

Registration decision: Indian Marriage Bureau New Zealand Auckland (NZ) (IND44146)

Executive Summary

1. The Charities Registration Board (**the Board**) has determined to decline the application for registration of The Indian Marriage Bureau New Zealand Auckland (NZ) (**the Trust**) under *Charities Act 2005* (**the Act**).¹
2. The Trust has applied for registration under the Act on the basis that it has a charitable purpose to preserve Indian culture and tradition.
3. The Board has determined that the Trust does not qualify for registration as a charitable entity. The Trust's purpose is to provide a service to introduce prospective marriage partners to individuals in the Indian community in New Zealand and Australia, based on matching family traditions and interests. The Board considers that this purpose is not a charitable purpose in New Zealand law, and as such the Trust does not qualify for registration under the Act.²
4. The Board's reasons are organised as follows:
 - A. Background
 - B. Legal Framework for Registration Decision
 - C. The Charities Registration Board's Analysis
 - D. Section 5(3)
 - E. Determination

A. Background

5. The Trust was established by deed of trust executed before 26 April 2012.³
6. The objects of the Trust set out in the deed of trust are as follows:
 - 1) The main object of this organisation shall be to enrol the names of Indian boys and girls who wish to marry with the Indian brides and bridegrooms exclusively after matching mutual interest viz education, age, family backgrounds etc.

¹ The decision is made under section 19 of the *Charities Act 2005* ("the Act").

² The essential requirements for registration are set out in section 13 of the Act.

³ The deed of trust provided with this application is signed but not dated; 26 April 2012 is the date of receipt of the application.

- 2) Different centres and branches of the organisation will be open at different areas of Auckland and other cities of New Zealand to propagate the above object of the trust.
 - 3) After getting sufficient enrolment of the bride and bridegrooms wishing to marry a seminar of these candidates will be held at Auckland or even at other places in NZ to enable the candidates to see each other and discuss their mutual interest, family history and also the ambitions of each one for future life.
 - 4) In seminar, the parents of the bride and bridegrooms will be invited to enable them to express their opinions regarding the matching of the mutual interest of the both.
 - 5) In cases of any marriages are finalised from the seminar or get together or from the canvassing and advertising programmes the trust will also organise the marriage programmes as per the customs or traditions of the respective families, the cost of this marriage will be borne by both the parties as agreed.
 - 6) The object of this organisation to maintain the customs/traditions/sanskar of the Indian communities, they follow in India.
7. The Trust deed provides that membership "will be open to all the Indian communities in New Zealand and Australia also" and that it will operate "for the benefit and interest of the Indian community migrated and settled in New Zealand and Australia".
 8. The Trust applied for registration under the Act on 26 April 2012.
 9. On 10 July 2012, an analyst in the Department of Internal Affairs, Charities Services (**Charities Services**) completed an initial review of the application, and issued a notice that the application may be declined on the basis that it was not established for exclusively charitable purposes as required for registration under the Act.
 10. There followed a period of further correspondence between the Trust and Charities Services, comprising a letter from the Trust to Charities Service dated 2 August 2012; a letter from Charities Services to the Trust dated 5 November 2012; and a letter from the Trust to Charities Services dated 19 March 2013. We have read the correspondence and will refer to the issues notified and submissions made in more detail in our analysis of the application at section C below.
 11. In the course of correspondence, the Trust has provided information that:
 - The service is provided for free to the Indian community in New Zealand and Australia;

- The Trust will operate on a voluntary basis⁴ and funding will be by public donations;⁵
- The Trust will enable the community in New Zealand to settle marriages with individuals in India or Fiji;⁶ and
- The Trust aims to facilitate “proposed marriage” – which is distinguished from marriage that is “arranged” on the one hand, and “arranged by the children without the consent of their parents” on the other.⁷

B. Legal Framework for Registration Decision

12. 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. This criterion is not met unless the income is derived for *exclusively* charitable purposes.⁸ The Act provides that an entity with a non-charitable purpose can qualify for registration if that non-charitable purpose is ancillary to its charitable purpose(s).⁹
13. 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. This statutory definition adopts the well-established fourfold classification of charitable purpose at general law.¹⁰ The general law on the content of the fourth

⁴ Letter from the Trust to Charities Services dated 2 August 2012, page 1; Letter from the Trust to Charities 19 March 2013, page 1 and 2.

⁵ Letter from the Trust to Charities Services dated 2 August 2012, page 2; Letter from the Trust to Charities Services dated 19 March 2013, page 2.

⁶ Letter from the Trust to Charities Services dated 2 August 2012, page 3, 4.

⁷ Letter from the Trust to Charities Services dated 2 August 2012, page 3.

⁸ See *McGovern v Attorney-General* [1982] 1 Ch 321 (“*McGovern*”) at 340. In New Zealand, see *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787 (“*Smitham*”) at 794-796; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 691 (“*Molloy*”). See also the assumption evident in the provision at section 5(3) and (4) of the Act, that a trust will not be disqualified from registration because it has *ancillary* non-charitable purpose.

⁹ Section 5(3) and (4) of the Act. The elements of the test of ‘ancillary’ are illustrated by court decisions under the Act including *Greenpeace of New Zealand Incorporated* [2012] NZCA 533 (“*Greenpeace, CA*”) at [62], [83] – [92]; *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] (“*Greenpeace, HC*”) at [68]; *Re New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] (“*Computer Society*”) at [16]; *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 (“*Education New Zealand Trust*”) at [43]-[44]; *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) (“*Grand Lodge*”) at [49]-[51].

¹⁰ This statutory definition adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) and previous common law: *Greenpeace, CA* at [42]; *Education New Zealand Trust* at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [11].

head of charity is of particular relevance to this application for registration, and is discussed in more detail at paragraph 21 below.

14. To be charitable at law a purpose must: (i) provide a benefit recognised in law; (ii) to the public.¹¹ As to the first limb, a purpose to relieve poverty, advance education or advance religion is assumed to provide a benefit recognised in law unless the contrary is shown.¹² No such assumption applies for purposes falling under the fourth head of charity (any other matter beneficial to the community), and for purposes in this category it is necessary to establish positively that the purpose provides a benefit of the kind recognised in this area of law.¹³ The assessment of whether a purpose provides a benefit focuses on the cognisable consequences of the undertaking – benefits that are nebulous and remote, or simply ‘hoped for’ are excluded.¹⁴
15. As to the second limb of the ‘public benefit’ requirement, the benefit must not be private in nature,¹⁵ but must be aimed at the public or a section of the community that amounts to the public. Any restrictions on access to benefits must be reasonable and appropriate to the entity’s charitable undertaking. If the activities

¹¹ Authorities include: *Oppenheimer v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Verge v Somerville* [1924] AC 496; *Dingle v Turner* [1972] AC 601. See also: *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 (“*Accountants*”) at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 (“*Latimer, CA*”) at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) (“*Travis Trust*”) at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 (“*Queenstown Lakes*”) at [30]; *Education New Zealand Trust* at [23].

¹² See for example: *Molloy* at 695 (Somers J). See also *Computer Society* at [14]: “This does not mean, however, that existence of public benefit is a foregone conclusion. Rather, ‘the question whether a gift is or may be operative for the public benefit is a question to be answered by the Court forming an opinion upon the evidence before it.’”

¹³ See for example: *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342 at 350 (Hammond J); *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 (“*CDC*”) at [45].

¹⁴ See discussion in *Latimer, CA* at [32] – [37]. The courts have held that the downstream benefits of an entity’s activities do not serve to characterise the purpose of the entity: see *Accountants* at 153 (the “generalised concept of benefit” identified with the public satisfaction of knowing that the fund is there to safeguard and protect clients’ interests is too “nebulous and remote” to characterise the purpose of the fund); *Travis Trust* at [30] – [35] (holding that where the express purpose was to “support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes”, the purpose was to support that single group race and not to support the racing industry or racing public as a whole). See to the same effect *Queenstown Lakes* at [68] – [76] (held that the purpose of the Trust was to provide housing for individuals not to advance the overall welfare of the community by enabling workers to stay in the area); *CDC* at [67] (primary purpose is the assistance of individual businesses and the ‘hope and belief’ that the success of those businesses would increase the economic wellbeing of the Canterbury region does not establish public benefit as a primary purpose); *Grand Lodge* at [59] – [60] (the purpose is to improve the character of members of a closed group, the public benefit in this is ‘too remote’).

¹⁵ See note 11 above. Section 5(2)(a) of the Act modifies the general law position to the extent that it deems a purpose to provide benefit to the public if the purpose would satisfy the public benefit requirement apart from the fact that the beneficiaries are related by blood.

create private profit or benefits, this must be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it.¹⁶

16. Section 18(3)(a)(i) and (ii) of the Act provide that the current and proposed activities of an entity must be taken into consideration when determining whether that entity qualifies for registration under the Act.¹⁷ The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.¹⁸ Once an entity's purposes are established as a matter of fact, whether or not they are charitable is a question of law.¹⁹ Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an entity's rules document that the entity's purposes are charitable in law will not be determinative.²⁰ Similarly, the subjective intentions of individuals involved in a charity will not be sufficient to establish its charitable status in law.²¹

C. The Charities Registration Board's Analysis

C.1. Overview

17. The Trust's purposes do not indicate an intention to relieve poverty or advance education, and the Trust has not submitted that its purposes ought to be characterised as charitable under those two heads of charity. The Board has therefore considered whether the Trust is established to advance religion or any other matter beneficial to the community. We have determined that the Trust's purposes are not charitable under either of these heads of charity.

C.2. Advancement of Religion

The Trust's submissions

18. The Trust has withdrawn an initial submission that it is established to advance religion. In its letter of 2 August 2012, the Trust submitted that the activities of

¹⁶ See for example *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 ("Professional Engineers") at 578; *Computer Society* at [42]; *Education New Zealand Trust* at [23]; *Queenstown Lakes* at [68] – [76]; *CDC* at [67]. Compare: *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218 ("Oldham"); *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

¹⁷ See also section 50(2)(a) of the Act.

¹⁸ *Greenpeace, CA* at [48] and [51]. See also the approach taken in the High Court in *CDC* at [29], [32], [44], [45] – [57], [67], [84] – [92]; *Queenstown Lakes* at [57] – [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] – [39], [60] and [68]; *Greenpeace HC* at [75].

¹⁹ *Molloy* at 693.

²⁰ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

²¹ G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) at [13.18], and see also the discussion at [2.8] – [2.11]. See for example *Latimer, PC* at 168; *Molloy* at 693; *Keren Kayemeth Le Jisroel Ltd v Inland Revenue Commissioners* [1932] AC 650 at 657 (Lord Tomlin), 661 (Lord Macmillan); *Oldham* at 251 (Lightman J).

the Trust advance religion.²² In its notice of 5 November 2012, Charities Services advised that it did not consider that the Trust's facilitation of arranged marriages is undertaken to increase and sustain religious belief as required to qualify as "advancing" religion.²³ The Trust responded to this notice by letter dated 19 March 2013. In its response, the Trust clarified that it does *not* seek to advance religion; and submitted that the case law test for advancement of religion is not relevant to its application.²⁴ The Board agrees that the Trust is not established to advance religion.

C.3. Other matters beneficial to the community

The Trust's submissions on the fourth head of charity

19. The Trust has submitted that its purposes provide a benefit to the community which lies within the fourth head of charity.²⁵ The Trust has submitted that the *benefit* it provides is the maintenance of customs and traditions of the Indian community in New Zealand. In this regard, the Trust contends that individuals who are married to partners with the same traditions and customs will be more likely to uphold the customs and traditions of the Indian community.²⁶ The Trust has also submitted that its purpose is beneficial because it provides an example to other local communities in New Zealand seeking to maintain traditions and customs.
20. The Trust has further submitted that the benefit is *open to the public* because the service it provides is a free service, open to the Indian community in New Zealand and Australia as a whole.²⁷ In addition, the Trust submits that there is a public benefit in the maintenance of Indian customs and traditions in New Zealand as most Indian customs and traditions involve the greater public.²⁸

²² Letter from the Trust to Charities Services dated 2 August 2012, page 3 ("Indian community is a religious community and they believe in Hindu Religion and life partners from Hindu religion only. As such our Trust will satisfy the purpose of religion as stated in section 5(1) of the Act") and 4 ("New Zealand is a democratic nation and the communities from different countries migrated here enjoy the rights/custom based on their respective religions in New Zealand").

²³ *Liberty Trust v Charities Commission* HC WN CIV-2010-485-831 [2 June 2011] at [58], [94]; *United Grand Lodge of Ancient Free and Accepted Masons of England v Holburn Borough Council* [1957] 1 WLR 1080 at 1090

²⁴ Letter from the Trust to Charities Services dated 19 March 2013, page 2.

²⁵ Letter from the Trust to Charities Services dated 2 August 2012, page 3-4; Letter from the Trust to Charities Services dated 19 March 2013, page 2

²⁶ Letter from the Trust to Charities Services dated 19 March 2013, page 2.

²⁷ Letter from the Trust to Charities Services dated 19 March 2013, page 2 ("The main objective of the Trust is to offer a free service ... The Indian communities that will benefit are not those only from India, but also may be from Fiji, Africa, Britain and so on"). See also letter from the Trust to Charities Services dated 2 August 2012, page 3 ("our Trust is being mainly established for the benefit of the Indian community migrated/from India as well as from Fiji (the nearest island)").

²⁸ Letter from the Trust to Charities Services dated 19 March 2013, page 2 ("Families that follow customs and traditions of the Indian community provide a public benefit as most Indian customs and traditions involve the greater public. Festivals such as Krishan Janmashtami, Holi, Dussera,

The law on the fourth head of charity

21. In order for a purpose to qualify as charitable under the fourth head, it must: (i) be beneficial to the community; and (ii) within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).²⁹ The Court of Appeal has recently stated the scope of the fourth head of charity in these terms:³⁰

... the retention of the fourth category of charitable purpose, namely “any other matter beneficial to the community”, confirms that the decisions of this Court relating to its interpretation and application remain applicable. In particular, the purpose must be for the public benefit and charitable in the sense of coming within the spirit and intendment of the preamble to the Statute of Charitable Uses Act 1601 (43 Eliz I c 4) (the Preamble). The public benefit requirement focuses on whether the purpose is beneficial to the community or a sufficient section of the public. The requirement to be charitable within the spirit and intendment to the preamble focuses on analogies or the presumption of charitable status. Even in the absence of an analogy, objects beneficial to the public are prima facie within the spirit and intendment of the preamble and, in the absence of any ground for holding that they are outside its spirit and intendment, are therefore charitable in law ...

22. In that case, the Court of Appeal went on to hold that promotion of nuclear disarmament and the elimination of all weapons of mass destruction were purposes beneficial to the community, and that “it is a purpose within the spirit and intendment to the preamble both on the basis of analogy and the presumption of charitable status.”³¹
23. For the purposes of this application, it suffices to note that in order to come within the fourth head of charity a purpose must provide a proven benefit, to the community. It is only if such benefit is established that analysis moves to the question whether it is within the spirit and intendment of the preamble (whether by analogy or application of a presumption of charitable status for objects beneficial to the public).³² It is the first limb of the test that is determinative in this case.

Diwali all do not involve private observances and rites; instead they celebrate a coming together of family, friends and acquaintances of all religions and nationalities”).

²⁹ For the requirement that the benefit be within the spirit and intendment of the Preamble, see: *Greenpeace, CA* at [43], *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 (CA) at 302 (Richardson P and Gault J; dissenting), 310 (McKay J), 320-321 (Thomas J), 321 (Keith J, agreeing with McKay and Thomas JJ); *Latimer* at [39]-[40], *Travis Trust* at [20].

³⁰ *Greenpeace, CA* at [43].

³¹ *Greenpeace, CA* at [81]

³² See note 13 above.

The Trust's purpose

24. The Board considers that the Trust's purpose is to facilitate marriages based on mutual interests, for the benefit of the Indian community in New Zealand and Australia.
25. The Board acknowledges that the trustees genuinely intend to promote the retention of Indian traditions and culture through the provision of a service that enables individuals to find a marriage partner who shares culture, tradition and other interests. However, the Board considers that viewed objectively, the Trust's purpose is to facilitate marriages based on "matching mutual interest viz education, age, family backgrounds etc" (object 1) and "mutual interest, family history and also the ambitions of each one for future life" (object 3). Thus, the Trust's purpose is not to maintain Indian culture and tradition. Any connection between the service offered by the Trust and the maintenance of Indian culture and tradition is too remote to serve to characterise the Trust's purpose.³³

The Trust's purpose does not provide a 'benefit'

26. The Board considers that the purpose to facilitate marriages based on "matching mutual interest viz education, age, family backgrounds etc" (object 1) and "mutual interest, family history and also the ambitions of each one for future life" (object 3) does not provide a clearly established benefit. There is no clearly established benefit in the promotion of marriage.³⁴ More particularly, there is no clearly established benefit in: the promotion of marriages between individuals who are deemed to have matching interests; or the promotion of marriages to which the parents of the marriage partners consent.³⁵ The Board accepts that the trustees sincerely believe that the Trust's service will be beneficial to the Indian community in New Zealand. However, the Board considers that the service does not provide a benefit of a kind that is recognised in New Zealand law.³⁶
27. Even if (contrary to the Board's finding above), the Trust's purpose is to promote the maintenance of Indian culture and traditions within the Indian community in

³³ The Board considers that this case is analogous to the cases in which the courts have declined to characterize a purpose based on its 'down-stream' or 'hoped for' consequences, see note 14 above.

³⁴ New Zealand law recognises the institution of marriage, but does not promote that institution above or to the exclusion of other relationships.

³⁵ The Board acknowledges that a purpose to promote mental health and relieve distress and hardship by promoting healthy relationships through such means as counselling and research into aspects of the maintenance and development of successful relationships would be charitable. However, the Trust's purpose to promote relationships between individuals of matching backgrounds and interests reflects a singular prescription for successful relationships, the benefit of which is not established so as to bring it within this charitable purpose.

³⁶ The Board assumes, in the absence of any evidence to the contrary, that the Trust's operation to facilitate marriages with individuals resident overseas is consistent with New Zealand immigration law and policy, and that the "boys and girls" enrolled by the Trust (object 1) have capacity to marry under New Zealand law.

New Zealand, the Board considers that the Trust would not qualify for registration. This is because a purpose to promote the maintenance of Indian culture and traditions within the Indian community in New Zealand would not be a charitable purpose in law. The Board acknowledges that Indian culture, language and tradition would be a suitable subject for education,³⁷ and there is also scope to advance aesthetic education for the public benefit by exposure to Indian music and arts.³⁸ However, the trustees' intentions and the Trust's activities do not advance education in Indian culture and tradition. Rather, the trustees' submission is that the Trust promotes the maintenance of Indian culture and tradition by the individuals who use the Trust's service.

28. The Board considers that the Trust's purposes have not been demonstrated to provide a benefit, as is required to establish charitable status under the fourth head of charity.³⁹

The Trust's purpose does not provide 'public' benefit

29. The Board is prepared to assume that the Trust's service is provided for a section of the public. The Trust has told us that the service is offered free of charge, and is available to all members of the Indian community in New Zealand and Australia. On this basis, the Trust's operation appears to be open to a group that amounts to a section of the public.
30. However, the Board considers that the Trust's purpose to facilitate marriages based on mutual interests will provide a benefit to the individuals who meet a marriage partner through the Trust's service. We consider that the achievement of matrimony is something of essentially personal significance, and the Trust's endeavours to achieve this end for individual clients therefore lacks the requisite public aspect.⁴⁰
31. The Board notes the Trust's submission that the cultural traditions preserved through its actions in facilitating matches for marriage include celebrations that are open to the wider community.⁴¹ The Board does not consider this establishes the requisite benefit to the community, as the connection between the Trust's activities and the observance of any specific celebrations that involve the community is tenuous and remote.

Conclusion on fourth head of charity

32. For the above reasons, the Board determines that the Trust's purpose does not provide a benefit to the community that lies within the fourth head of charity. The

³⁷ Compare advancement of education by conducting research into matters of culture and heritage, for example in *Re Hopkins' Will Trusts* [1965] Ch 669.

³⁸ Compare *Smitham* at 795.

³⁹ See note 13 above.

⁴⁰ But see our remarks at note 35 above.

⁴¹ See note 28 above.

benefit provided by the Trust's service is not clearly established as required to engage the fourth head of charity. Nor does the Trust's operation have the requisite public aspect.

D. Section 5(3)

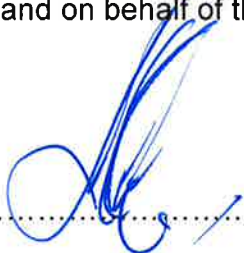
33. The Board considers that the Trust's non-charitable purpose does not come within the savings provision at section 5(3) of the Act. The Trust's purpose to provide a service to introduce prospective marriage partners in the Indian community is the predominant and pervasive purpose of the Trust and cannot be regarded as ancillary within the meaning of sections 5(3) and (4) of the Act.

E. Determination

34. The Board's determination is that the Trust does not qualify for registration under the Act and the application for registration should be declined. The Trust's purpose is to provide a service to introduce prospective marriage partners to individuals in the Indian community in New Zealand and Australia, based on matching family traditions and interests. This purpose does not advance religion and is not otherwise beneficial to the public within the scope of the fourth head of charity.

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

Signed for and on behalf of the Board



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Roger Holmes Miller

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Date