. The Commission has analysed the purposes set out in clause 2 of the Applicant's rules document, information on the Applicant's website, information supplied by the Applicant, and the relevant case law.
16. The Commission does not consider that the Applicant's purposes in clause 2 indicate an intention to relieve poverty or advance religion. Accordingly, these purposes have been assessed under advancement of education and "other matters beneficial to the community". The Commission considers that clauses 2(e)-(g) are powers clauses. Firstly, however, it is necessary to consider the effect of the wording in the Background and clause 2(g) of the trust deed.

Effect of clauses purporting to limit purposes

17. The Background in the trust deed states:

Whereas the Trustees desire to establish a trust exclusively for charitable purposes on the terms hereinafter set out;

18. Clause 2(g) states:

ANZGCIR has been formed exclusively for charitable purposes as set out in this Trust Deed.

⁵ See *Attorney-General v Ross* [1986] 1 WLR 252, 263; *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 194; *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] at para 29.

19. In *Commissioner of Inland Revenue v White*,⁶ the Court considered limitations in the constitution of the Clerkenwell Green Association. The court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:

*The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because clause 2(b) limits the field in which the charitable intention is to be effectuated. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purposes within the specified field and the Association would not be entitled to registration as a charity. In other words, the mere insertion of the word "charitable" in clause 2(b) is not by itself enough to establish that the objects of the Association are charitable.*⁷

20. Finally, in *Canterbury Development Corporation v Charities Commission*,⁸ Young J wrote "the mere fact that the constitution says that CDC's objects are charitable does not make CDC charitable although such a declaration is relevant in assessing whether they are."⁹ The judge went on to say, "...in the end, the objects and operation of the organisations either support a charitable purpose or they do not."¹⁰ In that case, he concluded that they did not support a charitable purpose.
21. For these reasons, the Commission does not consider that the inclusion of the wording in the above clauses provides conclusive evidence that the Applicant's purposes are in fact exclusively charitable.¹¹

Advancement of education

22. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. The modern concept of "education" covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding, as long as there is a balanced, and systematic process of instruction, training, and practice.¹² In order to advance education, learning must be passed on to a broad section of the public.¹³

⁶ (1980) 55 TC 651.

⁷ Ibid, 653.

⁸ HC WN CIV 2009-485-2133 [18 March 2010].

⁹ Ibid, para 56.

¹⁰ Ibid, para 56.

¹¹ See also *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405, 408.

¹² *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

¹³ See *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010]; *Re New Zealand Computer Society Incorporated* HC WN CIV-2010-485-924 [28 February 2011].

23. Education does not include advertisements for particular goods or services or promotion of a particular point of view.¹⁴ If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available, or accessible to the public.
24. In New Zealand in the case of *Re Collier (deceased)*,¹⁵ Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:
- It must first confer a public benefit, in that it somehow assists in the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore, deceased [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value.*¹⁶
25. Courts have held that in order for a trust to be charitable for the advancement of education, the information provided must not be limited to one side of complex issues. The test to decide whether the activity is political or genuinely educational is "one of degree of objectivity or neutrality surrounding the endeavour to influence, and assesses whether the political change is merely a by-product or is instead the principal purpose of the gift or institution".¹⁷
26. A distinction must be made between propagating a view that can be characterised as political and the desire "to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose certain views".¹⁸

Promotion of international friendship and understanding

27. Courts have held that the promotion of international friendship and understanding is not charitable, even when there is an educational element. In these cases, they have held that purposes or activities aimed at creating a particular climate of opinion and promoting an attitude of mind fall outside the ambit of "advancement of education" because the law regards them as political.
28. In *Anglo-Swedish Society v Inland Revenue Commissioners*,¹⁹ the society, with a purpose to promote "a closer and more sympathetic understanding between the English and Swedish people", was found to be non-charitable as it "was a trust to promote an attitude of mind, a view of one nation by another".

¹⁴ *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

¹⁵ [1998] 1 NZLR 81.

¹⁶ *Ibid*, 91-92.

¹⁷ *Re Bushnell (deceased)* [1975] 1 All ER 721 as applied by *Public Trustee v. Attorney-General* (1997) 42 NSWLR 600, 608.

¹⁸ *Re Bushnell (deceased)* [1975] 1 All ER 721, 729.

¹⁹ [1931] 47 TLR 295.

29. In *Re Strakosch*,²⁰ the English Court of Appeal decided that a fund established “for any purpose which in the opinion [of the trustees] is designed to strengthen the bonds of unity between the Union of South Africa and the Mother Country and which incidentally will conduce to the appeasement of racial feeling between the Dutch and English speaking sections of the South African community” was not charitable.
30. In *Buxton v Public Trustee*,²¹ it was held that “to promote and aid the improvement of international relations and intercourse” and “encouraging or assisting personal intercourse between the inhabitants of different countries including the payment of travelling expenses and maintenance” were not charitable purposes. Plowman J stated:
- I ask myself the question whether a charitable education purpose clearly comes within the ambit of "the improvement of international relations and intercourse". In my judgment it does not. I think that Mr. Stamp was right in his submission that the objects of this trust have nothing at all to do with charity.*²²
- ...
- So here it seems to me that the objects of this trust are really public utility or political. The only element of education which might be said to be comprehended in those objects appears to me to be education for a political cause, by the creation of a climate of opinion and that is not, in my judgment, education of a kind which is charitable. As Mr. Stamp said, it is really no more than propaganda.*²³
31. In *Taxation Review Authority Case 46*,²⁴ a New Zealand case, the reviewing authority decided that a society established to promote interest in knowledge about the Commonwealth and to foster better relations between its different peoples was not exclusively charitable.
32. In *Toronto Volgograd Committee v Minister of National Revenue*,²⁵ an organisation established to recreate links between residents of Toronto and Volgograd, in order to promote understanding, reduce tensions and help find peaceful ways of living together was found not to be undertaking charitable purposes.
33. Clause 2(a)-(d) set out the purposes of the Applicant as:
- a. *To acknowledge and promote the importance of the historic and cultural ties which link all the peoples and countries of the world, including Arabs and the people of New Zealand.*
 - b. *To promote closer ties between the Arab world and New Zealand, incorporating the principles of respecting cultural diversity and other factors that enrich and differentiate between the two regions, with emphasis on full respect for the rights and cultures of both peoples.*

²⁰ [1949] 1 Ch. 529.

²¹ [1962] 41 TC 235.

²² *Ibid*, 240.

²³ *Ibid*, 242.

²⁴ (1980) 3 TRNZ 665.

²⁵ [1988] 30 ETR 159.

- c. *To contribute to activating scientific, cultural, media, technical and economic awareness between New Zealand and the Arab world, as well working towards greater rapprochement and cooperation between various aspects of society, media and communication in both regions to promote the exchange of knowledge including research information and to encourage joint initiatives in all areas.*
- d. *To promote, foster and develop ongoing interaction between these two groups to achieve excellence in all fields including science, medicine, culture, the arts, media and education through conferences, scholarships, exchange programmes, twinning of educational institutions, and other ventures. In doing so, ANZGCIR will also combat false stereotypes of the Arab world created by the media, simply by establishing positive experiences and building relationships between similar sectors of both societies.*

34. The Applicant's website states:

The Arab NZ Global Council for International Relations aims to reinforce the status of Arabs as a renewed and multi-cultural nation, and we will work to encourage all efforts that open channels of communication and mutual understanding and cooperation between the Arabs and New Zealand, sending a message of love and peace to all mankind targeted at clarifying the image of the modern Arab in the world.²⁶

35. In light of the case law above, the Commission does not consider that the purposes of the Applicant are exclusively charitable purposes under advancement of education, but relate to the promotion of international friendship and understanding.

Promotion of business and economic development

36. In *Canterbury Development Corporation v Charities Commission*,²⁷ Justice Ronald Young J stated:

*I do not consider this service [business training] comes within the provision of the enhancement of education as intended by the Act. To be a charitable purpose it must provide this opportunity to a broad section of the public. ... **Nor in my view is supporting businesses by providing assistance to their proprietors, in such aspects as financial management or marketing, the support or advancement of education and learning.***²⁸
[Emphasis added]

37. The Applicant states in its response of 21 November 2011:

ANZGCIR is a charitable enterprise set up to benefit NZ and Arab society, to break down the mistrust and misunderstandings between our two societies through the exchange of ideas and information, and to build on that foundation of friendship further as our members and those attending the events hosted by ANZGCIR network with similar people in other countries, which will naturally create business ventures and generate employment in both regions.

²⁶ <http://www.arabglobal.org.nz/>

²⁷ HC WN CIV 2009-485-2133 [18 March 2010].

²⁸ Ibid, para 33.

38. Moreover, the Applicant, in its response of 14 December 2011, states:

*ANZGCIR is building on that basis of openmindedness and peaceable friendliness, facilitating relationships between individuals, businesses and even educational / medical institutions in New Zealand and the Arab world with one ultimate goal: **world peace.***

...
ANZGCIR is specifically established to facilitate the development of relationships between individuals within NZ and the Arab world...

...
By introducing many business people to each other, we anticipate that business relationships will also be developed between the two areas, as well as possible joint ventures between those businesses.

...
ANZGCIR will not be restricting the businesses taking part at any event for the promotion of business between the areas. Our aim is to introduce as many individuals and businesses as possible from both areas, because the more relationships that are developed, the more effect will be had in lessening international tension and achieving a better understanding of each other.

39. The Commission does not consider that facilitating business relationships through networking is charitable under the advancement of education.

Other matters beneficial to the community

40. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must be beneficial to the community and must be within the spirit and intendment of the purposes set out in the Preamble to the *Charitable Uses Act 1601* (the Statute of Elizabeth).²⁹

- relief of aged, impotent, and poor people
- maintenance of sick and maimed soldiers and mariners
- schools of learning
- free schools and scholars in universities
- repair of bridges, ports, havens, causeways, churches, sea banks, and highways
- education and preferment of orphans
- relief, stock or maintenance of houses of correction
- marriage of poor maids
- supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed
- relief or redemption of prisoners or captives and
- aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.³⁰

²⁹ *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304, 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

³⁰ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

41. Not all organisations that have purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. According to *Charity Law in Australia and New Zealand*:

... it is not all objects of public utility that are charitable, 'for many things of public utility may be strictly matters of private right, although the public may indirectly receive a benefit from them.' Nor are essentially economic or commercial objects within the spirit of the Preamble.³¹

Promotion of international friendship and understanding

42. In the cases analysed above in relation to the advancement of education, the courts found that the promotion of international friendship and understanding were not charitable under the fourth head for the same reason that they did not qualify as advancement of education: they are essentially political purposes.
43. In line with the case law, the Commission considers that organisations which promote international friendship are not charitable. However, the Commission considers that purposes opposing racial discrimination and promoting good community relations can be charitable under the fourth head.
44. In *Latimer v CIR*,³² it was decided that assisting Maori in the preparation, presentation and negotiation of claims before the Waitangi Tribunal was charitable under the fourth head. In that case, the court held that promotion of racial harmony was not a political purpose.
45. The Commission considers that the purposes set in clause 2(a)-(d) may promote racial harmony, but the purposes and activities of the Applicant go further than promotion of race relations, to include non-charitable purposes such as the promotion of international friendship and understanding and the facilitation of networking opportunities.

Promotion of business and economic development

46. Courts have sometimes found the promotion of business, industry or commerce to be charitable under the fourth head, where essential services are provided or when the community or beneficiaries are under a particular disadvantage, such as being poor, rural or isolated.³³
47. Clause 4 of the trust deed lists the Business and Economic Council as one of the nine individual councils established under the deed.

³¹ Gino Dal Pont, 2000, Oxford University Press, p 178; citing *Nightingale v Goulburn* (1847) 5 Hare 484, 490 and *Re Davis (deceased)* [1965] WAR 25, 28.

³² [2002] 3 NZLR 195, 209.

³³ See *Re Tennant* [1996] 2 NZLR 633; *Tasmanian Electronic Commerce Centre Pty Ltd v Federal Commissioner of Taxation* (2005) 142 FCR 371; and *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010].

48. The Applicant's website, referring to the Business and Economic Council, states:

Globalization has controlled all aspects of life, especially in terms of the economy and business, where the world economy has become almost uniform. To ensure that we promote economic interaction which will result in a dignified life for people, the Council of Economics and Business will coordinate between a number of governmental and non-governmental bodies to hold periodic meetings, conferences and specialized workshops in an attempt to create multiple and varied investment opportunities, which have a positive impact in developing the economy and creating employment opportunities for many Arab and foreigner experts.³⁴

49. The Commission does not consider that the Applicant has provided sufficient evidence to show that its promotion of business will assuage a need. In this case, the benefit may go to people who are well established in their chosen trade, business or profession and may not be in need of such help. Accordingly, the Applicant's purposes are not within the spirit and intendment of the Statute of Elizabeth and therefore are not charitable under "other matters beneficial to the community".

Promotion of tourism

50. In *Travel Just v Canada (Revenue Agency)*,³⁵ the Canadian Federal Court of Appeal considered a case relating to an entity whose purposes were the creating of model tourism development projects and the production and dissemination of tourism information. The Court found that promoting commercial activity with a strong flavour of private benefit was not a purpose beneficial to the public and expressed doubt that the dissemination of information as described would qualify as either publication of research or an educational purpose.
51. Clause 4 of the trust deed lists the Tourism Council as one of the nine individual councils established under the deed.
52. The Applicant's website, referring to the Tourism and Antiquities Council, states:

The tourism industry has developed dramatically in the current era, due to the development of transport and the growing interests around the world. Arab states are considered to be strong tourist attractions because they contain many historical, religious and natural elements that attract tourists. The Council of Tourism and Antiquities therefore will cooperate with governmental and non-governmental organizations to organize conferences, seminars and festivals to define features and characteristics of tourism, and investment opportunities for both Arab countries and the countries of the South Pacific, especially New Zealand.³⁶

³⁴ <http://www.arabglobal.org.nz/councils-02.html#navigation>.

³⁵ 2006 FCA 343, [2007] 1 CTC 294.

³⁶ <http://www.arabglobal.org.nz/councils-08.html#navigation>.

53. The Applicant's response of 14 December 2011 states:

The intention of the Tourism Council is to raise awareness of each other's countries as a possible destination, for the exact same reason: If you travel in someone else's country, you develop relationships and come home with happy memories of those people.

54. Based on the case law above, the Commission considers that the promotion of tourism the Applicant is undertaking is not a charitable purpose.

Public Benefit

55. In order to be charitable, the benefits from the Applicant's activities must be to the community rather than to private individuals. Any private benefits arising from the Applicant's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.³⁷ In addition, proof that public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.³⁸
56. In *Commissioners of Inland Revenue v Yorkshire Agricultural Society*,³⁹ the improvement of agriculture was held to be charitable when it was for the benefit of the public at large. However, Lord Hanworth made it clear that the promotion of agriculture for private profit or benefit would not be charitable.⁴⁰
57. In *Commissioners of Inland Revenue v Oldham Training and Enterprise Council*,⁴¹ the Court held:

*"[T]he second main object, namely promoting trade, commerce and enterprise, and the ancillary object, of providing support services and advice to and for new businesses, on any fair reading must extend to enabling Oldham TEC to promote the interests of individuals engaged in trade, commerce or enterprise and provide benefits and services to them [...] **Such efforts on the part of Oldham TEC may be intended to make the recipients more profitable and thereby, or otherwise, to improve employment prospects in Oldham. But the existence of these objects, in so far as they confer freedom to provide such private benefits regardless of the motive or the likely beneficial consequences for employment, must disqualify Oldham TEC from having charitable status. The benefits to the community conferred by such activities are too remote.**"⁴² [Emphasis added].*

³⁷ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

³⁸ *Gilmour v Coats* [1949] AC 426; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

³⁹ [1928] 1 KB 611.

⁴⁰ See also *Crystal Palace Trustees v Minister of Town and Country Planning* [1951] 1 Ch 132; *Hadaway v Hadaway* [1955] 1 WLR 16.

⁴¹ (1996) 69 Tax Cases 231.

⁴² *Ibid*, 251.

58. In *Canterbury Development v Charities Commission*,⁴³ Ronald Young J held:

*The relief of unemployment is certainly not a direct object of purpose of CDC's function. The public benefit is hoped for but ancillary. In the same way the general economic lift for the Canterbury region from CDC's work is the hoped for result of helping individual businesses. It is remote from the purpose and operation of CDC. Public benefit is not at the core of CDC's operation.*⁴⁴ [Emphasis added]

59. Applying the Court's reasoning in the above cases, facilitating business networking would only be charitable if the private benefits which result from this purpose were ancillary to any public benefit, through for example, the increase in employment.
60. The Applicant's website states as one of the three objectives of the Applicant:

*Intensifying cooperation and exchange of professional expertise among the Arab countries and the country of New Zealand.*⁴⁵

61. The Commission considers that the facilitation of networking and promotion of business, economic development and tourism resulting from the Applicant's purposes and activities will primarily accrue to private individuals and business owners. Any benefits conferred on the community at large are too remote to give the purposes a charitable nature.
62. In this case, the Commission considers that the private benefits to businesses and individuals are essential to the Applicant and are not incidental to any wider public benefit.

Applicant's submissions

Private profit

63. In the response of 14 December 2011, the Applicant states:

By introducing many business people to each other, we anticipate that business relationships will also be developed between the two areas, as well as possible joint ventures between those businesses. However ANZGCIR will not profit in any way from these enterprises. Its role is that of an instigator, an organiser, an initiator. It will bear the cost of the meetings, promotion and speakers, etc out of funds donated for those specific purposes in order to create the opportunities for people to form these links.

...

⁴³ HC WN CIV 2009-485-2133 [18 March 2010].

⁴⁴ Ibid, para 67.

⁴⁵ <http://www.arabglobal.org.nz/about.html>.

In summary, there is no financial benefit to the trustees or specific individuals from any of ANZGCIR's activities. ANZGCIR will not be engaged in any commercial ventures. All events are for one ultimate purpose which benefits us all: to reduce international and intercultural tension and promote world peace by enabling many members of both societies to interact in a variety of ways and thus form lasting friendships and professional relationships which preclude bigotry and aggressive behaviour.

64. The Commission acknowledges that the Applicant itself will not be undertaking commercial activity for private profit, but considers that it is assisting individuals to make a private pecuniary profit through its promotion of international business and economic development. In *Canterbury Development Corporation v Charities Commission*⁴⁶ and *In Re Education New Zealand Trust*,⁴⁷ the presence of prevention of private pecuniary profit clauses did not prevent the court from finding that the appellant did not meet registration requirements, because these two entities were assisting individuals and organisations to make a pecuniary profit.

Promotion of world peace

65. The Applicant has stated in the response of 14 December 2011 that the purposes and activities of the Applicant are motivated by a desire to achieve world peace.
66. The Commission acknowledges that the Applicant is inspired by worthy objectives. However, in *Toronto Volgograd Committee v Minister of National Revenue*,⁴⁸ the committee had an object of advancing peace, and yet the entity was held to be non-charitable. Stone J held:

*I do not question that the motives which lay behind them are entirely altruistic. The very strong view is plainly held that nothing but good can flow to the wider community from this sort of people-to-people contact, especially in times of international tensions and the threat of nuclear war, because it serves to promote mutual understanding and friendship between groups in two countries professing distinct political ideologies. The only question we are called upon to decide, however, is whether these activities, though laudable and worthwhile in themselves, meet the test of "charity" in the sense that they are beneficial to the community in a way the law regards as charitable. In my respectful opinion that test is not met.*⁴⁹

67. The Commission is of the view that while some of the purposes and activities of the Applicant are likely to promote world peace, the Applicant's purposes and activities extend much further, to include promotion of international friendship and understanding, facilitation of networking opportunities, promotion of business and economic development, and promotion of tourism. As outlined above, these have been held by the courts to be non-charitable purposes.

⁴⁶ HC WN CIV 2009-485-2133 [18 March 2010].

⁴⁷ HC WN CIV-2009-485-2301 [29 June 2010].

⁴⁸ [1988] 30 ETR 159.

⁴⁹ *Ibid*, 170.

Section 61B of the *Charitable Trusts Act 1957*

68. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the *Charitable Trusts Act 1957* however, can operate in two situations to “save” a trust that has both charitable and “non-charitable and invalid” purposes.
69. The first is where the entity’s **stated** purposes include charitable and non-charitable purposes (in which case the non-charitable purposes may be “blue pencilled out”). The second is where the stated purposes are capable of both a charitable and a non-charitable **interpretation** and the primary thrust of the gift is considered to be charitable (in which case the purposes could be deemed to apply only in terms of the charitable interpretation).⁵⁰
70. In *Re Beckbessinger*, Tipping J held:

*In the case of designated and identifiable organisations it may well be necessary to have evidence as to whether or not they are charitable to determine the flavour of the gift. The Court cannot in my judgment say, ... that because a gift might have been applied for charitable purposes, s 61B can be used to save it. The testator must be shown to have had a substantially charitable mind but to have fallen foul of the law of uncertainty by including either actually or potentially a non-charitable element or purpose.*⁵¹

71. The Commission has analysed the wording of the Trust’s purposes, surrounding context, and activities (as directed by section 18(3)(a) of the Charities Act. The Commission does not consider that these provide evidence of “a substantially charitable mind” with an intention to create a charitable trust, but which was not conveyed by the drafting.
72. On this basis, the Commission considers that the Trust’s purposes are not substantially charitable and therefore section 61B of the *Charitable Trusts Act 1957* cannot operate to validate the trust.

Conclusion

73. The Commission considers that the Applicant’s purposes set out in clause 2 are non-charitable for the reasons set out above.

Charities Commission’s determination

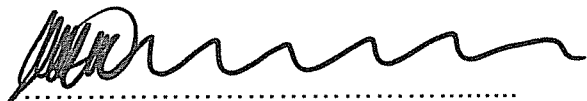
74. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it is not a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.

⁵⁰ *Re Beckbessinger* [1993] 2 NZLR 362, 373.

⁵¹ *Ibid*, 376.

For the above reasons, the Commission declines the Applicant's application for registration as a charitable entity.

Signed for and on behalf of the Charities Commission



.....
Trevor Garrett
Chief Executive

8/2/12

.....
Date