

Please note:

The Plumbers, Gasfitters and Drainlayers' Board appealed the Charities Registration Board's decision (shown below) and the High Court allowed the appeal and set aside the Board's decision: see *The Plumbers, Gasfitters and Drainlayers Board v The Charities Registration Board* [2013] NZHC 1986.

Decision No: D2012 - 2
Dated: 3 September 2012

Deregistration decision: Plumbers Gasfitters Drainlayers Board (CC34435)

Summary

1. The Charities Registration Board ('the Board') has determined that the Plumbers Gasfitters Drainlayers Board ('the PGDB') is not qualified for registration as a charitable entity and that it is in the public interest that it be removed from the Charities Register.¹
2. The Board considers the PGDB has an independent (non-ancillary) purpose to regulate the sanitary plumbing, gasfitting and drainlaying trades for the benefit of plumbers, gasfitters and drainlayers. The courts have held that such a purpose shows insufficient public benefit to be charitable in law.² As such, the PGDB is not qualified for registration as a charitable entity and the grounds for removal from the Charities Register are satisfied.³
3. In reaching this conclusion, the Board has determined that the PGDB is not analogous to the Medical Council of New Zealand, held to be established for exclusively charitable purposes in *Commissioner of Inland Revenue v Medical Council of New Zealand ('MCNZ Case')*.⁴ Although it is a purpose of the PGDB to protect the health and safety of the public, this is not the *exclusive* purpose of the PGDB. Further, the public benefit in maintenance of professional standards in plumbing, gasfitting and drainlaying is not a public benefit that is charitable in law.
4. The Board's reasons appear below, organised under the following headings:
 - A. Background
 - B. Legal framework for deregistration
 - C. Charities Registration Board's analysis
 - C.1 Overview
 - C.2 Law on charitable purposes
 - C.2.1 Matters beneficial to the community
 - C.2.2 The Public benefit requirement
 - C.2.3 Regulation of a profession for benefit of members does not provide sufficient public benefit
 - C.2.4 The *MCNZ Case*
 - C.3 The PGDB's purposes

¹ That is, the register established under section 21 of the *Charities Act 2005* and published at <http://www.charities.govt.nz>.

² See discussion at paras 25 – 30 below, and the leading authorities at note 18 below.

³ Sections 32(1)(a) and 35(1)(a) of the *Charities Act 2005* refer. See text at para 12 below.

⁴ [1997] 2 NZLR 297.

- C.3.1 The PGDB's purpose to regulate professions for the benefit of members
- C.3.2 Section 3(a) of PGD Act considered
- C.3.3 The *MCNZ Case* distinguished
- C.3.4 The PGDB's non-charitable purpose is not ancillary
- C.4 Removal from the register is in the public interest
- D. Charities Registration Board's determination

A. Background

5. The PGDB is established under section 133 of the *Plumbers, Gasfitters, and Drainlayers Act 2006* ('the PGD Act'). The PGDB was registered as a charitable entity under the *Charities Act 2005* ('the Act') by the Charities Commission ('the Commission') on 30 June 2008.
6. The PGD Act does not expressly state purposes of the PGDB. However, the purposes of the PGD Act are set out at section 3:

The purposes of this Act are---

(a) to protect the health and safety of members of the public by ensuring the competency of persons engaged in the provision of sanitary plumbing, gasfitting, and drainlaying services; and

(b) to regulate persons who carry out sanitary plumbing, gasfitting, and drainlaying.

7. Section 137 sets out the functions of the PGDB:

Functions of Board

The functions of the Board are---

(a) to designate classes of registration for the purposes of Part 2:

(b) to specify for each of those classes the work that persons are authorised to do, or assist in doing, by virtue of being a registered person of a particular class and holding a current practising licence:

(c) to prescribe the minimum standards for registration for each of those classes that persons must meet in order to be registered as registered persons and to be issued with practising licences:

(d) to prescribe the terms and conditions subject to which persons are registered and licences are issued:

(e) to prescribe standards or requirements relating to competent and safe work practices and the testing of those practices:

(f) to recognise appropriate overseas qualifications, certificates, registration, or licences for the purposes of registering persons and issuing licences under Part 2:

(g) to consider applications for registration and licences under Part 2, and to register persons and issue licences in proper cases:

(h) to establish criteria for granting, and to grant, exemptions from registration and licensing requirements to persons and classes of persons:

(i) to authorise persons to do certain things in accordance with Part 1 and to issue limited certificates in proper cases under that Part:

(j) to renew licences for subsequent terms in proper cases:

(k) to promote, monitor, and review the ongoing competency and safe work practices of registered persons, provisional licence holders, and employer licence holders:

(l) to make arrangements for the examination of persons practising or intending to practise the sanitary plumbing or gasfitting or drainlaying trades:

(m) to present or issue, either independently or in conjunction with any other examining body, diplomas or certificates to persons in recognition of their proficiency in any of those trades:

(n) to make recommendations to any person or body concerned with the education or training of any person wishing to enter the sanitary plumbing, gasfitting, or drainlaying trades, or with regard to any other matter affecting those trades:

(o) to hear complaints about, and discipline, persons to whom subpart 1 of Part 3 applies:

(p) to institute prosecutions against persons for the breach of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying:

(q) to make recommendations to the Minister with respect to the making of regulations, or the making of regulations controlling sanitary plumbing or drainlaying under the Health Act 1956:

(r) to exercise and perform any other functions, duties, and powers as are conferred or imposed on the Board by or under this Act or by or under any other enactment:

(s) to do any other things as may, in the Board's opinion, be necessary for the effective administration of this Act:

(t) to carry out any functions that are incidental and related to, or consequential on, its functions stated in this section.

8. On 18 July 2011, the Commission received a complaint from a member of the public relating to the PGDB's purposes and activities. The Commission reviewed the PGDB's purposes and activities and considered that it may not qualify for registration. Accordingly, a notice of intention to remove the PGDB from the register was sent on 20 February 2012.
9. On 19 April 2012, the PGDB responded to the intention to remove, requesting the Commission reconsider its decision, it provided extensive submissions that:
 - the statutory purpose of the PGDB is to protect public health and safety and all its activities and functions are carried out in furtherance of these purposes;
 - any benefits to individuals within the plumbing, gasfitting and drainlaying trades are incidental to its statutory purpose;
 - the statutory purpose of the PGDB is charitable - there is sufficient public interest in maintaining high professional standards within these trades.
10. After meeting with the Charities registration team, the PGDB made further submissions on 30 July 2012. The PGDB stated that the PGDB

fell with the spirit and intendment of the Preamble to the Statute of Elizabeth I as:

- it provides a public benefit through proper regulation and operation of those industries through protecting public safety, including ensuring proper sanitation;
- its purposes and activities facilitate the proper provision of the basic public services and therefore they are analogous to the provision of public services in the Preamble and as held by the courts.

B. Legal framework for deregistration

11. Section 50 of the Act provides that the chief executive of the Department of Internal Affairs may examine and inquire into any registered charitable entity, including into its activities and proposed activities, and its nature, objects and purposes.
12. Section 32(1)(a) of the Act provides that the Board may direct that an entity be removed from the register if the entity is not, or is no longer, qualified for registration as a charitable entity, provided that the entity has been given notice under section 33. Under section 35(1)(a) of the Act, if an objection to the removal of an entity from the register is received, the Board may proceed with the removal if it is satisfied that it is in the public interest to proceed with the removal and at least one ground for removal has been satisfied.
13. The essential requirements for registration as a charitable entity are set out at section 13 of the Act. Under section 13(1)(b), a society or institution cannot qualify for registration unless it is established and maintained exclusively for charitable purposes and is not carried on for the private pecuniary profit of any individual.
14. 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'.⁵ In addition, to be charitable at law a purpose must be for the public benefit.⁶ This means that the purposes must provide a benefit to the public or a sufficient sector of the public.

⁵ This statutory definition does not alter the scope of charitable purposes recognised in New Zealand law but rather 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: *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [11].

⁶ 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 at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June

15. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not prevent qualification for registration if it is merely ancillary to a charitable purpose. 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.*

C. Charities Registration Board's analysis

C.1 Overview

16. The Board has analysed the purposes and functions of the PGDB set out in the PGD Act, together with the activities of the PGDB as seen in information published on the PGDB's website and supplied by the PGDB, in light of the relevant case law.
17. The Board is satisfied that the PGDB has an independent purpose to regulate plumbing, gasfitting and drainlaying for the benefit of plumbers, gasfitters and drainlayers. This purpose is evident in:
- the express terms of the PGD Act including section 3(b) and section 137;
 - the activities of the PGDB.
18. The courts have ruled that, in general terms, a purpose to advance the interests of members of a profession does not show sufficient public benefit to be charitable in law.⁷ In light of these authorities, the Board considers that the PGDB's primary purpose is not charitable in law and that accordingly the PGDB is not qualified for registration and there are grounds for removal from the register.
19. In reaching this conclusion, the Board has determined that the PGDB is not analogous to the Medical Council of New Zealand held to be charitable in the *MCNZ Case*. First, unlike the Medical Council of New Zealand, the PGDB has an independent purpose to regulate plumbing, gasfitting and drainlaying for the benefit of plumbers, gasfitters and drainlayers. Secondly, even were this not the case, the public benefit in the maintenance of professional standards within plumbing, gasfitting and drainlaying is not charitable in law as it does not fall within the spirit and intendment of the preamble to the Statute of Elizabeth I.⁸

2011 at [30]; *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [23].

⁷ See discussion at paras 25 – 30 below, and the leading authorities at note 18 below.

⁸ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

C.2 Law on charitable purposes

20. The PGDB's stated purposes and activities do not indicate an intention to relieve poverty, advance education or advance religion. Accordingly, the Board has assessed whether the PGDB's purposes are charitable under the fourth general law classification, namely "any other matter beneficial to the community".

C.2.1 Matters beneficial to the community

21. The fourth head of charity, described in section 5 of the Act as "any other matter beneficial to the public" has a specific meaning in law.⁹ It is not intended to indicate that all purposes that provide public utility qualify as charitable. In order to qualify as charitable under this head, the purpose must be both for the benefit of the community and beneficial in a way that the law regards as charitable. More particularly, the purpose must be within the spirit and intendment of the purposes set out in the Preamble to the *Charitable Uses Act 1601* (the Statute of Elizabeth I):

- 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.

22. This two stage test for charitable purposes 'beneficial to the community' (requiring that a purpose be both beneficial to the community and within the spirit and intendment of the Preamble) is well-established in law.¹⁰ In *Queenstown Lakes Community Housing Trust*, MacKenzie J explained:¹¹

⁹ See generally Gino Dal Pont, *Charity Law in Australia and New Zealand* (2nd ed., Lexis Nexis Butterworths, 2010) at [11.3] – [11.8], and authorities at notes 10 and 11 below.

¹⁰ *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at 208-209 (CA). See also *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 at [20] (Joseph Williams J); *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157 (Somers J); *Re Tennant* [1996] 2 NZLR 633 at 638). This is consistent with the approach taken in other jurisdictions, see for example *Re Jones* [1907] SALR 190 at 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447 at 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138 at 146-148, 15; *Brisbane City Council v Attorney-General for Queensland* [1979] AC 411 at 422 (PC); *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659 at 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304 at 305.

¹¹ *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818 [24 June 2011] at [48].

"Not every purpose beneficial to the community will be charitable under this head. Lord Simonds, in *Williams Trustees v Inland Revenue Commissioners*, noted two propositions which must be borne in mind. The first is that the purpose must be within the spirit and intendment of the preamble to the Statute to Elizabeth I. The second is that Lord Macnaghten's fourfold classification in *Pensel's case* must be read subject to the qualification that it does not mean that every object of public general utility must necessarily be a charity. He concluded that the purpose must be both for the benefit of the community and beneficial in a way which the law regards as charitable. The somewhat circular requirement that to be charitable, a purpose must be beneficial in a way which the law regards as charitable, reflects and restates the requirement that the purpose must be within the spirit and intendment of the preamble. [footnotes omitted]"

23. Over the years, the courts have recognised many new charitable purposes that are substantially similar to those listed in the Statute of Elizabeth I, acknowledging that what is accepted as a charitable purpose must change to reflect current social and economic circumstances. For example, the courts have held that the protection of the health and safety of the community by ensuring proper standards in the practice of medicine is a charitable purpose within the category of purposes beneficial to the community.¹² Similarly, the courts have recognised as charitable a purpose to "promote the improvement of health, the prevention of disease and the mitigation of suffering ...".¹³ The courts have also recognised that the advancement of useful branches of science applied in specific professions may be a charitable purpose beneficial to the general public.¹⁴

C.2.2 The public benefit requirement

24. An entity cannot be considered charitable unless it provides public benefit, that is, it must benefit the community or a sufficient sector of the community.¹⁵ In order to be charitable, the benefits from an entity's purposes and activities must be to the community rather than to private individuals. 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. It will not be a public benefit if the private benefits are an end in themselves.¹⁶ In addition, proof that public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.¹⁷

¹² *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 at 309-310 (McKay J), 320-321 (Thomas J).

¹³ *Hewitt v Commissioner of Stamp Duties* [1952] NZLR 726 at 730 (Fair J).

¹⁴ *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 at 580; *Commissioners of Inland Revenue v Forrest (Institution of Civil Engineers)* (1890) TC 117 at 131 (Lord MacNaghten).

¹⁵ See authorities at note 6 above.

¹⁶ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

¹⁷ *Gilmour v Coats* [1949] AC 426; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342 at 350.

C.2.3 Regulation of a profession for benefit of members does not provide sufficient public benefit

25. The courts have held that an entity will not be charitable if it is founded for the advantage and in the interests of those practising in a particular profession.¹⁸ This extends to continuing education for the advancement of a particular profession, and activities intended to increase the status of a particular profession and the esteem in which it is held.¹⁹
26. In a number of cases, the courts have held that a purpose to regulate an industry or profession confers a private benefit on the members of the profession or industry and is not charitable in law. In *General Medical Council v Inland Revenue Commissioners*,²⁰ the English Court of Appeal held that the General Medical Council was not established for charitable purposes only, as "societies for the benefit of professions and trades were not societies with charitable objects".²¹ Lawrence J stated:

I think it is fairly plain, when it is seen what the constitution and functions of this Council are, that in one sense it may be said to be a body established for the benefit of the public. But that is only telling half the truth. It is no doubt for the benefit of the public that such an important profession as the medical profession should be properly regulated and supervised; but it is also a matter of the greatest concern to the medical profession itself that such regulation and supervision should be done in an authoritative manner, as provided for by this Act of Parliament.

27. In *General Nursing Council for England and Wales v St Marylebone Borough Council*,²² the House of Lords held that the purpose of this statutory authority established to maintain a register of nurses and exercise supervisory powers in training and examination was to regulate the nursing profession for the private benefit of nurses and was not a charitable purpose in law. Lord Keith explained:

¹⁸ *Re Mason (deceased)* [1971] NZLR 714 (held that a significant purpose of the Law Society was to provide benefits to members in the conduct of their professional practices); *New Zealand Society of Accountants v Commissioner of Inland Revenue* (1986) 1 NZLR 147; *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 (held that a significant and non-incident purpose of the Institution of Professional Engineers New Zealand Inc was to act as a professional organisation for the benefit of engineers); *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] (held a non-ancillary purpose of the New Zealand Computer Society was to benefit the profession, or members of that profession). See also: *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR 867; *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380; *Society of Writers to Her Majesty's Signet v Commissioners of Inland Revenue* (1886) 2 TC 257; *General Medical Council v Commissioners of Inland Revenue* (1928) 13 TC 819 (CA; approved [1959] AC 540 (HL)); *General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540 (HL).

¹⁹ *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [41].

²⁰ (1928) 97 LJKB 578 (CA).

²¹ (1928) 97 LJKB 578 at 581.

²² *General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540.

"The only object of this body is to maintain the register and to see that suitable people get onto it and unsuitable people are taken off. The court is not concerned with the motives of Parliament or the results for which it may have hoped. The regulation of a profession is not a charitable object."²³

...

If, contrary to what is submitted, one does seek to find the object of this body in the presumed results of its activities, one cannot dismiss the professional advantages conferred on nurses by the Act as merely subsidiary or incidental.²⁴

...

It is said the conditions as to training and experience imposed as a prerequisite of registration make the council a charitable organisation, because these conduce to the advancement of the nursing of sick persons, which is a charitable object. But assuming for a moment that this is a consequence of imposing these conditions, that cannot, in my opinion, be said to be the reason why they were imposed. The reason was to secure that only properly qualified persons should be registered. That clearly was the direct object indicated by the Act. We are not concerned with indirect consequences or entitled to speculate on what ultimate purposes, if any Parliament had in view.

...

If it is legitimate to look at the effect of the Act at all, as distinct from the actual functions imposed by the Act on the council and their content, it appears to me to be easier to say that one of its results was to raise the professional status of nurses and to protect them in the exercise of their profession, than to say the result was to advance the nursing of sick persons.²⁵

28. In *Re Mason*,²⁶ the Supreme Court held that the Auckland District Law Society had an independent purpose to advance the legal profession, which was not charitable in law. McMullin J considered that, while the objects of the Auckland District Law Society were "entirely wholesome and likely to lead to the ultimate benefit of the public in that the members of the legal profession in this country will be encouraged to be more competent and more ethical in the practice of the law, they fall short of making the Society a charity."²⁷ His Honour explained:²⁸

... there is an established line of authority which draws a distinction between two kinds of institutions – the one which regulates a profession for the advantage of those practising it and the other whose interests include the advancing of some branch of science in a wide sense. The first class of institution has been held to be not charitable; the second class has been held to be charitable.

²³ *General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540 at 545.

²⁴ *General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540 at 546.

²⁵ *General Nursing Council for England and Wales v St Marylebone Borough Council* [1959] AC 540 at 561, 562.

²⁶ [1971] NZLR 714.

²⁷ [1971] NZLR 714 at 725.

²⁸ [1971] NZLR 714 at 723.

29. McMullin J reviewed the authorities citing examples of charitable institutions (such as an institute of pathology²⁹ and a college of nursing³⁰) and examples of non-charitable institutions (such as an insurance institute³¹ and a society of writers³²). His Honour held that, in order for an association to be charitable, promotion of a charitable purpose must be its predominant object and any benefits to individual members of non-charitable character which result from its activities must be of a subsidiary or incidental character.³³
30. In the *MCNZ Case*, the Court of Appeal recognised the general principle that, if the main object of an institution is the protection and advancement of those practising a profession, the institution cannot be a charity even though effectuating the main object has as a consequence the benefiting of the community.³⁴ The Court specifically acknowledged the general principle of law that "benefits to the public will not suffice if there are also objects of providing benefits to the profession."³⁵

C.2.4 The MCNZ Case

31. In the *MCNZ Case*, the New Zealand Court of Appeal held by majority (McKay, Thomas and Keith JJ; Richardson P and Gault J dissenting) that the Medical Council of New Zealand ('the MCNZ') was established for a charitable purpose, to protect the public in respect of the quality of medical and surgical services.³⁶ The decision rested on two findings. The first was that the Council was exclusively established for the protection of the public in relation to the quality of medical and surgical services, and that benefits to the medical profession were incidental to that primary benefit to the public and not an independent purpose of the Council.³⁷ The second was that the protection of the public in respect of the quality of medical and

²⁹ *Royal College of Surgeons of England v National Provincial Bank* [1952] AC 631 (HL) (held that the College of Surgeons was established for the purpose of promoting the science of surgery and that professional protection for members was merely ancillary).

³⁰ *Royal College of Nursing v St Marylebone Corporation* [1959] 3 All ER 663 (CA) (held that the College's purpose was to advance the science of nursing for the relief of human suffering and not to promote the interests of nurses as members of the nursing profession).

³¹ *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR 867.

³² *Society of Writers to Her Majesty's Signet v Commissioners of Inland Revenue* (1886) 2 TC 257.

³³ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380.

³⁴ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1007] 2 NZLR 297 at 313 (MacKay J).

³⁵ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1007] 2 NZLR 297 at 312 (MacKay J).

³⁶ [1997] 2 NZLR 297 at 309 (McKay J), 320-321 (Thomas J), 321-2 (Keith J). Compare *Royal College of Nursing v St Marylebone Corporation* [1959] 3 All ER 663 (CA) and *Inland Revenue Commissioners v Yorkshire Agricultural Society* [1928] 1 KB 611 (held that an agricultural society, whose purpose it was to promote agriculture, carried on a charitable purpose because agriculture was an industry vital to the welfare of the community).

³⁷ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 at 309-310 (McKay J), 319-320 (Thomas J).

surgical services was a benefit to the community within the fourth *Pemsel* category.³⁸

32. The Board notes that the determination of the purposes of an entity and the relative importance of those purposes to the entity's overall objective requires a situation-specific assessment in light of the entity's stated objects and its activities.³⁹ Certainly, the *MCNZ Case* does not lay down any binding principle of law that a statutory body that has a purpose to protect health and safety of the community is established exclusively for that purpose, or that any other purpose of the statutory body is necessarily ancillary to that purpose.
33. Moreover, the Board considers that the *MCNZ Case* ruling that it is a charitable purpose to protect the public in respect of the quality of medical and surgical services does not generalise to all industries that have public utility. The Court of Appeal expressly recognised that a purpose to protect the public in respect of professional standards in an industry may not be charitable in law – the public benefit in maintenance of professional standards in an industry is charitable in law *if it lies within the spirit and intendment of the preamble to the Statute of Elizabeth I.*⁴⁰ The court held that the protection of the public in respect of the quality of medical and surgical services is part and parcel of relief of human suffering and promotion of health, which manifestly falls within the spirit and intendment of the preamble.⁴¹
34. In *New Zealand Computer Society Inc*,⁴² the Society had submitted that its main purpose was to provide a benefit to the community by ensuring high standards in the IT profession. McKenzie J rejected that characterisation of the Society's purposes. Moreover, his Honour stated:⁴³

... I do not consider that its importance is such that the IT profession can be equated with the medical profession or the nursing profession so far as the public interest in the maintenance of high standards in the profession is concerned.

35. Further, in *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*,⁴⁴ the High Court held that the Institution was not charitable despite the Institution dealing with professional conduct and discipline and requiring all members to conduct themselves with due regard to the public interest especially in matters of health and safety.⁴⁵

³⁸ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 at 311-312 (McKay J), 320-321 (Thomas J).

³⁹ Compare *New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011]. See further discussion of the PGDB purposes at paras 36 - 51.

⁴⁰ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 at 310-311 (McKay J), 319-320 (Thomas J). See also at 302 (Richardson P and Gault J, dissenting).

⁴¹ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 at 309-311 (McKay J), 320-321 (Thomas J).

⁴² HC WN CIV-2010-485-924 [28 February 2011].

⁴³ HC WN CIV-2010-485-924 [28 February 2011] at [56].

⁴⁴ [1992] 1 NZLR 570.

⁴⁵ [1992] 1 NZLR 570 at 574.

C.3 The PGDB's purposes

C.3.1 The PGDB's purpose to regulate professions for benefit of members

36. Section 3 of the PGD Act states:

The purposes of this Act are---

(a) to protect the health and safety of members of the public by ensuring the competency of persons engaged in the provision of sanitary plumbing, gasfitting, and drainlaying services; and

(b) to regulate persons who carry out sanitary plumbing, gasfitting, and drainlaying.

37. The PGDB engages in a range of activities, the nature of which is indicated by the functions set out in section 137 of the PGD Act. In broad terms, the PGDB is responsible for regulating the trade and registering people who carry out sanitary plumbing, gasfitting and drainlaying. It sets registration standards, considers applications for registration and prescribes the terms and conditions on which licenses are issued. It also monitors the qualifications of individuals working in the industries and has the ability to operate competence programmes. It also has powers to remove, restrict, suspend or decline applications for licenses of individuals who fail the competency programmes, and carries out disciplinary functions including hearing complaints and imposing sanctions on individuals who engage in professional misconduct.⁴⁶
38. The Board considers that the PGDB has an independent purpose to promote plumbing, gasfitting and drainlaying trades for the 'private' benefit of individuals working in those trades. Specifically, the Board considers that the PGDB is analogous to the regulatory bodies held to be non-charitable in *General Medical Council v Inland Revenue Commissioners*,⁴⁷ *General Nursing Council for England and Wales v St Marylebone Borough Council*,⁴⁸ and *Re Mason*.⁴⁹
39. While the PGDB argued that tradepersons are not members of the PGDB (unlike in many of the other professional associations cases), the tradespeople still gain direct professional benefits from the purposes, functions and activities of the PGDB. It is this, and not membership per se, that the courts have decided preclude professional associations from being exclusively charitable.
40. Finally, while the PGDB argued *New Zealand Computer Society Inc* was not relevant, the Board considers that the case illustrates that a purpose

⁴⁶ Sections 32, 53, 55, 56, 125, 137 of the PGD Act refer. The Board has considered the information about activities provided by the PGDB.

⁴⁷ (1928) 97 LJKB 578 (CA).

⁴⁸ [1959] AC 540.

⁴⁹ [1971] NZLR 714.

to regulate a profession is viewed as conferring a 'private' and non-charitable benefit on those practicing in the profession. This point is relevant to the PGDB, even though the PGDB is an 'external' regulator of the profession and not an association of members drawn from the profession. Accreditation and maintenance of high standards in a profession provide a direct benefit to members of the profession, and a purpose to regulate a profession for the benefit of members is not charitable in law.

41. Therefore, the Board is of the view that the PGDB's purposes and activities fall into the non-charitable category described in *General Medical Council v Inland Revenue Commissioners*,⁵⁰ *General Nursing Council for England and Wales v St Marylebone Borough Council*,⁵¹ and *Re Mason*⁵² because there is an independent purpose to provide a benefit for the occupational groups concerned.

C.3.2 Section 3(a) of the PGD Act considered

42. The PGDB has submitted that the primary purpose is, as stated in section 3(a) of the PGD Act, "to protect the health and safety of members of the public ..." and that its regulatory functions are merely means to achieve that purpose.
43. The Board does not consider that the characterisation of the PGDB's purposes can be purely determined by the fact that the PGD Act states a purpose to protect the health and safety of members of the public.
44. The Board considers that the opening words of section 3(a) should not take priority when it came to ascertaining the PGDB's purposes. This is for two reasons.
45. First, 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.⁵³ The phrase used to open section 3(a) is broad and vague, and there is ample justification for looking to the whole context, including the means specified in clause 3(a), the purpose at clause 3(b), and the PGDB's functions under the PGD Act, to ascertain the PGDB's purpose.
46. In *Travis Trust v Charities Commission*, Joseph Williams J determined that a purpose to "support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes" was not charitable. His Honour rejected a submission that the purpose was to benefit the racing industry. Despite the opening words of the purpose clause, his Honour held that the purpose was to support a single group race.⁵⁴

⁵⁰ (1928) 97 LJKB 578 (CA).

⁵¹ [1959] AC 540.

⁵² [1971] NZLR 714.

⁵³ Gino Dal Pont, *Law of Charity in Australia and New Zealand* (2nd ed., LexisNexis Butterworths, Australia, 2010) at [13.17].

⁵⁴ *Travis Trust v Charities Commission* HC WN CIV 2008-485-1689 [3 December 2012] at [30] – [35], [58].

47. It would be inconsistent with judicial authorities to favour the general purpose expressed in the opening words of section 3(a) over the more specific elaboration of the purpose in the context as a whole. In *Commissioners of Inland Revenue v White and Others and Attorney General*,⁵⁵ the court considered limitations in the constitution of the Clerkenwell Green Association. The court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:⁵⁶

The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because clause 2(b) limits the field in which the charitable intention is to be effectuated. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purposes within the specified field and the Association would not be entitled to registration as a charity. [emphasis added]

48. The general point made in the case is that the purpose of the entity is identified by looking at the constitution as a whole and the specific field within which the purposes are to be effectuated.
49. Secondly, even if ensuring the competence of those involved in the trades is viewed as the 'means' by which the PGDB achieves its broad purpose, it is legitimate to take those 'means' into account in determining whether the PGDB is established exclusively for charitable purposes. At its highest, the PGDB's argument is that the balance of section 3(a), section 3(b) and the PGDB's functions under the Act sets out the *activities* the PGDB undertakes. It is legitimate to take activities into consideration when determining whether an entity qualifies for registration under the Act.⁵⁷ The High Court has consistently taken activities into consideration in determining whether an entity qualifies for registration under the Act.⁵⁸ This accords with the approach taken in other jurisdictions.⁵⁹ In determining

⁵⁵ (1980) 55 TC 651.

⁵⁶ (1980) 55 TC 651 at 653. See also *Royal College of Nursing v St Marylebone Corporation* [1959] 3 All ER 663 at 667 (CA).

⁵⁷ See section 18(3)(a)(i) and (ii) and 50(2)(a) of the Act, and authorities at notes 58 – 60 below.

⁵⁸ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818 at [57] - [67]; *Re The Grand Lodge Of Antient Free And Accepted Masons In New Zealand* HC WN CIV 2009-485-2633, 23 September 2010 at [59], [71]; *New Zealand Computer Society Inc* HC WN CIV-2010-485-924, 28 February 2011 at [35] – [39], [60] and [68]; *Greenpeace of New Zealand Incorporated* HC WN CIV 210-485-829 6 May 2011 at [75].

⁵⁹ See for example: *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] 1 All ER 747 at 751-752; *Institution of Mechanical Engineers v. Cane* [1961] A.C. 696 (HL) at 723; *Attorney-General v Ross* [1986] 1 WLR 252 at 263; *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] 1 SCR 10 at [194]; *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204 at [70].

qualification for registration under the Act, substance must prevail over form.⁶⁰

50. The Board considers that the *MCNZ Case* does not require that the opening words of section 3(a) of the PGD Act be read as establishing the exclusive purpose of the PGDB. In the *MCNZ Case*, McKay and Thomas JJ (with whom Keith J agreed) held that the purpose of the MCNZ was not to be identified *solely* from its statutory functions.⁶¹ This is not to say that the functions of a statutory entity must be ignored when determining the entity's purposes, or when determining whether one purpose is ancillary to the other. The case certainly does not establish any rule that would bind us to treat the opening words of section 3(a) as controlling the purposes for which the PGDB is established.
51. Nor does the *MCNZ Case* bind us to identify the PGDB's purposes by reference to parliament's motivations in enacting the PGD Act. It is true that in the *MCNZ Case*, the court constructed the purposes of the MCNZ by reference to parliament's motivations in enacting the legislation that established the MCNZ. This aspect of the reasoning in the *MCNZ Case* has been criticised for conflating purposes and motivations.⁶² It is unnecessary to comment on that criticism of the *MCNZ Case* here. In this case it suffices to say that, unlike the MCNZ, the PGDB is established under a statute that states a purpose to regulate persons who carry out sanitary plumbing, gasfitting and drainlaying. It is not necessary in this instance to go behind the statutory provisions to establish the PGDB's purpose directly from parliament's motives in establishing the PGDB.

C.3.3 The MCNZ Case distinguished

52. The PGDB has argued that its purpose to protect the health and safety of the public is analogous to the purpose of the Medical Council of New Zealand held charitable in the *MCNZ Case*. The Board is satisfied that the PGDB is not analogous to the Medical Council of New Zealand. As already stated, the PGDB has an independent purpose to regulate plumbing, gasfitting and drainlaying for the benefit of plumbers, gasfitters and drainlayers. Moreover, the Board is not satisfied that the public benefit in the maintenance of professional standards within sanitary plumbing, gasfitting and drainlaying is charitable in law.
53. The Board does not accept the PGDB's argument that securing safe provision of services and disciplining individuals who compromise health and safety is sufficient to determine the entity is charitable. As stated above, the ruling in the *MCNZ Case* does not generalise to all industries that have public utility. In *General Medical Council v Inland Revenue Commissioners*,⁶³ and *General Nursing Council for England and Wales v St*

⁶⁰ G E Dal Pont *Law of Charity in Australia and New Zealand* (LexisNexis Butterworth, Australia, 2010) at [2.12], [13.19], [13.20].

⁶¹ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 at 309-310, 313 (McKay J), 316-317 (Thomas J).

⁶² Gino Dal Pont, *Charity Law in Australia and New Zealand* (2nd ed., Lexis Nexis Butterworths, 2010) at [13.29] – [13.31].

⁶³ (1928) 97 LJKB 578 (CA).

Marylebone Borough Council,⁶⁴ the fact that the Councils removed unsuitable people from the register did not prevent the court concluding that the Councils were non-charitable. In addition, in *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*,⁶⁵ the High Court held that the Institution was not charitable despite the Institution dealing with professional conduct and discipline and requiring all members to conduct themselves with due regard to the public interest especially in matters of health and safety.⁶⁶

54. The PGDB has argued that its purposes are charitable in law because the preamble to the Statute of Elizabeth I recognises that providing general public utilities is a charitable purpose and the trades it regulates are involved in the provision of public utilities.
55. The Board does not accept this argument. The provision of public utilities may be charitable under the fourth head, however the PGDB is not providing public utilities and the regulation of individuals who may be employed in provision of public utilities is too remote from the provision of public utilities to qualify as charitable in law under the fourth *Pemsel* classification.
56. There is a clear public benefit in the PGDB's regulation of the sanitary plumbing, gasfitting and drainlaying trades. However, sanitary plumbing, gasfitting and drainlaying do not come within that limited class of industries, the advancement of which is recognised as charitable in law.⁶⁷ Further, the PGDB's purpose is not analogous to charitable purposes to promote industry or commerce for the benefit of the public.⁶⁸

C.3.4 The PGDB's non-charitable purpose is not ancillary

57. The Board considers that the PGDB's non-charitable purpose is not ancillary to any valid charitable purpose of the PGDB.
58. First, the 'private' benefits conferred on the occupational groups regulated by the PGDB are substantial and not merely incidental to the PGDB's purpose to protect public health and safety.
59. Secondly, as indicated above, the public interest in maintenance of professional standards in sanitary plumbing, gasfitting and drainlaying is not within the spirit and intendment of the preamble to the Statute of Elizabeth I and is not charitable in law.

⁶⁴ [1959] AC 540.

⁶⁵ [1992] 1 NZLR 570.

⁶⁶ [1992] 1 NZLR 570 at 574.

⁶⁷ Contrast the courts' recognition that promotion of agriculture provides a public benefit that is charitable in law, e.g. *Inland Revenue Commissioners v Yorkshire Agricultural Society* [1928] 1 KB 611.

⁶⁸ Contrast *Crystal Palace Trustees v Minister of Town and Country Planning* [1951] 1 Ch 132 (held control and management of a public place for the promotion of industry, commerce and art was charitable); *Commissioners of Inland Revenue v White* (1980) 55 TC 651 (held that preservation and improvement of fine craftsmanship was a charitable purpose and benefits to craftsmen were incidental).

60. Accordingly, the PGDB's purpose to promote the interests of members of those trades is not ancillary to any valid charitable purpose of the PGDB.

C.4 Removal from the register is in the public interest

61. For the reasons given above, the PGDB does not have exclusively charitable purposes and does not meet the requirements for registration.
62. Section 10(1)(a) of the Act obliges the Board to promote public trust and confidence in the charitable sector. The Board considers that public trust and confidence in registered charitable entities would not be maintained if entities which did not meet the essential requirements for registration remained on the register.
63. Accordingly, the Board considers that it is in the public interest to remove the PGDB from the register as this will maintain public trust and confidence in the charitable sector.

D. Charities Registration Board's determination

64. The Board determines that the PGDB is not qualified for registration as a charitable entity because it is not established and maintained exclusively for charitable purposes as required by section 13(1)(b) of the Act. Specifically, the PGDB has an independent (non-ancillary) purpose to regulate the sanitary plumbing, gasfitting and drainlaying trades for the benefit of plumbers, gasfitters and drainlayers, and this purpose is not charitable in law.
65. Under section 35(1) of the Act, the Board is satisfied that it is in the public interest to proceed with the PGDB's removal from the register and that one ground for removal from the register has been satisfied, that is, the PGDB is not qualified for registration as a charitable entity.
66. The decision of the Board is therefore to remove the PGDB from the Register pursuant to section 31 of the Act with effect from 2 November 2012.

For the above reasons, the Charities Registration Board determines to deregister the entity as a charitable entity by removing the entity from the Register.

Signed for and on behalf of the Charities Registration Board

.....
Roger Holmes Miller
Chair

..... 2ND OCTOBER 2012
.....
Date

