

## Registration decision: Greenpeace of New Zealand Incorporated

### The facts

1. Greenpeace of New Zealand Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 5 July 1976.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 19 June 2008.
3. The Applicant's objects are set out in clause 2 of its constitution:

*The Objects of the Society are to:*

- (a) *Promote the philosophy that humanity is part of the planet and its interconnected web of life and whatever we do to the planet we do to ourselves.*
  - (b) *Promote the protection and preservation of nature and the environment, including the oceans, lakes, rivers and other waters, the land and the air and flora and fauna everywhere and including but not limited to the promotion of conservation, disarmament and peace.*
  - (c) *Identify, research and monitor issues affecting these objects, and develop and implement programmes to increase public awareness and understanding of these and related issues.*
  - (d) *Undertake, promote, organise and participate in seminars, research projects, conferences and other educational activities which deal with issues relating to the objects of the Society.*
  - (e) *Promote education on environmental issues by giving financial and other support to the Greenpeace New Zealand Charitable Trust.*
  - (f) *Co-operate with other organisations having similar or compatible objects and in particular to co-operate with Stichting Greenpeace Council by abiding by its determination in so far as it is lawful to do so.*
  - (g) *Promote the adoption of legislation, policies, rules, regulations and plans which further the objects of the Society and support the enforcement or implementation through political or judicial processes, as necessary.*
4. The Commission analysed the application for registration and on 21 January 2009, sent the Applicant a notice that may lead to decline on the basis that its winding up clause did not limit the distribution of surplus assets to charitable purposes. The notice also included a recommendation that the Applicant add clauses to its constitution preventing private pecuniary profit, and sought further information about how the Applicant promotes disarmament and peace, the nature of the programmes the Applicant undertakes under clause 2(c), and information about the "Greenpeace New Zealand Charitable Trust" and the "Stichting Greenpeace Council".

5. The Applicant responded to the notice on 24 September 2009, stating that it had added clauses to prevent private pecuniary profit and amended the winding up clause to read:

*If upon the winding up of the Society there remains after the payment of its debts and liabilities a surplus of assets, the same shall not be distributed to members of the society but shall be given or transferred to some other association or associations, institution or institutions that are charitable under the New Zealand law, have objects similar to the objects of this society and which shall prohibit the distribution of its or their income and property among its members. The identity of these associations shall be determined by resolution at the final Special General Meeting of the Society, or in default thereof, in accordance with the provisions of the Incorporated Societies Act 1908.*

6. The Applicant's objects were also renumbered, as follows:

*The Objects of the Society are to:*

- 2.1 Promote the philosophy that humanity is part of the planet and its interconnected web of life and whatever we do to the planet we do to ourselves.*
- 2.2 Promote the protection and preservation of nature and the environment, including the oceans, lakes, rivers and other waters, the land and the air and flora and fauna everywhere and including but not limited to the promotion of conservation, disarmament and peace.*
- 2.3 Identify, research and monitor issues affecting these objects, and develop and implement programmes to increase public awareness and understanding of these and related issues.*
- 2.4 Undertake, promote, organise and participate in seminars, research projects, conferences and other educational activities which deal with issues relating to the objects of the Society.*
- 2.5 Promote education on environmental issues by giving financial and other support to the Greenpeace New Zealand Charitable Trust.*
- 2.6 Co-operate with other organisations having similar or compatible objects and in particular to co-operate with Stichting Greenpeace Council by abiding by its determination in so far as it is lawful to do so.*
- 2.7 Promote the adoption of legislation, policies, rules, regulations and plans which further the objects of the Society and support the enforcement or implementation through political or judicial processes, as necessary.*

7. The Commission considers that the amendments are sufficient to meet the requirements regarding winding up and the prevention of private pecuniary profit. The Applicant also provided further information about its activities stating:

### Promotion of Disarmament and Peace

- *Greenpeace promotes disarmament and peace through public education and integrating peaceful change and peaceful protest into its activities.*
- *Greenpeace organisations worldwide have campaigned for an end to the testing, production and use of nuclear weapons and Greenpeace is committed to the elimination of all weapons of mass destruction including nuclear and biological.*
- *Greenpeace has actively campaigned against nuclear testing in the Pacific.*
- *Greenpeace personnel have attended international disarmament meetings under the auspices of the United Nations, have published papers, conducted research, installed public exhibitions and other materials promoting international disarmament and have engaged in public education activities.*
- *Greenpeace regularly talk at schools, universities and other public events on the nuclear history of the Pacific and the on going international effort to eliminate nuclear weapons, a commitment that the nuclear weapon states have made under the Nuclear Non Proliferation Treaty. Greenpeace has participated in government delegations attending these negotiations as the non government representative for the broader movement.*
- *Greenpeace collaborates with others on materials that inform and educate others about the history of New Zealand's own efforts to be, become and remain Nuclear Free. They regularly submit articles to the newspapers that present a perspective on nuclear disarmament and climate change as part of the new discourse on security that we believe contributes to a more informed public debate on these issues.*
- *Greenpeace runs non violence education workshops with the broader community. These describe the history and philosophy behind bearing witness and non-violent peaceful change from the time of Gandhi, through the US civil rights movement and New Zealand's own Parihaka history.*
- *Currently Greenpeace is participating in the world march for peace and non-violence by speaking at an ecumenical service on the history of nuclear disarmament in the Pacific and by participating in the march itself.*

### The nature of the programmes undertaken under clause 2(c)

- *Clause 2(c) has two parts:*
  - *Identify, research and monitor issues [affecting these objects]; and*
  - *Develop and implement programmes to increase public awareness and understanding of these and related issues*
- *With respect to (1): Individual employees and contractors – such as oceans campaigners, climate campaigners, and forest campaigners – (collectively called 'campaigners') have responsibilities to identify, research and monitor issues affecting their respective campaigns. That means keeping in touch with people working in the field in those areas, both in New Zealand and internationally, attending meetings, in New Zealand and overseas, reading the relevant media and relevant publications and attending training and skillshare meetings in New Zealand and overseas. It involves translating this material into public accessible information to contribute to the public's understanding of an issue. It often involves commissioning original research or critiques of research for affected communities to add to the body of knowledge in a particular area.*

- *Greenpeace has access to its own scientists and laboratory for independent research, and tools such as ships that also has enabled documentation of activities otherwise out of sight and mind of the public and government. The current work in the Pacific with the Greenpeace ship Esperanza is documenting the extent of pirate and illegal fishing and is being done in collaboration with a number of government fisheries ministries.*
- *Greenpeace has a large library of environmental film footage and photos and makes these available to documentary makers, journalists and educationalists.*
- *With respect to (2): individual campaigners as identified above, have the responsibility to develop and implement campaigns in their respective areas. These may include web based activities, sending emails to our supporters (57,000) providing information about an issue and what the latest developments are, writing blogs, articles for newsletters and op-ed pieces for newspapers. They may include meeting and writing to Members of Parliament, local officials and initiating programmes such as the 'sign on' programme. The campaigns include climate change, fisheries, forestry and toxic pollution.*

#### Information about the "Greenpeace New Zealand Education Trust"

- *The Greenpeace New Zealand Education Trust is a new entity which came into existence on 1<sup>st</sup> June 2008. The Trust has recently been registered with charitable status and the intention is for the Trust to continue to support education projects on conservation and education in NZ that its predecessor, the Greenpeace Charitable Trust supported.*
- *It will have a focus on educational activities, organizing and supporting projects, events and programmes to educate people about preserving the environment, conservation and sustainability. The Trust informs us that the kinds of activities it would engage in include producing and distributing educational resources and material for use such as in schools, tertiary institutions, Marae and other places of learning, organising public awareness campaigns on environmental, conservation and sustainability issues and working with and supporting teachers and students on projects designed and implemented by them on environmental, conservation and sustainability issues.*

#### Information about Stichting Greenpeace Council

- *Stichting Greenpeace Council is a non-profit Dutch foundation called a 'stichting', which is most analogous to an incorporated society in New Zealand.*
- *The Stichting Greenpeace Council forms the supervisory body for the broader Greenpeace International organisation, in a loose sense, which consists of national Greenpeace officers such as Greenpeace New Zealand, Inc. Greenpeace New Zealand, Inc, appoints a representative to the Council, which in turn elects a Board of Directors, which in turn appoints the International Executive Director responsible for the day to day management of the international Organisation. The Council discusses and harmonises international policy, so Greenpeace national offices have similar positions on matters such as whaling, fisheries policy and climate change, and facilitates the exchange of information and skills between national Greenpeace offices.*

8. The Commission considered the information provided and on 14 December 2009, sent the Applicant a second notice that may lead to decline on the basis that the "promotion of disarmament and peace" was not exclusively charitable; that political advocacy is a primary purpose of the Applicant and is not charitable, and that the Applicant appears to engage in illegal activities which do not provide a public benefit.

9. On the 1 February 2010, the Applicant responded to the notice submitting that:

- *The Charities Act 2005 is clearly what we must look to. The test is firstly: is the society established and maintained exclusively for charitable purposes (section 13(1)(b)). Section 5(3) makes it clear that a non-charitable purpose (for example, "advocacy") which is merely ancillary to a charitable purpose; does not prevent the society from qualifying for registration as a charitable entity.*
- *This is the test that the Commission should be applying – not a test drawn from common law before the Act based on "political purpose".*
- *Your statement that "a 'political purpose' includes any purpose directed at securing or opposing any change in the law or in the policy or decisions of central or local government, whether in New Zealand or another country" makes it appear that this is a statutory definition. It is not. Instead, the statute speaks specifically of "advocacy" as an ancillary purpose.*
- *We are also surprised that you have cited pre-2005 case law on the definition of "charitable purpose" instead of relying on the very broad wording of section 5(1): "any other matter beneficial to the community".*
- *The elimination of all weapons of mass destruction is clearly beneficial to the community.*
- *There are many ways of achieving these objects (the elimination of all weapons of mass destruction). Greenpeace famously sent many boats to support disarmament and an end to French nuclear testing at Moruroa, ... we wrote letters, marched the streets and protested. None of these activities were 'political' in the sense you are using, even if that was relevant.*
- *The promotion of disarmament and peace is clearly beneficial to the community.*
- *Trying to improve and strengthen government action in relation to climate change, actively opposing field trials of GE foods in New Zealand and the release of genetically modified organisms into the environment are themselves not "political". They include myriad activities, including litigation, public information campaigns, persuading supermarkets to stock environmentally sustainable goods, persuading and educating consumers to buy and eat environmentally sustainable foods, educating and empowering consumers to save electricity, switch to sustainable energy sources, and generally raising the awareness of these issues.*
- *Any other non-charitable aspect is merely ancillary to the main activities of Greenpeace.*
- *We strongly submit that any advocacy activities are indeed ancillary to our main purposes.*

## **The issue**

10. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case the key issue for consideration is whether the Applicant is established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular:
  - (a) whether all of the Applicant's purposes are charitable?
  - (b) if any of the Applicant's purposes are non-charitable, whether those purposes are ancillary to a charitable purpose?

## **The law on charitable purposes**

### Charities Act 2005

11. Under section 13(1)(b)(i) of the Act, a society or institution must be established and maintained exclusively for charitable purposes.
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, 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.<sup>1</sup> This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
13. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
14. Section 5(4) of the Act states that a non-charitable purpose is ancillary to a charitable purpose of the trust, society or institution 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. Also, in considering a registration application, section 18(3)(a) of the Act requires the Commission to have regard to the activities of the entity at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

### Political purposes

16. Political purposes have been defined as purposes directed at furthering the interests of any political party; or securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in New Zealand or abroad.<sup>2</sup>

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<sup>1</sup> See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.  
<sup>2</sup> *Re Wilkinson* [1941] NZLR 1065, 1077.

17. The rule that political purposes cannot be charitable was set out by Lord Parker of Waddington in *Bowman v Secular Society*.<sup>3</sup>

*" ... a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift."*

18. In New Zealand, the *Bowman* case has been applied by the Supreme Court in *Re Wilkinson (deceased)*,<sup>4</sup> when deciding the charitable status of the League of Nations Union of New Zealand, and in *Knowles v Commissioner of Stamp Duties*,<sup>5</sup> when deciding whether a temperance organisation was charitable.

19. The New Zealand Court of Appeal has also applied *Bowman* in *Molloy v Commissioner of Inland Revenue*<sup>6</sup> when considering whether a gift to the New Zealand Society for the Protection of the Unborn Child was tax deductible. In that case, Somers J held that a political purpose included both advocating and opposing any change in the law. He also noted that to preclude recognition as a valid charity the political object must be more than an ancillary purpose, it must be the main or a main object.

20. In the United Kingdom, the *Bowman* case has been applied in *National Anti-Vivisection Society v Inland Revenue Commissioners*<sup>7</sup> and in *McGovern v Attorney-General*<sup>8</sup>, when the Court was considering the purposes of a trust established by Amnesty International. In the latter case, Slade J summarised his conclusions in relation to trusts for political purposes as:

(1) *Even if it otherwise appears to fall within the spirit and intendment of the preamble to the Statute of Elizabeth, a trust for political purposes falling within the spirit of Lord Parker's pronouncement in Bowman's case can never be regarded as being for the public benefit in the manner in which the law regards as charitable.*

(2) *Trusts for political purposes falling within the spirit of this pronouncement include, inter alia, trusts of which a direct and principal purpose is either:*

- (i) *to further the interests of a particular political party; or*
- (ii) *to procure changes in the laws of this country; or*
- (iii) *to procure changes in the laws of a foreign country; or*
- (iv) *to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or*

<sup>3</sup> [1917] AC 406.

<sup>4</sup> [1941] NZLR 1065.

<sup>5</sup> [1945] NZLR 522.

<sup>6</sup> [1981] 1 NZLR 688.

<sup>7</sup> [1948] AC 31.

<sup>8</sup> [1982] 1 Ch 321.

(v) to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country."<sup>9</sup>

21. Two reasons for the principle that the Court will not regard as charitable a trust which has a main object of procuring an alteration of the law were cited by Slade J:

"... first, the court will ordinarily have no sufficient means of judging as a matter of evidence whether the proposed change will or will not be for the public benefit. Secondly, even if the evidence suffices to enable it to form a prima facie opinion that a change in the law is desirable, it must still decide the case on the principle that the law is right as it stands, since to do otherwise would usurp the functions of the legislature."<sup>10</sup>

22. Slade J also considered that "for a court to uphold a gift directed to changing the law of a foreign country could prejudice relations with that foreign country." This would mean that the purpose was contrary to public policy and therefore not in the public interest.

23. The judge noted that the mere fact that political means were employed in furthering the non-political purposes of a trust would not necessarily render it non-charitable. "If all the main objects of the trust are exclusively charitable, the mere fact that the trustees may have incidental powers to employ political means for their furtherance will not deprive them of their charitable status."<sup>11</sup>

24. Since *McGovern* was decided, there has been some divergence of views between the leading authorities as to what will constitute a political purpose. According to *The Law and Practice Relating to Charities*<sup>12</sup> a principle purpose of educating the public in one particular set of political principles or of seeking to sway public opinion on controversial social issues will be a political purpose and therefore will not be able to be considered charitable.

25. Alternatively, *Tudor on Charities*<sup>13</sup> suggests that a strong case can be made that advocating for a change in the law and encouraging debate is analogous with educating the public in forms of government and encouraging political awareness. It could therefore be charitable as long as the public benefit test is still satisfied. The author suggests that a neutral stance could be taken in relation to political purposes in the same way that it is taken between religions.

26. The author of *Tudor* notes that more recent Commonwealth decisions do not appear to have upheld the principles cited in *McGovern* with absolute certainty. For example, when considering a trust to remove racial discrimination and advance the interests of Aborigines and Torres Strait Islanders, the Supreme Court of Australia in *Public Trustee v Attorney-*

<sup>9</sup> [1982] 1 Ch 321, 340.

<sup>10</sup> Ibid pp 336-7.

<sup>11</sup> Ibid p 343.

<sup>12</sup> 1999, 3<sup>rd</sup> edition, Butterworths, London, Dublin & Edinburgh, p 189.

<sup>13</sup> 2003, 9<sup>th</sup> edition, Sweet & Maxwell, London, p 68.

*General of New South Wales*<sup>14</sup> considered that a purpose directed to changing the law in a direction that the law was already going, particularly if reinforced by treaty obligations, should be charitable.

27. In that case, Santow J noted:

*The cases on charities also involve some confusion between means and ends when it comes to their persuasive activities. There is a range of activity from direct lobbying of the government, to education of the public on particular issues, in the interests of contributing to a climate conducive to political change. The line between an object directed at legitimate educative activity compared to illegitimate political agitation is a blurred one, involving at the margin matters of tone and style. ...*

*Persuasion directed to political change is part and parcel of a democratic society in which ideas and agendas compete for attention and allegiance. Much will depend on the circumstances including whether an object to promote political change is so pervasive and predominant as to preclude its severance from other charitable objects or subordinate them to a political end. It is also possible that **activities** directed at political change may demonstrate an effective abandonment of indubitably charitable objects.<sup>15</sup>*

28. In New Zealand in *Re Collier (deceased)*<sup>16</sup> Hammond J upheld the principle that a trust with purposes of changing the law was not charitable, but also considered that a court could recognise an issue as worthy of debate even though the outcome of the debate could lead to a change in the law.
29. In coming to this conclusion, Hammond J criticised other decisions holding that political purposes were not charitable, especially in light of section 13 (freedom of thought, conscience, and religion) and section 14 (freedom of expression) of the *New Zealand Bill of Rights Act 1990*. Nevertheless, he wrote:

*I have considerable sympathy for that viewpoint which holds that a Court does not have to enter into the debate at all, hence the inability of the Court to resolve the merits is irrelevant. ... In this Court at least, there is no warrant to change these well established principles – which rest on decisions of the highest authority – even though admirable objectives too often fall foul of them.<sup>17</sup>*

30. In *Victorian Women Lawyers' Association Inc v Commissioner of Taxation*, the court made the following obiter comments about political purposes:

*The High Court's formulation suggests that a trust may survive in Australia as charitable where the object is to introduce new law consistent with the way the law is tending. In his paper in the Australian Bar Review, Santow J also observed that the trust which has an undoubtedly charitable object does not lose its charitable status simply because it also has an object of changing the law or reversing policy (at 248): "the question is always*

<sup>14</sup> (1997) 42 NSWLR 600.

<sup>15</sup> (1997) 42 NSWLR 600, 621.

<sup>16</sup> [1998] 1 NZLR 81.

<sup>17</sup> *Re Collier (deceased)* [1998] 1 NZLR 81, 90.

*whether that political object precludes the trust satisfying the public benefit requirements".*<sup>18</sup>

31. Finally, the Federal Court of Australia has recently held that an entity whose purposes and activities were aimed at influencing government to ensure foreign aid was delivered in a particular manner, did not have exclusively charitable purposes because of its political purposes.<sup>19</sup> In reaching its decision the court stated:

*Aid/Watch's attempt to persuade the government (however indirectly) to its point of view necessarily involves criticism of, and an attempt to bring about change in, government activities and, in some cases, government policy. There can be little doubt that this is political activity and that behind this activity is a political purpose. Moreover the activity is Aid/Watch's main activity and the political purpose is its main purpose ...*

*We accept that, at one level Aid/Watch's efforts, are not in conflict with government policy. There was no suggestion that government is not concerned to deliver aid efficiently or with due regard to environmental concerns. Aid/Watch's concern however, is that the delivery of aid should conform to its view of the best way to achieve these objects. It does not take into account that government and its agencies inevitably have to make choices in determining where, how and how much aid is to be delivered. Undoubtedly some of these choices will involve factors with which Aid/Watch is concerned. Others, however, will involve domestic and foreign political considerations that do not concern Aid/Watch. Some of these factors may have very little to do with foreign aid or the manner of its delivery.*<sup>20</sup>

### Illegal Purposes

32. An entity that has a primary purpose which is illegal or contrary to public policy cannot be charitable. This is because an illegal purpose cannot be for the benefit of the public. Thus, in *National Anti-Vivisection v IRC*, Lord Wright stated:

*It cannot be for the public benefit to favour trusts for objects contrary to the law.*<sup>21</sup>

33. Similarly, in *Re Collier*, a bequest for voluntary euthanasia failed as "euthanasia is not lawful in New Zealand and there cannot be a charitable bequest to promote an illegal purpose".<sup>22</sup>

### **Charities Commission's analysis**

34. The Commission considers that promoting the "protection and preservation of nature and the environment including the oceans, lakes, rivers and other waters, the land and the air and flora and fauna" as outlined in clause 2.2 is

<sup>18</sup> [2008] FCA 983, para 128 (Federal Court of Australia).

<sup>19</sup> *Commissioner of Taxation v Aid/Watch Incorporated* [2009] FCAFC 128.

<sup>20</sup> *Commissioner of Taxation v Aid/Watch Incorporated* [2009] FCAFC 128, paras 37 and 41.

<sup>21</sup> [1948] AC 31, 42.

<sup>22</sup> [1998] 1 NZLR 81, 91.

charitable under the fourth head "any other matter beneficial to the community" as it relates to the protection of the environment.<sup>23</sup> The Commission considers that the purposes outlined in clause 2.3, 2.4 and 2.5 are charitable under the advancement of education. Clause 2.1 is aspirational and clause 2.6 is ancillary.

35. The purpose outlined in clause 2.2 so far as it relates to promoting the protection and preservation of nature and the environment by disarmament and peace does not show an intention to relieve poverty, advance education or advance religion. Accordingly, this purpose has been analysed under "any other matter beneficial to the community". In addition, the Commission has considered whether clause 2.7 is charitable and whether this purpose is ancillary to the Applicant's other purposes.

Clause 2.2 "promotion of disarmament and peace"

36. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).<sup>24</sup>

37. The purposes set out in the Statute of Elizabeth are as follows:

- 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.<sup>25</sup>

38. The promotion of disarmament and peace has been the subject of a number of Court decisions. In *Re Koepler Will Trusts*, the Court stated:

*I was also referred to In Re Harwood [1936] Ch 285 in which it was accepted, apparently without argument to the contrary, that gifts to peace*

<sup>23</sup> See *Re Centrepoint Community Growth Trust* [2000] 2 NZLR 325.

<sup>24</sup> *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.

<sup>25</sup> *Charitable Uses Act 1601* 43 *Elizabeth I c. 4*.

*societies were charitable gifts. The purposes with which I am concerned are differently worded and in any event seems to me at least strongly arguable that the purposes of a peace society are political and not charitable.*<sup>26</sup>

39. In *Re Collier (deceased)*<sup>27</sup>, the Court held that a gift for the promotion of world peace was not charitable as it was a political purpose.
40. However, in *Re Collier (deceased)*, the bequest for the promotion of world peace had to be construed in light of the telegram that was considered by the court to be an invitation "to give soldiers voices" and to tell them that they are empowered to exercise them. The High Court held that:

*That being the construction, in my view this charitable bequest fails; the objective is overtly political. To the extent that soldiers are to be encouraged to "down arms" it also pursues an unlawful end. The present state of military law does not allow them to adopt such a course, save on appropriate orders.*<sup>28</sup>

41. Therefore, it was not the bequest for the promotion of world peace itself that was held to be political, but rather that purpose viewed in light of the testatrix's message "that it is soldiers who are the persons who can 'stop the fighting'".
42. Accordingly, the Commission considers that if the promotion of disarmament and peace is done in a way that is considered political, for example, by requiring a change of law or government policy in New Zealand or abroad, it will not be charitable.
43. However, the promotion of peace may be considered to be charitable if it is undertaken in a purely charitable manner, for example, through the advancement of education. The English Court of Appeal in *Southwood v AB* endorsed the finding at first instance that there is:

*Nothing controversial in the proposition that a purpose may be educational even though it starts from the premise that peace is preferable to war, and puts consequent emphasis on peaceful, rather than military techniques for resolving international disputes; and even though one purpose of the education is to "create a public sentiment" in favour of peace. The important distinction from the "political" cases [In re Hopkinson and in Re Bushnell] mentioned above, is that the merits or otherwise of the Labour Party's views on education, or (in the early 1940s) of a state health service, were matters of political controversy. The desirability of peace as a general objective is not.*<sup>29</sup>

<sup>26</sup> [1984] 1 Ch 243 at 257. The Court of Appeal in *Re Koepler Will Trusts* [1986] Ch 423 reversed the decision that the Wilton Park process was not charitable holding it to be charitable under the advancement of education. However, the Court of Appeal did not need to decide the peace issue.

<sup>27</sup> *Re Collier (deceased)* [1998] 1 NZLR 81.

<sup>28</sup> *Re Collier (deceased)* [1998] 1 NZLR 81, 91.

<sup>29</sup> [2000] WTLR 1199 at para 27.

44. Chadwick LJ then went on to conclude that:

*There is no objection – on public benefit grounds – to an educational programme which begins from the premise that peace is generally preferable to war. For my part, I would find it difficult to believe that any court would refuse to accept, as a general proposition, that it promotes public benefit for the public to be educated to an acceptance of that premise. That does not lead to the conclusion that the promotion of pacifism is necessarily charitable. The premise that peace is generally preferable to war is not to be equated with the premise that peace at any price is always preferable to any war. The latter plainly is controversial. But that is not this case. I would have no difficulty in accepting the proposition that it promotes public benefit for the public to be educated in the differing means of securing a state of peace and avoiding a state of war. The difficulty comes at the next stage. **There are differing views as to how best to secure peace and avoid war. To give two obvious examples: on the one hand it can be contended that war is best avoided by “bargaining through strength”; on the other hand it can be argued, with equal passion, that peace is best secured by disarmament – if necessary, by unilateral disarmament.** The court is in no position to determine that promotion of the one view rather than the other is for the public benefit. Not only does the court have no material on which to make that choice; to attempt to do so would be to usurp the role of government. So the court cannot recognise as charitable a trust to educate the public to an acceptance that peace is best secured by “demilitarisation” in the sense in which that concept is used in the Prodem background paper and briefing documents. Nor, conversely, could the court recognise as charitable a trust to educate the public to an acceptance that war is best avoided by collective security through the membership of a military alliance – say, NATO.<sup>30</sup> [Emphasis added]*

45. Moreover, the Courts have accepted that entities established for the promotion of peace are charitable.<sup>31</sup> Thus, in *Parkhurst v Burill*, the World Peace Foundation was held to be charitable by the Supreme Judicial Court of Massachusetts. The reason was stated as:

*Efforts were not directed immediately to the change of existing laws, constitutions or governments. The general diffusion of intelligence upon the subjects taught well might result ultimately in a modification of governmental policies [...] A conscientious following of the precepts by all people would result in the most enlightened government and wise and just laws perhaps deferring in substantial part from those now prevailing, yet gifts to promote these ends would not come under the prohibition of the rule against gifts to change existing laws.<sup>32</sup>*

46. In the *Estate of Cole (deceased)*<sup>33</sup> the court said that a disposition could be validly construed as for educational purposes notwithstanding that, as a result of the educational programme, the law may be changed.

<sup>30</sup> *Southwood v AB* [2000] WTLR 1199 at para 29.

<sup>31</sup> See also *Re Harwood* (1936) Ch 285.

<sup>32</sup> (1917) 177 NE 39, 40-41.

<sup>33</sup> 1980 25 SASR 489.

47. In light of the above, the Commission has assessed the way in which the Applicant promotes "disarmament and peace". The Applicant has submitted that it campaigns for an end to the testing, production and use of nuclear weapons and is committed to the elimination of all weapons of mass destruction including nuclear and biological. In addition, the Applicant has submitted that there are many ways of achieving disarmament and peace that are not political in nature, including sending boats to support disarmament and an end to French nuclear testing at Moruroa, writing letters, marching in the street and protesting.

48. The Applicant's website states:

*Greenpeace was born out of the desire to create a green and peaceful world. As an organisation based on principles of peace and non-violence, we strongly believe that violence cannot resolve conflict. Greenpeace is fundamentally opposed to war.*

*Since our founding in 1971 we have campaigned against nuclear weapons and we are committed to the elimination of all weapons of mass destruction (including nuclear and biological).*

*We believe that war will not eliminate these threats. We are actively campaigning for international disarmament.*

*We believe greater peace, greater security, greater safety is possible. Reaching out across national boundaries Greenpeace is working with citizens and political leaders around the world to make this happen.*

*We champion non-violence as a force for positive change in the world and promote environmentally responsible and socially just development.*

*We advocate policies that ensure all the world's people have access to the basic securities of life so that the injustices that lead to conflict cannot take hold.*

*We believe we can create a green and peaceful world.<sup>34</sup>*

49. The Commission acknowledges that 187 countries have signed up to the Nuclear Non-Proliferation Treaty whose objective is to prevent the spread of nuclear weapons and weapons technology, to promote co-operation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament<sup>35</sup>. However, the Commission considers that in order for the Applicant to achieve its purpose of international "disarmament" all countries that currently have nuclear weapons or nuclear weapon programmes would have to change their laws or policies. This would include those countries who have signed up to the Nuclear Non-Proliferation Treaty<sup>36</sup> and those that have not. Accordingly,

<sup>34</sup> <http://www.greenpeace.org/new-zealand/campaigns/peace>

<sup>35</sup> <http://www.un.org/Depts/dda/WMD/treaty/>

<sup>36</sup> The Commission acknowledges that those countries who have signed up to the Nuclear Non-Proliferation Treaty have undertaken an obligation to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament and on a treaty on general and complete disarmament under strict and effective international control". However, it appears that while this obligation imposes an obligation to "negotiate in good faith" it does not impose a requirement that the nuclear states disarm themselves of nuclear weapons.

the Commission considers that the promotion of "disarmament" as outlined in clause 2.2 is a political purpose and therefore is not charitable.

50. In addition, it appears from the information provided on the Applicant's website that the Applicant is not promoting peace solely in an educational manner. Accordingly, the Commission concludes that the promotion of peace is also a political purpose and therefore is not charitable.

#### Clause 2.7

51. Clause 2.7 of the Applicant's constitution states:

*Promote the adoption of legislation, policies, rules, regulations and plans which further the objects of the Society and support the enforcement or implementation through political or judicial processes as necessary.*

52. The Commission considers that this purpose allows for political activities and therefore is not exclusively charitable.
53. The Commission has considered whether this purpose can be considered to be ancillary to the Applicant's other purposes. The Commission notes that the words "which further the objects of the Society" may indicate that this purpose is ancillary to the Applicant's other purposes. In addition, the Commission has considered the Applicant's submission "that any advocacy activities are indeed ancillary to our main purposes".
54. However, the Commission does not consider this to be conclusive. Section 18 of the Act requires the Commission to look at the activities of the entity at the time at which the application was made and the entity's proposed activities.
55. Accordingly, the Commission has looked at the Applicant's activities in order to assess whether its focus on political activity is so great that it has become an independent primary purpose of the Applicant.
56. The Applicant has stated that in order to further its campaigns or programmes it:
- *undertakes web based activities*
  - *sends emails to supporters*
  - *provides information about an issue and what the latest developments are*
  - *writes blogs, articles for newsletters and op-ed pieces for newspapers*
  - *meets and writes to members of Parliament and local officials, and*
  - *initiates programmes such as the 'sign-on' programme wherein well known and respected New Zealanders sign up to support what the climate scientists say we need.*
57. The Applicant's website includes information on different types of action that can be taken. For example, its website gives information on taking action to stop climate change. This includes information about the film "An

Inconvenient Truth", "Supporting Wind Power", being "Energy Efficient", "Getting the Message Out There" and "Writing to, Phone or Visiting your Local Member of Parliament". Information under this latter heading states:

***Write to, phone or visit your local Member of Parliament***

- *Ask them what they are doing to address climate change.*
- *Call on them to push for the energy strategy to deliver 100% renewable energy in New Zealand and stop new coal powered plants.*
- *Urge them to oppose new fossil fuel power plants and protect the environment from global warming.*
- *Encourage them to meet or better New Zealand's Kyoto obligations.*

*A personal letter shows that this issue is of serious concern to you, and letters do have an impact on politicians. Post your letter to: Freepost, Parliament Buildings, Wellington.*

*Here's some useful tips for when you communicate with politicians*<sup>37</sup>

58. In addition, the entity's website states.<sup>38</sup>

*Greenpeace is synonymous with action. We do not just make comment on environmental wrongs, we take action and find real solutions to protect the environment.*

*Greenpeace is best known for taking non-violent direct actions that confront environmental problems directly and peacefully at their source. But non-violent direct action is not the only method we use to protect our environment.*

*We bear witness to environmental wrongs, we lobby governments and companies to implement change, we use science and technology to promote solutions that are good for the environment, and we communicate with the world to stimulate people, like you, to also take action for our shared environment.*

***Non-violent direct action***

*Non-violent direct action is taking action physically, in person, to stop environmental destruction at its source.*

*Non-violent direct action is at the core of Greenpeace's values and work. Essentially this enshrines the idea that wrong doing, both environmental destruction and the abuse of power which causes it, must be confronted.*

*This leads Greenpeace to go to the place of environmental destruction and has led to the tradition of non-violent actions that confront both problems and the problem-makers. Non-violent direct action rather than any political ideology, is core to our identity and campaigning style.*

*Non-violent direct action (NVDA) is used as a last resort when lobbying or negotiations with decision makers fails, and when government and industry do not hear the calls to stop harming our environment. NVDA raises awareness, creates urgency and applies pressure for change.*

<sup>37</sup>

<http://www.greenpeace.org/new-zealand/campaigns/climate-change/action>

<sup>38</sup>

<http://www.greenpeace.org/new-zealand/about/taking-action>

*When undertaking a non-violent direct action our committed staff and volunteers are trained in safety procedures, and we take full responsibility for our actions and the consequences.*

*Greenpeace did not invent NVDA. Earlier NVDA examples include the mass civil disobedience in India lead by Mahatma Gandhi, the sit-ins of the US civil rights movement and the passive resistance lead by Maori Chiefs Te Whiti o Rongomai and Tohu Kakahi at Parihaka (Taranaki, NZ) against the government stealing their land.*

#### **Bearing witness**

*Bearing witness was the first act of the founding members of Greenpeace in 1971, when they attempted to sail to the site of nuclear testing in Alaska.*

*Bearing witness is a Quaker tradition of silent, non-violent protest. Being physically present at the scene of an environmental crime exposes and confronts those responsible. It raises awareness and brings public opinion to bear on decision makers.*

#### **Communicating messages to the world**

*Greenpeace has always sought to communicate our most urgent message – the environment needs action.*

*Raising public awareness is crucial to making change. We actively use our magazine, websites, email, the media, and talk face-to-face on the streets or in official presentations to inform the public, industry and governments about environmental issues and events – so everyone can take action for our environment!*

*Greenpeace's information is widely respected and provides the basis on which many audiences make up their minds and make decisions that affect the environment.*

#### **Lobbying governments and companies**

*Greenpeace communicates with all levels of local, national and international governments and representative bodies, such as the UN, to ensure that representatives and party's live up to their promises and responsibilities.*

*Greenpeace is accredited with more than 26 international treaties and conventions of the United Nations and other international bodies on issues including toxic trade, ozone depletion, climate change, biodiversity, endangered species, and the Earth Summit.*

*We also pressure and persuade companies and industries to take a best practice approach and adopt truly sustainable measures, and we propose solutions. For example, having alerted the world to the connection between the use of chlorine-based chemicals and the destruction of the ozone layer, Greenpeace took the lead in developing an ozone-safe refrigerator.*

#### **Allies and communities**

*Sometimes Greenpeace forms partnerships, alliances and coalitions with other Non Governmental Organization's (NGO's) and with communities that share a common goal. At these times we use our respective strengths co-operatively to campaign for change.*

### **Scientific research**

*Greenpeace, together with international experts conducts scientific, economic, social and political research into the causes and effects of environmental problems as well as to what the solutions could be. This research underpins our campaigning.*

*Greenpeace International supports a science laboratory at Exeter University where a team of scientists provide reports, analysis and scientific responses, and develop solutions.*

59. In light of the above, the Commission considers that the Applicant's focus on political advocacy is so great that the political activities outlined in clause 2.7 are an independent purpose of the Applicant, which is non-charitable.
60. In the alternative, even if the political activities outlined in clause 2.7 are considered ancillary to the Applicant's charitable purposes, the Commission does not consider that this clause would be exclusively charitable. This is because, in order to meet registration requirements, a non-charitable purpose must be ancillary to a charitable purpose. In so far as the activities referred to in clause 2.7 relate to furthering the promotion of disarmament and peace in clause 2.2, they cannot be said to be ancillary to a charitable purpose.

### **Illegal activities**

61. The information above sourced from the Applicant's website refers to non-violent direct action being at the core of Greenpeace's values and work and defines non-violent direct action as "taking action physically, in person, to stop environmental destruction at its source".

62. The Applicant's website states:

*This leads Greenpeace to go to the place of environmental destruction and has led to the tradition of non-violent actions that confront both problems and the problem-makers. Non-violent direct action rather than any political ideology, is core to our identity and campaigning style.*

63. Examples of non-violent direct action taken by the Applicant's members include:

- Protesting at a coal mine near Gore against Fonterra's increased use of coal. During this protest 4 Greenpeace activists were arrested<sup>39</sup>.
- Protesting the importation of palm kernel for use as stock feed because of its role in the destruction of rainforests. During one protest 14 Greenpeace activists were arrested and charged with illegally boarding

<sup>39</sup> <http://www.stuff.co.nz/southland-times/news/3070051/Greenpeace-protestors-at-Gore-mine>  
(17/11/2009)

a vessel<sup>40</sup>. In another protest, activists were arrested for spray painting "Fonterra climate crime" on the side of a berthed ship.<sup>41</sup>

- Using an ocean mascot "Sad Fish" to raise awareness about the lack of sustainable seafood in our supermarkets.<sup>42</sup>
- Planting trees on an area of land that had been cleared for dairy farming in order to draw attention to the large amounts of forestry land in the Tahorakuri Forest being converted to dairy farming.<sup>43</sup>

64. The Commission acknowledges that illegal activities are not a stated purpose of the Applicant and that not all of the Applicant's non-violent direct action activities are illegal. However, it is clear from the information above that non-violent direct action is central to the Applicant's work and that non-violent direct action may involve illegal activities such as trespassing. According to the case law cited above, the Commission cannot consider that illegal activities will provide a public benefit.

#### Applicant's Submissions

65. The Applicant has submitted that the Commission must look at the requirements of the Act and not at the common law before the Act came into force. In this regard, the Applicant has submitted that the Commission should consider the broad wording of section 5(1) of the Act "any other matter beneficial to the community".

66. The Commission considers that case law decisions on charitable purposes decided before the Act came into force are relevant to the determination of whether an entity meets the requirements of the Act. In *Inland Revenue Commissioners v Pemsel*<sup>44</sup>, Lord MacNaughten analysed the charitable purposes as stated in the preamble to the Charitable Uses Act 1601 and classified them into four categories as follows:

- (i) the relief of poverty
- (ii) the advancement of education
- (iii) the advancement of religion
- (iv) other purposes beneficial to the community

67. The definition of charitable purposes as outlined in section 5(1) of the Act is a reformulation of the classification of charitable purposes from *Inland Revenue Commissioners v Pemsel*<sup>45</sup> and does not broaden the common law definition of charitable purpose.

<sup>40</sup> <http://www.stuff.co.nz/environment/2869838/14-Greenpeace-protesters-removed-after-boarding-ship> (16/09/2009)

<sup>43</sup> <http://www.stuff.co.nz/national/2952589/Greenpeace-activists-arrested-over-port-protest> (11/10/2009)

<sup>44</sup> <http://www.stuff.co.nz/taranaki-daily-news/news/3008703/Greenpeace-champions-fish-sustainability> (29/10/2009)

<sup>43</sup> <http://www.stuff.co.nz/dominion-post/archive/national-news/354027> (08/04/2008)

<sup>44</sup> [1891] AC 531 (PC).

<sup>45</sup> [1891] AC 531 (PC).

68. In this regard, we note that in *Travis Trust v Charities Commission*, the only case interpreting the *Charities Act 2005*, Williams J wrote:

*Section 5 includes a number of additions and amendments to that broad definition but none of them are relevant to this case. The definition rather unhelpfully repeats the four heads of charity contained in the celebrated House of Lords decision in Commissioners for Special Purposes of the Income Tax v Pemsel.<sup>46</sup> They in turn are extracted, it is said, from the preamble to the Statute of Charitable Uses 1601<sup>47</sup> – generally referred to these days as the Statute of Elizabeth.<sup>48</sup>*

69. In the *Travis Trust* case, Williams J noted that previous case law decisions should be considered when determining whether a purpose falls under “any other matter beneficial to the community”. Williams J stated:

*From this [Pemsel decision] his Lordship extracted the four heads of charity now codified in s 5(1) with the last and most problematic of them being “other purposes beneficial to the community, not falling under any of the preceding heads”.<sup>49</sup> But, as Lord Bramwell said in the same case “certainly every benevolent purpose is not charitable”.<sup>50</sup> So in a deft circumlocution of legal logic, we are required in considering what is beneficial to the community under the last of the Pemsel heads to look back to the “spirit and intendment” of the preamble to the Statute of Elizabeth to assist in dividing between those purposes that are both beneficial and charitable, and those that are beneficial but not charitable. **To make the division, regard must be had to the particular words of the preamble and, it has now long been held, any cases in which purposes have been found to be within the spirit and intendment of the preamble by analogy.**<sup>51</sup> [Emphasis added]*

70. The Applicant has also submitted that the Act speaks specifically of “advocacy” as an ancillary purpose. Section 5(3) of the Act states:

*To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.*

71. This section does not refer to advocacy as being only an ancillary purpose. Rather it refers to advocacy as being an example of a non-charitable purpose that may be “merely ancillary” to a charitable purpose. In order to determine whether a non-charitable purpose such as advocacy is ancillary to a charitable purpose in any given case, the requirements of section 5(4) of the Act must be considered. Section 5(4) of the Act states:

<sup>46</sup> [1891] AC 531.  
<sup>47</sup> 43 Elizabeth I c.4.  
<sup>48</sup> CIV-2008-485-1689, 3 December 2009 at para 18.  
<sup>49</sup> [1891] AC 531, 581.  
<sup>50</sup> Ibid p 583.  
<sup>51</sup> *Travis Trust v Charities Commission* CIV-2008-485-1689, 3 December 2009 at para 20.

*For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution 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.*

72. As outlined above, the Commission considers that "advocacy" is an independent purpose of the Applicant and therefore it does not meet the requirements of section 5(4) of the Act to be an ancillary purpose.

### Conclusion

73. The Commission concludes that clause 2.2 in so far as it relates to the "promotion of disarmament and peace" is a political purpose that is not charitable. The Commission also concludes that the Applicant's political activities as outlined in clause 2.7 are an independent purpose of the Applicant that is not charitable.

### **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 the Applicant is not a society or institution established and maintained for exclusively charitable purposes, as required by section 13(1)(b)(i) of the Act.

**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

15 April 2010

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Date