Decision Number: 2013 - 8
Dated: 15 April 2013

Registration decision: National Council of Women of New Zealand Incorporated

Executive Summary

1. The National Council of Women of New Zealand Incorporated (NCWNZ) submitted an application for registration under the *Charities Act 2005* (the Act) on 10 September 2012. The Charities Registration Board (the Board) has considered that application, and determined that the NCWNZ qualifies for registration. The Board has directed that the NCWNZ be registered, effective 10 September 2012.[1]

2. The Board considers that the NCWNZ meets the requirements for registration at section 13(1) of the Act. In particular, the Board is satisfied that the NCWNZ is established and maintained for the advancement of education and to promote the status of women in a manner that is beneficial to the community as provided by New Zealand law. The NCWNZ communicates with political actors, including by making submissions to parliamentary committees. Having regard to the nature, content and tone of NCWNZ's communications with political actors, the Board is satisfied that these communications further the NCWNZ's charitable purposes (education and promotion of the status of women), and do not indicate that the NCWNZ is maintained for an independent (non-ancillary) political purpose.

A. Background

3. The NCWNZ was originally established in 1896 and incorporated under the *Incorporated Societies Act 1908* on 25 September 1959.

4. The NCWNZ is one of seventy national councils affiliated to the International Council of Women, which holds consultative status with the United Nations Economic and Social Council.

5. The NCWNZ's stated purposes are (Rule II of the rules document):

    1. *to serve women, the family and the community at the local, national and international level*
    2. *to research the needs of women and the family*
    3. *to engage in education for women and the family*
    4. *to engage in education of women, that advances the betterment of women, the family and the community*
    5. *to collect and redistribute information of service to the community*
    6. *to form a link with National Councils of Women of the other countries through the International Council of women.*

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[1] This decision is made pursuant to section 19(2) of the *Charities Act 2005*.

6. The NCWNZ was registered under the Act by the Charities Commission on 4 June 2009, effective 30 June 2008. The NCWNZ was registered on the basis that it would research the needs of women and the family and engage in education for women that advances the betterment of women, the family and the community and collect and redistribute information of service to the community.

7. On 22 July 2010, the Charities Commission directed that the NCWNZ be removed from the register on the grounds that it had a political purpose that was not ancillary to any valid charitable purpose, effective 19 August 2010. The Charities Commission published its reasons for its decision.[2]

8. The NCWNZ did not exercise its statutory right of appeal from the decision of the Charities Commission.[3]

9. On 10 September 2012, the NCWNZ submitted this new application for registration.

10. The Department of Internal Affairs, Charities Services have analysed the application, and have recommended that the application be approved.

B. Legal Framework for Registration

11. Under section 13(1)(b) of the Act, a society qualifies for registration if it is established and maintained for exclusively charitable purposes and not for private pecuniary profit.

12. 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 or religion, or any other matter beneficial to the community". This statutory definition adopts the well-established fourfold classification of charitable purpose at general law.[4]

13. To be charitable at law a purpose must be for the public benefit.[5] Public benefit must be expressly shown where the claimed purpose is an "other

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2 See http://www.charities.govt.nz/the-register/registration-decisions/deregistration/

3 A right of appeal is conferred under section 59 of the Act.

4 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 of New Zealand Incorporated* [2012] NZCA 533 ("*Greenpeace, CA*") at [42]; *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 ("*Education New Zealand Trust*") at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] ("*Draco*") at [11].

5 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].

matter beneficial to the community".[6] Further, in every case, the direct benefit of the entity's purposes must flow to the public or a sufficient sector of the public.[7] Any private benefits arising from an entity's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it.[8]

14. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not preclude registration if it is merely ancillary to a charitable purpose. Section 5(4) of the Act states that a non-charitable purpose is ancillary if the non-charitable purpose is:

> *(a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and*
> *(b) not an independent purpose of the trust, society or institution.*

15. It is clear that determining whether a non-charitable purpose is ancillary includes a qualitative assessment of whether it is a means to advance the charitable purpose.[9] It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity's overall endeavour.[10]

Relevance of entity's activities in registration decision-making

16. Section 18(3)(a)(i) and (ii) of the Act provide that the activities of an applicant entity must be taken into consideration when determining whether that entity qualifies for registration under the Act.[11] The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.[12] Section 13 of the Act focuses attention on the purposes for which an entity is *at present* established.[13] This focus is justified in the broader scheme of the Act[14] and the fiscal consequences of registration under the Act.[15]

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6 *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 ("*CDC*") at [45].

7 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 characterize the purpose of the entity: see *Accountants* at 153; *Travis Trust* at [30] – [35]; *Queenstown Lakes* at [68] – [76]; *CDC* at [67].

8 See for example *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 ("*Professional Engineers*") at 578; *Re New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] ("*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.

9 For recent judicial comment on the qualitative test see *Greenpeace, CA* at [62], [83] – [91].

10 The quantitative requirement was applied by the High Court in *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] ("*Greenpeace, HC*") at [68]; *Computer Society* at [16]; *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]. The Board notes the Court of Appeal's observation in *Greenpeace, CA* at [92], including footnote 95.

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

12 *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].

13 *Greenpeace CA* at [40]. See to same effect *Institution of Mechanical Engineers v Cane* [1961] AC 696 (HL) at 723; *Guaranty Trust Company of Canada v Minister of National Revenue*

17. Activities are not to be elevated to purposes,[16] but reference to activities may assist, for example, to make a finding about:
    - the meaning of stated purposes that are capable of more than one interpretation;[17]
    - whether the entity is acting for an unstated non-charitable purpose;[18]
    - whether the entity's purposes are providing benefit to the public;[19]
    - whether a non-charitable purpose is within the savings provision set out in section 5(3) of the Act.[20]

18. Further, it is well established that the charitable status of an association is determined by construing its objects and powers in context as a whole, rather than construing objects and powers individually.[21]

Characterisation of an entity's purposes

19. Once an entity's purposes are established as a matter of fact, the question whether they are charitable is a question of law.[22] The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.

20. Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an entity's rules document that the

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[1967] SCR 133 at 144; *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55 ("*Word Investments*") at [25] – [26] (Gummow, Hayne, Heydon and Crennan JJ) and [173] – [174] (Kirby J, dissenting); *Cronulla Sutherland Leagues Club Ltd v Commissioner of Taxation* (1990) 23 FCR 82 at 89.

14 Including the statutory functions set out in section 10 of the Act, "promote public trust and confidence in the charitable sector" and "encourage and promote the effective use of charitable resources".

15 Compare *Greenpeace, CA* at [34]. While the statutory criteria for eligibility for fiscal privileges are in tax legislation administered by Inland Revenue, one of the benefits of registration is that it qualifies entities to be eligible for tax exemption on charitable grounds.

16 *McGovern v Attorney-General* [1982] 1 Ch 321 ("*McGovern*") at 340 and 343; *Latimer v Commissioner of Inland Revenue* [2004] 3 NZLR 157 ("*Latimer, PC*") at [36]. Compare *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 ("*Public Trustee*") at 616; *Vancouver Society of Immigrant and Visible Minority Women v the Minister of National Revenue* [1999] 1 SCR 10 ("*Vancouver Society*").

17 See *Professional Engineers* at 575 (Tipping J).

18 *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 ("*Glasgow Police Athletic Association*"); compare *Word Investments* at [25] (Gummow, Hayne, Heydon and Crennan JJ).

19 See for example *Glasgow Police Athletic Association*; *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].

20 See for example *Greenpeace, CA* at [40], [48], and [87] – [92], [99] and [102], [103]. Earlier authorities to same effect include *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA) ("*Molloy*") at 693 and the authorities cited there.

21 Gino Dal Pont, *Law of Charity in Australia and New Zealand* (2nd ed., LexisNexis Butterworths, Australia, 2010) ("*Dal Pont*") at [13.17]. See for example *Travis Trust* at [30] – [35], [58]; *Glasgow Police Athletic Association*; *Professional Engineers*.

22 *Molloy* at 693.

entity's purposes are charitable in law will not be determinative.[23] Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.[24]

C. The Board's Analysis

C.1 Formal requirements

21. NCWNZ meets registration requirements in relation to its legal name; qualification of officers; formal protections against private pecuniary profit during the lifetime of the entity; and provision for disposition of any surplus funds to charitable purposes in the event of winding-up of the entity.[25]

22. The Board has sufficient information about NCWNZ's activities and other relevant matters to comply with the obligation at section 18(3) of the Act.[26]

C.2 Charitable purpose

23. Having considered the rules document and activities of the NCWNZ together with the submissions made by NCWNZ in support of its application for registration, we are satisfied that the NCWNZ has valid charitable purposes within section 5(1) of the Act, namely purposes to advance education, and to provide other matters beneficial to the community within the meaning of section 5(1), including promotion of the status of women.

C.2.1 Advancement of education

24. NCWNZ's stated purposes at clause II 2, 3, 4 and 5 are to advance education.

25. As NCWNZ's submissions in support of this application for registration and the NCWNZ's website[27] shows, NCWNZ undertakes a range of activities that advance education consistently with those stated purposes at clause II. For example, NCWNZ has conducted research projects on the quality of maternity services in New Zealand,[28] and women's access to credit in New Zealand.[29] It has reported to the UN Monitoring Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[30] Further, NCWNZ's publications to its members and the general public contain genuinely educational content, and the organisation also conducts training

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

24 *Dal Pont* 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).

25 Section 13(1) of the Act refers.

26 Information includes: annual returns filed with the Charities Commission and Registrar of Incorporated Societies; information published to NCWNZ's website, http://www.ncwnz.org.nz; and information provided by NCWNZ in support of its application.

27 http://www.ncwnz.org.nz

28 "Report on the Results of the NCWNZ Maternity Services Survey 2001".

29 "Women's Access to Credit Project 2004".

30 "Women Experiencing Discrimination – 2012", and NGO reports to the CEDAW Monitoring Committee in 2007, 2002, 1998 and 1993.

days and presents educational seminars that advance education for participants.

26. Having reviewed the NCWNZ's publications and submissions in support of this website, we consider that the NCWNZ's educational activities meet the threshold requirements for 'advancement of education' articulated by the courts.[31] The NCWNZ's research publications are well-balanced and objective, and findings are supported by a robust methodology.

27. The NCWNZ's publications proceed from the premise that it is beneficial to advance the status of women, including by removing barriers to gender equality in New Zealand. For the reasons given below,[32] we consider that the promotion of the status of women is a charitable purpose within section 5(1) of the Act. The courts have held that education starts from a generally accepted premise regarding the public good does not in itself mean it promotes a point of view in a way that is not charitable.[33]

28. The NCWNZ does utilise its research to inform actions it takes to raise awareness about gender inequality in New Zealand and to promote the status of women in New Zealand. For example, NCWNZ has participated in campaigns for companies and private individuals to take steps to address gender inequality.[34] It has also compiled reports and made recommendations to a range of government actors.[35] We have considered whether the NCWNZ's activities show that it is now maintained for an unstated political purpose. For the reasons given below,[36] we are satisfied that the activities advance charitable purposes within the meaning of section 5(1) of the Act.

C.2.2 'Other matter beneficial to the community'

29. We consider that the NCWNZ has a purpose to promote the status of women in New Zealand that is beneficial to the community within the meaning of section 5(1) of the Act.

30. In *Greenpeace of New Zealand Incorporated,* the Court of Appeal stated, in reference to section 5(1) of the Act:[37]

> *[T]he retention of the fourth category of charitable purpose, namely "any other matter beneficial to the community", confirms that the decisions of this*

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31 See in particular *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011]; *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10 at [171]; *News to You Canada v Minister of National Revenue* [2011] FCA 192 at [17] and Canada Revenue Agency, *Research as a Charitable Activity* published at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/rsrch-eng.html> at [11], [17].

32 See section C.3 below.

33 *Southwood v Attorney-General* [2000] EWCA Civ 204 at [29]; see also *In re Bushnell (deceased)* [1975] 1 All ER 721 at 729; *Challenge Team v Revenue Canada* [2000] 2 CTC 352.

34 Facebook, "Cotton Off Our Kids", "Women and Work: No Barriers".

35 Including ICW General Assembly, UN CEDAW Committee, Government Administration Select Committee, Ministry of Justice, ACC, Ministry of Social Development.

36 See section C.3 below.

37 *Greenpeace, CA* at [43].

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.

31. The Court of Appeal went on to hold that a purpose to promote peace *through nuclear disarmament and the elimination of all weapons of mass destruction* is a valid charitable purpose, because this is a public good that is "self-evident as a matter of law",[38] which lies within the scope of the fourth head of charity.[39] In reaching its decision that the public good was "self-evident as a matter of law", the Court referred to New Zealand's international obligations as a signatory to the Nuclear Non-Proliferation Treaty; New Zealand's domestic law enacted in the *New Zealand Nuclear Free Zone Disarmament and Arms Control Act*; and the fact that successive New Zealand Governments have confirmed their intentions to support the Treaty and retain the legislation.[40]

32. We consider that the NCWNZ's purpose to promote the status of women and children is a charitable purpose within the fourth head of charity. The public good in promoting the status of women is "self-evident as a matter of law" by reference to: New Zealand's obligations as signatory to CEDAW; New Zealand legislation for gender equality, and freedom from discrimination on the basis of sex, marital status or family status;[41] government statements and actions to implement gender equality and advance the status of women and children.[42]

33. We further consider that the NCWNZ's purpose is beneficial to the community within the "spirit and intendment of the preamble", by analogy with established charitable purposes including promotion of moral or spiritual welfare or

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38 *Greenpeace, CA* at [76].

39 *Greenpeace, CA* at [81].

40 *Greenpeace, CA* at [77] - [80].

41 See for example, *Human Rights Act 1993,* sections 21 and 22; *New Zealand Bill of Rights Act 1990*, section 19; Equal Pay Act 1972.

42 In its submissions, NCWNZ points to actions such as: Government's agreement to the Platform for Action, Beijing Conference (1996); Ministry of Women's Affairs work to produce *The Full Picture*; Ministry of Social Development's actions in entering into contracts with the NCWNZ to provide services to promote the status of women and families in New Zealand.

improvement;[43] promotion of human rights, good citizenship and democracy; and promotion of compliance with domestic law.[44]

34. For these reasons, we consider that NCWNZ's purpose to promote the status of women and children is a purpose that is beneficial to the community within the meaning of section 5(1) of the Act.

C.3 Political purpose?

35. In New Zealand law, a political purpose is not charitable. An entity that has a political purpose will only qualify for registration if that purpose is ancillary to a valid charitable purpose of the entity. We have considered whether the NCWNZ is disqualified from registration on the grounds that it has a political purpose that is not ancillary to any valid charitable purpose. For the reasons below, we consider that the NCWNZ does not have a political purpose that disqualifies it from registration under the Act.

C.3.1 Law on political purposes and charity

36. The proposition that political purposes lie outside the scope of charity derives from English authorities,[45] and has been approved and applied in New Zealand by the Court of Appeal[46] and the High Court.[47]

37. The proposition is recognised in section 5(3) of the Act, which specifically provides that advocacy is an example of a non-charitable purpose, which will disqualify an entity from registration under the Act unless it is ancillary to the valid charitable purposes of the entity.[48]

38. The case law and legislation in New Zealand makes a distinction between "political" and "charitable" purposes that is similar to the distinction drawn in Canadian legislation and case law[49] and English case law; and dissimilar to

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43 *Re Scowcroft* [1898] 2 Ch 638 ("*Scowcroft*"); *Re Hood* [1931] 1 Ch 240 ("*Hood*") at 250, 252; *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522 ("*Knowles*") at 528; *Anti-Vivisection* at 49; *Molloy* at 696.

44 Compare: *Ahlpin v Seear* [1977] Ch Com Rep at 34; *Victorian Women Lawyers Association Inc v Commissioner of Taxation* [2008] FCA 983 (27 June 2008); Charities Commission of England and Wales, *The Promotion of Human Rights* (2005), at [7]-[12]; Canada Revenue Agency Guidance, *Upholding Human Rights and Charitable Registration* at [4.1]-[4.3]; Charities Commission administrative action, registering entities that promote the status of women, e.g. UN Women National Committee Aotearoa New Zealand (CC40606); Auckland Women Lawyers' Association Incorporated (CC43284); New Zealand Global Woman (CC39719); New Horizons for Women Trust (CC23206); Equal Employment Opportunities Trust (CC22630).

45 *Bowman* v *Secular Society Ltd* [1917] AC 406 (HL) ("*Bowman*") at 442; *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 (HL) ("*Anti-Vivisection*"); *McGovern* at 340; *Southwood v Attorney-General* [2000] EWCA Civ 204 ("*Southwood*") at [29].

46 *Molloy*, *Greenpeace, CA* esp at [63] (note leave to appeal granted by Supreme Court).

47 *Re Wilkinson (deceased)* [1941] NZLR 1065 (HC) ("*Wilkinson*"); *Re Collier (Deceased)* [1998] 1 NZLR 81 ("*Collier*") at 90; *Draco* at [58]-[60]; *Greenpeace, HC* at [44] – [59].

48 Compare *Greenpeace, CA* at [45].

49 See Income Tax Act RSC 1985 c 1 (5th Supp) ss 149.1(6.1) and 149.1(6.2); *Vancouver Society* at [169], and see also *Human Life International in Canada Inc v Minister of National Revenue* [1998] 3 FC 202 ("*Human Life*").

the position in Australian law.[50]

39. New Zealand law's position on political purposes and charity is conceptually tied to the public benefit requirement for charity, and as such operates across all established heads of charitable purpose.[51]

40. The courts have recognised three categories of political purposes excluded from the scope of charity.[52] These are first, purposes to further the interests of a particular political party or representative;[53] secondly, purposes to procure governmental actions, including through legislation,[54] and other regulatory, administrative and/or judicial actions;[55] *and* thirdly, purposes to promote a point of view, the public benefit of which is not self-evident as a matter of law.[56]

41. The *third* mentioned category of political purpose covers the dissemination of opinions that are not found to be for the advancement of education or religion, and which fail to be justified as charitable under the fourth head of charity because there is no established beneficial value.[57] The Court of Appeal describes the touchstone for the third category of political purpose as the promotion of a view, the public benefit of which is not "so self-evident as a matter of law" that the requisite public benefit is achieved.[58]

C.3.2 Application of law to NCWNZ

42. There is no suggestion that NCWNZ advances the interest of any particular political party or representative.

43. Turning to the third category of political purpose recognised in New Zealand law, the Board is satisfied that the NCWNZ does not have a purpose to promote a point of view that lies outside the scope of charity. NCWNZ does have a purpose to advance the status of women in New Zealand. However, for the reasons given above, the Board is satisfied that this purpose is charitable under the "fourth head" and within section 5(1) of the Act. The Board notes that the NCWNZ advocates to the public to promote the status of women, and participates in campaigns to influence private individuals to take

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50 See *Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539 ("*Aid/Watch*").

51 *Greenpeace, CA* at [63].

52 See *Collier* at 89-90. Slade J's influential non-exhaustive categorization in *McGovern* at 340 is similar, but expands on the second category and omits the third category.

53 *Collier* at 90, and see also *McGovern* at 337.

54 See e.g. *Bowman* at 441-442 (Lord Parker of Waddington); *Anti-Vivisection* at 49 – 51 (Lord Wright) 62-63 (Lord Simonds; Viscount Simon concurring), 76-77 (Lord Normand); and note the extension to purposes to maintain current legislation against calls for reform in *Molloy* at 695-698.

55 See e.g. *McGovern* at 339; *Anti-Vivisection* at 77; *Re Hopkinson* [1949] 1 All ER 346 at 352; *Wilkinson* at 1076; *Draco* at [54].

56 *Collier* at 90; *Molloy* at 697; *Greenpeace, CA* at [61], [72], [76]; *Draco* at [67]. Compare Canadian authorities recognising this category of political purpose: *Human Life* at [12]; *Action by Christians for Abolition of Torture v Canada* [2002] 225 DLR (4th) 99 ("*ACAT*") at [38]-[42] (obiter); *Human Life International in Canada Inc v Minister of National Revenue* [1998] 3 FC 202.

57 *Molloy* at 697; *Greenpeace, CA* at [61], [72], [76]. Compare *Human Life*.

58 *Molloy* at 697; *Greenpeace, CA* at [61].

actions to promote the status of women in New Zealand. The Board is satisfied that NCWNZ's advocacy to the private sector is a means to advance its charitable purpose and not indicative of an unstated political purpose.[59]

44. Turning to the *second* category of political purpose recognised in New Zealand law, the Board considers that NCWNZ does not have an independent purpose to procure government action to advance the status of women in New Zealand. The Board recognises that NCWNZ communicates with political actors at a number of levels. Having considered NCWNZ's activities and submissions, the Board considers that these communications with political actors are not indicative of an independent unstated purpose to procure government actions.

45. First, the Board recognises that NCWNZ's advances education by providing policy-oriented research and research into the implementation of international law obligations to promote the status of women. The Board recognises that this research is communicated to political actors at various levels, including in communications containing recommendations for government action. The Board is satisfied that the NCWNZ's communication of its educational research to political actors is within the scope of the advancement of education and is not indicative of a political purpose. Court decisions recognise that, where a charity has a valid research purpose and undertakes genuinely educational research, there is scope for the charity to advance that educational purpose by communicating outcomes and making recommendations to government and policy makers.[60] This is consistent with registration decisions under the Act.[61]

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59 Compare the approach taken by the Charities Commission for England and Wales in its administrative guidance on advocacy to corporations and individuals to take 'private' actions that advance a public interest within the scope of charity: see Charities Commission for England and Wales, *The Promotion of Human Rights* (2005) at [25]–[30]; Charities Commission for England and Wales, *Speaking Out: Guidance on Campaigning and Political Activity by Charities* (2008) at 17.

60 For example, in *McGovern v Attorney-General* [1982] Ch 321 at 353, the court held that certain trusts for research into the observance of human rights and dissemination of the results of such research would have been charitable if they stood alone, but that they failed because in context they were merely adjuncts to the political purposes declared in earlier provisions of the deed. Amnesty International has since been registered as a charity by the Charity Commission of England and Wales, and its educational purpose is not negated by its communication of research results to governmental actors. See to similar effect: *Re Koeppler Will Trusts* [1986] 1 Ch 436; *Southwood v Attorney-General* [2000] EWCA Civ 204. See also:

61 Compare for example the registration of entities which have a purpose to conduct research on matters that are subject to active policy and legislative review, and to communicate the recommendations based on that research to political actors and the general public, including Amnesty International Aotearoa New Zealand Incorporated (CC35331); Association of Non-Governmental Organisations of Aotearoa (CC45453). Policy-oriented research institutes, including: NZ Institute of Economic Research Incorporated (CC33555), which provides "quality economic analysis and research to help decision-makers in both the private and public sectors with strategic and policy advice"; Motu: Economic and Public Policy Research Trust (CC11191), which has a purpose to "promote well-informed and reasoned debate on public policy issues relevant to New Zealand decision-making ... by ... carrying out and facilitating empirical and theoretical research on public policy issues relevant to New Zealand"; New Zealand Social and Civic Policy Institute (CC36429), which has a purpose "to

46. Second, the NCWNZ makes submissions to parliamentary committees on a range of matters. The Board considers that the NCWNZ's activity is not indicative of an unstated political purpose, but is rather a means by which the NCWNZ advances its charitable purposes. The Board notes that, through its standing committees, NCWNZ is able to canvass its membership and make submissions in response to government calls for comment and discussion that represent the views of women. The information provided by NCWNZ makes clear that this work is representational in nature, i.e. NCWNZ circulates questions put out to public consultation by government and collates responses in a manner that is objective. In addition, the representational activities (through the standing committees) provide a framework for the active training that NCWNZ provides for women in various professional and life skills.

47. Third, the Board notes that it would be open to a charity with a purpose to promote the status of women within the framework of CEDAW, to provide technical advice to governments on the implementation of laws enacted to promote the status of women, and to make recommendations for the development of laws and policies consistent with New Zealand's obligations under CEDAW and domestic law.[62] The Charities Commission for England and Wales takes a similar approach,[63] and recognises that the following purposes are themselves capable of being charitable purposes in their own right: providing technical advice to government and others on human rights matters; contributing to the sound administration of human rights law; and commenting on proposed human rights legislation.[64]

48. The Board is satisfied that the NCWNZ's communications with political actors are primarily, if not exclusively, means to advance its charitable purposes and not indicative of an unstated political purpose.

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promote, carry out and disseminate the findings of research, discussion and policy development on matters of social and community concern within New Zealand".

62 *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [40] (assistance purpose of providing the Waitangi Tribunal with material leading to more informed recommendations directed to settlement of long-standing disputes between Maori and Crown, directed towards racial harmony in New Zealand for the general benefit of the community). See also, for e.g. registration of Howard League for Penal Reform in United Kingdom and New Zealand. See also: *Victorian Women Lawyers' Association Incorporated v Commissioner of Taxation* [2008] FCA 983 at [117], [122], [128] - [129] (recognizing as charitable a purpose to advance status of women in the legal profession including through law reform); and discussion in *Public Trustee v Attorney-General of NSW* (1997) 42 NSWLR 600 at 619-621 (recognizing as charitable purposes to promote the welfare of a group judicially and statutorily recognized as in need).

63 Charities Commission for England and Wales, *Speaking Out: Guidance on Campaigning and Political Activity by Charities* (2008) at 6, 16: A charity can campaign to "ensure that existing laws are observed", as for example where "a refugee charity ... calling for Government to enforce existing legislation that supports the rights of refugees" and "a disability charity calling for existing legislation to be adhered to in order to ensure that all children with special educational needs receive the support they are entitled to in order to access learning".

64 Charities Commission for England and Wales, *The Promotion of Human Rights* (2005) at [14] – [32] and [37].

49. Finally, the Board notes that charities may undertake some *political* activities *as a means to advance charitable purposes* without thereby adopting an independent non-charitable political purpose. Political activities can be seen as means to advance charitable purposes where they further the purposes of the charity to an extent justified by the resources committed, and the activities are not the dominant means by which the charity carries out its objects.[65] The Board considers that, to the extent NCWNZ's communications with political actors constitute "political" activities, they are means to advance NCWNZ's charitable purposes and do not indicate that NCWNZ is maintained for an independent unstated political purpose.

50. In summary, the Board is satisfied that the NCWNZ has valid charitable purposes, and that its activities advance those purposes and do not support the implication that NCWNZ is maintained for an independent unstated political purpose. Relevantly:

- NCWNZ engages in *campaigning activities* that advance charitable purposes, i.e. activities to promote charitable purposes to corporations and individuals;
- NCWNZ engages in *educational research* (and its communication of results of the research to public sector decision-makers does not constitute political action);
- NCWNZ *advances a charitable purpose under the fourth head* by making recommendations for the implementation of existing law enacted to advance the status of women, and for the development of law and policy consistently with existing legislation, legislative policy and New Zealand's obligations under CEDAW;
- NCWNZ *advances a charitable purpose under the fourth head* by preparing representational responses to questions put out for public consultation by parliamentary committees (this representational communication does not advocate for any predetermined view of NCWNZ and is itself a means to advance the charitable purpose of advancing the status of women);
- Where NCWNZ does engage in "political" activities (as distinct from campaigning and activities that advance education and promote a public benefit recognised in law), these activities are means by which NCWNZ carries out its charitable purposes and do not dominate the activities NCWNZ carries out to promote its charitable purposes.

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65 Compare Charities Commission for England and Wales, *The Promotion of Human Rights* (2005) at [33] – [37].

C.4 Effective registration date

51. The NCWNZ has requested that its registration be backdated to 19 August 2010.

52. Pursuant to section 20 of the Act, the Board may direct that an entity be given an effective registration date that is before the time at which the entity became registered as a charity. Section 20(2)(b) clearly states that an effective registration date must not be "earlier than the time that the chief executive received a properly completed application for registration of the entity as a charitable entity." The Board therefore directs that the effective registration date be the date of the NCWNZ's present application for registration, i.e. 10 September 2012.

D. Determination

53. The Board determines that the NCWNZ qualifies for registration as a charitable entity in terms of section 13(1)(a) of the Act, and accordingly approves the NCWNZ's 10 September 2012 application for registration.

54. Pursuant to section 20 of the Act, the Board directs that the effective registration date be the date of receipt of the current application for registration, 10 September 2012.

For the above reasons, the Board determines to register the National Council of Women of New Zealand Incorporated as a charitable entity, effective 10 September 2012.

Signed for and on behalf of the Board

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Roger Holmes Miller