

## Deregistration decision: The Immunisation Awareness Society Incorporated (CC42358)

### Summary

1. The Charities Registration Board (the Board) has determined that the Immunisation Awareness Society Incorporated (the Society) 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.<sup>1</sup> While the stated purposes of the Society are to advance education, the Board considers that its main purpose is to promote a point of view. The courts have held that promotion of a point of view lies outside the legal definition of a charitable purpose to advance education.
2. Further, the Board considers the Society has, as one of its purposes, to seek a change in government policy in regard to vaccinations. The courts have held that a purpose to seek a change in government policy is a 'political' purpose, which is not charitable in law. An entity may qualify for charitable status if it has a non-charitable purpose that is *ancillary* to a valid charitable purpose of the entity. The Board is not satisfied that the Society's (non-charitable) political purpose is ancillary to any valid charitable purpose of the Society.
3. As the Society is not exclusively charitable it does not qualify for registration and meets the grounds for removal from the Charities Register.<sup>2</sup>
4. The Board's reasons appear below, organised under the following headings:
  - A. Background
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<sup>1</sup> That is, the register established under section 21 of the *Charities Act 2005* and published at <http://www.charities.govt.nz>.

<sup>2</sup> Section 32(1)(a) of the *Charities Act 2005* provides, 'The Board may direct that an entity be removed from the register if – (a) the entity is not, or is no longer, qualified for registration as a charitable entity.'

- C.4 Removal from register is in the public interest.  
D. Charities Registration Board's determination.

## A. Background

5. The Society was registered as a charitable entity under the *Charities Act 2005* (the Act) on 23 September 2009.
6. The Society's purposes are set out in clause 2 of their rules:
- (a) to collate and disseminate information in relation to immunisation;*
  - (b) to encourage parents to take responsibility for their family's health and their medical records;*
  - (c) to provide a network of support groups throughout the country for members;*
  - (d) to provide detailed information whereby parents can make informed decisions about immunisation;*
  - (e) to seek support from within the medical profession and other interested bodies;*
  - (f) to make people aware of alternatives available;*
  - (g) to bring together all those concerned about vaccination and its effects.*
7. Clause 3 of the Society's rules provides:
- Beliefs*
- In the implementation of these aims, the Society relies on the following beliefs:*
- (a) Vaccination is the individual's choice and responsibility;*
  - (b) Parents, in consultation with their medical advisor, have the right to choose whether or not to vaccinate their children;*
  - (c) We are for informed choice about immunisation; we are not anti-vaccination;*
  - (d) To maintain good health, a high standard of nutrition and lifestyle are essential;*
  - (e) Every individual should have unrestricted access to all available information about the pros and cons of vaccination and natural immunity to enable an informed choice to be made;*
  - (f) We are a collective organisation rather than a consumer service.*
8. The Commission received several complaints regarding the Society and a decision was made to review whether the Society still remained eligible for charitable status.
9. After reviewing the purposes and activities of the Society, the Commission sent on 5 June 2012 a notice of intention to remove the Society from the Charities Register, on the ground that a main purpose of the Society is the promotion of a point of view which is not a recognised charitable purpose in New Zealand law.
10. On 3 August 2012, the Society responded to the notice of intention to remove submitting that the Society was charitable under advancement of

education as it provided evidence based information; did not 'solely push one viewpoint'; and did not meet the criteria of a 'political party'.

## 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 (among other things) 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) of the Act a society or institution cannot qualify for registration unless it is established and maintained exclusively for charitable purposes and 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'.<sup>3</sup> In addition, to be charitable at law a purpose must be for the public benefit.<sup>4</sup> This means that the purposes must be directed to benefiting the public or a sufficient sector of the public.
15. Section 5(3) of the Act provides that the presence of a non-charitable purpose will not prevent an entity qualifying for registration if it is merely ancillary to a charitable purpose of the entity. 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.*

<sup>3</sup> 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].

<sup>4</sup> See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

## C. Charities Registration Board's analysis

### C.1 Overview

16. The Board is satisfied that the main purpose of the Society is to promote the view that vaccination is ineffective and dangerous.<sup>5</sup> New Zealand law draws a distinction between promotion of a point of view and advancement of education, and holds that the former is not a valid charitable purpose.<sup>6</sup> Accordingly, the Society's main purpose (to promote a point of view) is not charitable.
17. The Board is also satisfied that it is a purpose of the Society to seek a change in government policy in regard to vaccination (e.g. a change to the government's policy to promote vaccination against childhood diseases in terms of the New Zealand Immunisation Schedule<sup>7</sup>). A purpose to seek a change in government policy is a political purpose which is non-charitable.<sup>8</sup> An entity with a political purpose may qualify for charitable status if that (non-charitable) political purpose is *ancillary* to a valid charitable purpose. However, the Society's (non-charitable) political purpose is not ancillary to any valid charitable purpose.<sup>9</sup>

### C.2 Law on charitable purposes

18. The Society has stated that its purpose is to advance education on the merits of vaccination and that it does not have political purposes. The Board has therefore considered whether the Society is charitable under advancement of education and whether it has political purposes.
19. The Board has taken into consideration the Society's stated purposes, information about the Society's activities,<sup>10</sup> and the relevant case law.

<sup>5</sup> See text at paras 31 to 35 and note 54 below.

<sup>6</sup> See text at paras 20 to 27 below.

<sup>7</sup> The New Zealand Immunisation Schedule is a series of vaccines offered free to babies, children, adolescents and adults, see <http://www.health.govt.nz/our-work/preventative-health-wellness/immunisation/new-zealand-immunisation-schedule>

<sup>8</sup> See text at paras 28 to 30 below.

<sup>9</sup> See text at note 55 below.

<sup>10</sup> The courts have held that where an entity's constitution does not indicate with clarity its main object(s) the activities of the entity must be considered in relation to its purposes in order to conclude whether it is, in fact, established and maintained for exclusively charitable purposes: see *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] 1 All ER 747 at 751-752; *Attorney-General v Ross* [1986] 1 WLR 252 at 263; *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204 at [70]; *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 [60] and [68]; *Greenpeace of New Zealand Incorporated HC WN CIV 210-485-829* 6 May 2011 at [75].

### **C.2.1 Promotion of a point of view does not advance education**

20. Advancement of education for the public benefit is a valid charitable purpose. An entity with a purpose to 'advance' education:
  - (i) provides some form of education; and
  - (ii) ensures that learning is advanced.
21. The modern concept of education covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding.<sup>11</sup>
22. In order to advance education, there must be a genuine attempt to transmit knowledge and advance learning.<sup>12</sup> It is not enough to put forward opinion and information about a topic. What is required is some endeavour to provide a structured method of transmitting information or analysis, so as to train the mind or improve a useful branch of human knowledge.<sup>13</sup>
23. Education does not include advertisements for particular goods or services or promotion of a particular point of view.<sup>14</sup> If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available or accessible to the public.
24. The courts have recognised that educational activities may be charitable notwithstanding that the law or the policies and decisions of public bodies may be changed in light of those activities.<sup>15</sup> However, the courts maintain a distinction between advancement of education on the one hand, and 'propaganda or cause under the guise of education'<sup>16</sup> on the other.
25. The question whether an endeavour is political or educational is one of degree of objectivity or neutrality surrounding the endeavour to influence, and assesses whether the political change is merely a by-product or is instead the principal purpose of the gift or institution.<sup>17</sup> A distinction must be

<sup>11</sup> *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

<sup>12</sup> See *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010]; *Re New Zealand Computer Society Incorporated* HC WN CIV-2010-485-924 [28 February 2011].

<sup>13</sup> See *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [42] - [43], [74]; *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] 1 SCR 10 at 118.

<sup>14</sup> *In re Shaw (deceased)* [1956] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46; See also *Re Collier* [1998] 1 NZLR 81; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011].

<sup>15</sup> *In the Estate of Cole (deceased)* (1980) 25 SASR 489 at 495.

<sup>16</sup> *Re Collier (Deceased)* [1988] 1 NZLR 81 at 91; *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

<sup>17</sup> *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [54]; *Re Bushnell (deceased) Lloyds Bank Ltd and others v Murray and others* [1975] 1 All ER 721 as applied by *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 at 608; *In re Hopkinson* [1949] 1 All ER 346. See also *Re Koeppler's Will Trusts* [1986] 1 Ch 423.

made between propagating a view that can be characterised as political and the desire 'to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose certain views'.<sup>18</sup>

26. The law requires that a charity's position must be reasonably objective and based on well-reasoned arguments.<sup>19</sup> Material that shows a strong bias towards a particular point of view has not been considered as educational by the courts. Further, an activity that is undertaken solely to promote a point of view is not educational in the charitable sense.<sup>20</sup>
27. In *In re Draco Foundation (NZ) Charitable Trust*, the High Court held that the entity's purpose was to influence local or central government or other officials to a particular point of view, and that this did not fall within the charitable purpose to advance education.<sup>21</sup>

*'In a democracy citizens are free to pursue [advocacy] but the activity is essentially political and therefore not a charitable purpose. Publicising one side of a debate is not advancing education'*

### **C.2.2 A purpose to seek change in government policy is not charitable**

28. Also relevant to this case, there is a general principle in New Zealand law that 'political purposes' are not charitable.<sup>22</sup>

<sup>18</sup> *Re Bushnell (deceased) Lloyds Bank Ltd and others v Murray and others* [1975] 1 All ER 721 at 729.

<sup>19</sup> *Positive Action against Pornography v MNR* [1988] 2 FC 340; (1988) 49 DLR (4<sup>th</sup>) 74.

<sup>20</sup> *Ibid*, at 83; *Challenge Team v Revenue Canada* [2000] 2 CTC 352 at [1].

<sup>21</sup> *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [54].

<sup>22</sup> *Bowman v Secular Society Ltd* [1917] AC 406 (HL) at 442. This principle was affirmed for New Zealand in *Re Wilkinson (deceased)* [1941] NZLR 1065 (HC) and *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA). See also: *McGovern v Attorney-General* [1982] Ch 321 at 340; *Re Collier (Deceased)* [1998] 1 NZLR 81 at 90; *Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [58]-[60]; *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] at [44] – [59].

29. The courts have defined political purposes to include purposes which:<sup>23</sup>
- (i) seek a change in the law;<sup>24</sup>
  - (ii) seek to maintain current law;<sup>25</sup>
  - (iii) seek a change in the policy or decisions of central government, local authorities or other public bodies,<sup>26</sup> including by influencing public sentiment to support a change in government policy;<sup>27</sup>
  - (iv) promote or support political parties;<sup>28</sup> and
  - (v) advocate for a particular point of view, where the public good is not self-evident as a matter of law. By way of illustration, the courts have held that the promotion of peace<sup>29</sup> and disarmament,<sup>30</sup> securing the release of prisoners of conscience, procuring the abolition of torture and inhuman or degrading treatment or punishment<sup>31</sup> are non-charitable political purposes.

<sup>23</sup> See *McGovern v Attorney-General* [1982] 1 Ch 321 at 334 – 340; *Re Collier (deceased)* [1998] 1 NZLR 81 at 89; *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] at [50].

<sup>24</sup> See *Bowman v Secular Society Ltd* [1917] AC 406 at 441-442 (Lord Parker of Waddington); *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 at 49 – 51 (Lord Wright) 62-63 (Lord Simonds; Viscount Simon concurring), 76-77 (Lord Normand).

<sup>25</sup> See *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 695-698.

<sup>26</sup> See *McGovern v Attorney-General* [1982] 1 Ch 321 at 339 (a purpose 'to procure a reversal of government policy or of particular administrative decisions of governmental authorities'); *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 at 77 ('if for legislative changes a change by means of government administration was substituted the result would be the same'); *Re Hopkinson* [1949] 1 All ER 346 at 352 (a purpose 'to secure, not necessarily a certain line of legislation, but a certain line – and a perfectly proper and permissible line from the point of view of those who advocate it – of political administration and policy'); *In re Wilkinson (deceased) v League of Nations Union of New Zealand* [1941] NZLR 1065 at 1076 (a purpose 'not so much as to secure legislation as to secure and obtain such an opinion that the people of New Zealand shall accept the League of Nations ... that is, that the central executive authority or the Government shall be influenced to act in a particular way'); *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [54] ('an attempt to influence local or central government or other officials to a particular point of view').

<sup>27</sup> See *McGovern v Attorney-General* [1982] 1 Ch 321 at 346 ('the primary activity contemplated by [the purpose] is the imposition of moral pressure on governments or governmental authorities') and 347 (a purpose that in '[i]ts very terms suggest the direction of moral pressure or persuasion against governmental authorities'); *In re Wilkinson (deceased) v League of Nations Union of New Zealand* [1941] NZLR 1065 at 1076 (a purpose 'not so much as to secure legislation as to secure and obtain such an opinion that the people of New Zealand shall accept the League of Nations ... that is, that the central executive authority or the Government shall be influenced to act in a particular way'); *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [65] (partisan advocacy seen in publication of 'partisan pieces ... about local government or central government issues').

<sup>28</sup> See *McGovern v Attorney-General* [1982] 1 Ch 321 at 337.

<sup>29</sup> *Southward v Attorney-General* [2000] EWCA Civ 204 at [29], *Re Collier (Deceased)* [1998] 1 NZLR 81; *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] at [63].

<sup>30</sup> *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] at [64].

<sup>31</sup> *McGovern v Attorney-General* [1982] 1 Ch 321.

30. The rationale for the legal principle that the above purposes are not charitable is that courts cannot determine, as a matter of general law, that such purposes provide a clear public benefit.<sup>32</sup> So for example, the courts cannot judge that there is a clear public benefit in a purpose to seek a change in government policy:<sup>33</sup>

*'If a trust [to procure a reversal of government policy or of particular administrative decisions of governmental authorities] is to be executed ... the court will ordinarily have no sufficient means of determining whether the desired reversal would be beneficial to the public, and in any event could not properly encroach on the functions of the executive, acting intra vires, by holding that it should be acting in some other manner.'*

### **C.3 The Society's purposes**

#### **C.3.1 The Society's purpose to promote a point of view**

31. Having considered the Society's purposes, activities, and submissions, the Board is of the view that it is a purpose of the Society to persuade the public that vaccination is ineffective and dangerous and to choose not to vaccinate. The following factors support this conclusion:

- (i) The purpose of the Society at clause 2(g) is to bring together those 'concerned about vaccination and its effects', while the purposes at clause 2(e) and (f) speak to an effort to develop support for alternatives to vaccination.
- (ii) The Society presents itself as an organisation that supports parents in a decision not to vaccinate. The Society's publications state that the Society:<sup>34</sup>
  - is an organisation of individuals 'who have concerns about the safety and efficacy of vaccines ...';
  - is founded on 'some basic philosophies regarding health and immunity' including:
    - a. 'natural immunity is far superior to artificial immunity';
    - b. 'appropriate allopathic and homeopathic treatment in the event of illness is safer and more effective than trying to prevent illness through artificial immunity';
  - 'provides support to people who choose not to vaccinate, people who sometimes come under considerable pressure from health professionals, and often members of the community, to vaccinate their children'; and

<sup>32</sup> See *Bowman v Secular Society Ltd* [1917] AC 406 at 442, quoted in *Molloy v Attorney-General* [1981] 1 NZLR at 695 ('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.')

<sup>33</sup> *McGovern v Attorney-General* [1982] 1 Ch 321 at 339.

<sup>34</sup> <http://www.ias.org.nz/about/> [accessed 15 August 2012], and the Society's brochure <http://www.ias.org.nz/newsletters-brochure/> [accessed 15 August 2012].



- is 'related' to four organisations, each of which promotes the view that vaccination is dangerous and ineffective.<sup>35</sup>

(iii) The information provided by the Society in its publications promotes the view that vaccination is ineffective and dangerous.

32. The Society publishes links to online material that readers may use to educate themselves about the medical science in regard to vaccination.<sup>36</sup> However, the courts have held that the provision of information and materials that readers can use to educate themselves does not advance education.<sup>37</sup> The provision of information (which is available to the public in a variety of places) in one place:<sup>38</sup>

*'does not have any independent educational value. It does have high convenience value. But it is essentially the provision of information.'*

33. The Society has submitted that it provides evidence based information, in order to enable the community to make an informed choice. However, the Board considers that it is a purpose of the Society to promote a point of view in regard to vaccines. The Society provides information about vaccination through the sale of two books; information published on its website;<sup>39</sup> and in its members newsletters.

34. Overwhelmingly, the information on the website argues that vaccination is ineffective and dangerous. Further, the content and tone of the material published on the website seeks to persuade and influence readers to this point of view. By way of illustration, the Society website contains the following:

- (i) The Vaccine Resources tab<sup>40</sup> comprises a list of vaccine information available online and 'vaccine resources sub-pages'. The links to information available online is divided into categories under labels including:
  - a. 'Pro-informed Choice Websites',
  - b. 'Other Health Websites', and
  - c. 'International Sites Run by Vaccine Defenders'.

The classification of websites under these category labels is not balanced or neutral – sites that promote vaccination are categorised as 'International Sites Run by Vaccine Defenders' whereas the category 'Pro-informed Choice' is populated by sites that oppose vaccination and 'Other Health Websites' is populated primarily by sites that promote alternatives to vaccination.

<sup>35</sup> <http://www.ias.org.nz/> [accessed 15 August 2012].

<sup>36</sup> See e.g. <http://www.ias.org.nz/vaccine-information/vaccine-resources/> [accessed 20 August 2012].

<sup>37</sup> *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [41], and see also [38] – [41], [73] – [77].

<sup>38</sup> *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [41], and see also [41].

<sup>39</sup> <http://www.ias.org.nz/> [accessed 20 August 2012].

<sup>40</sup> <http://www.ias.org.nz/vaccine-information/vaccine-resources/> [accessed 20 August 2012].

- (ii) The 'Vaccine Resources sub-pages'<sup>41</sup> are populated with links to pages that oppose vaccination on the basis that they are ineffective or dangerous. Examples of this include: the resource page for chickenpox provides only one link, to a report on grandparents catching shingles through exposure to grandchildren who have received a chickenpox vaccine; the resource page for HPV Gardasil provides one link, to the webpage of a group that is appealing to American authorities to take action to stop Gardasil vaccinations.
- (iii) The Press Releases tab<sup>42</sup> contains five press releases, each dated in April 2012. The releases promote an anti-vaccination message in emotive terms. For example, the release dated 25 April 2012 is entitled 'Illegally Vaccinating Minors: Waikato DHB's Social Media Campaign' and 'urges' parents to be aware of:

*'usual underhand tactics by Waikato DHB to illegally coerce children into being vaccinated, with or without parental consent. District boards have become adept at breaking the Health and Disability code of rights, and parents should be on the look-out for such desperate tactics.'*

The story is accompanied by an image of the vaudeville film characters, The Three Stooges, in a laboratory.

A Press Release dated 11 April 2012 'questions' the Ministry of Health's 'push' of 'ineffective' whooping cough vaccine: 'The IAS is questioning why people are being pushed to get a vaccine that is obviously not effective.'

- (iv) The News tab<sup>43</sup> comprises some 99 articles posted between June 2010 and July 2012. A significant number of the news items oppose vaccination and are emotive in nature. For instance, an item posted on 4 July 2012 entitled 'Vaccination Battles in Court – When Children are Collateral' reports on 'an alarming trend' whereby non-custodial parents are seeking court action to ensure that custodial parents vaccinate their children. The report states:

*'this is being used as a tool of manipulation to play 'good parent/bad parent ... children are being used as collateral with no respect for their health outcomes. The parent wanting the children vaccinated is not doing it out of concern for his or her children, but rather as a way of building their case and 'getting back' at their ex-partner.'*

An item posted on 20 February 2012 entitled 'Talking About Vaccination' provides examples of what people can say if the topic of vaccination comes up including:

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<sup>41</sup> <http://www.ias.org.nz/vaccine-information/vaccine-resources/> [accessed 20 August 2012].

<sup>42</sup> <http://www.ias.org.nz/category/press-releases/> [accessed 20 August 2012].

<sup>43</sup> <http://www.ias.org.nz/blog/> [accessed 20 August 2012].

*'I fail to see how injecting heavy metals, foreign proteins, multiple viruses and many toxic substances into a body all at one time can keep someone well, can you explain it to me?'*

The item goes on to state:

*'people who vaccinate can rarely answer any intelligent questions about vaccination ... People who vaccinate their children out of fear and ignorance do not have to justify their decision.'*

(v) The News tab contains stories that characterise official action in support of vaccination as 'fraud', 'discrimination' and 'coercion'. Examples of this include an item posted on 22 April 2012 entitled 'Does IMAC Breach Advertising Standards and Promote Medical Fraud?', and an article posted on 14 December 2011 reports that unvaccinated students are 'discriminated against' in school responses to confirmed cases of measles.

(vi) The books tab<sup>44</sup> promotes two books. The books are promoted on the basis that they provide support for the case against vaccination, and the tone is emotive and persuasive – the books are said to provide:

*'the information that doctors, nurses and other health professionals are unlikely to provide you with'...and to bring 'out into the open many of the findings of well documented research, as well as the sobering experiences of many parents and their children, which needs to be considered carefully, before anyone accepts without question the assurances of medical establishments and the powerful profit-driven messages from vested interests'.*

(vii) The links tab<sup>45</sup> provides five links, all to anti-vaccination websites:

- a. The Myth of Herd Immunity;<sup>46</sup>
- b. Raising A Vaccine Free Child;<sup>47</sup>
- c. The Trouble with the Anti "Anti-vaccine" Movement";<sup>48</sup>
- d. 10 Reasons Why Parents Choose Not to Vaccinate;<sup>49</sup> and
- e. Off the Radar<sup>50</sup>.

35. In light of this material, the Board is satisfied that it is a purpose of the Society to persuade the public that vaccination is ineffective and dangerous.

### **C.3.2 The Society's purpose to seek a change in government policy**

36. The Board considers that the Society also has a (non-charitable) political purpose, to seek a change in the government policy to promote vaccination,

<sup>44</sup> <http://www.ias.org.nz/products/> [accessed 20 August 2012].

<sup>45</sup> <http://www.ias.org.nz/links/> [accessed 20 August 2012].

<sup>46</sup> <http://www.h4cblog.com/vaccines-and-the-myth-of-herd-immunity>.

<sup>47</sup> <http://www.vaccinefreechild.com>

<sup>48</sup> <http://www.ageofautism.com/2012/02/the-trouble-with-the-anti-anti-vaccine-movement-how-they-hijack-the-issue-distort-the-facts-and-tota.html>

<sup>49</sup> <http://www.bellybelly.com.au/baby/question-vaccinations>

<sup>50</sup> <http://www.offtheradar.co.nz/>

e.g. against childhood diseases.<sup>51</sup> The Society's public criticisms of government actions to support vaccination are evidence of a purpose to seek a change in government policy by influencing public opinion to this end.<sup>52</sup> The Society presents itself as an entity providing a counterpoint to the Ministry of Health's public information on the issue of vaccination on its website,<sup>53</sup> and states in its submissions to the Board:

*'The Ministry of Health and IMAC websites do not provide balanced information on the issue of vaccination. They promote them solely and downplay any potential risks and side-effects as demonstrated by the NZ Immunisation Handbook and by NZ law, thus making informed consent difficult.'*

### **C.3.3 The Society's non-charitable purposes not ancillary**

37. An entity may qualify as a charity if it has a non-charitable purpose that is *ancillary* to an independent valid charitable purpose of the entity.
38. The Board is satisfied that the Society's purpose to persuade the public that vaccination is ineffective and dangerous is its main purpose. That purpose is so pervasive and predominant it cannot realistically be considered ancillary.<sup>54</sup>
39. Further, the Board does not consider that the Society's purpose to seek a change in government policy is ancillary to a valid charitable purpose of the Society.<sup>55</sup>

<sup>51</sup> Compare authorities at notes 26 and 27 above.

<sup>52</sup> See e.g. text at points (ii), (iii), (iv) and (v) in para 34 above.

<sup>53</sup> See e.g. the 11 April 2012 press release described at point (iii) in para 34 above. Compare *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [66] (placing weight on the fact that the entity stated that it sought to 'provide a counter balance to the powers Councils wield in the name of ratepayers').

<sup>54</sup> The question whether a purpose is ancillary requires both a quantitative and qualitative assessment: *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011]. The assessment involves a 'situation specific analysis of the relative relationship between public and private benefits': *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301 [29 June 2010] at [44]. In quantitative terms, we consider that the information provided on the website shows that it is a significant proportion of the Society's endeavour to promote the view that vaccination is ineffective and dangerous and to support individuals who have decided not to vaccinate. Adopting a qualitative approach, we consider that the Society's promotion of this point of view would not be necessary to advance education on related topics (e.g. on the methods of raising immunity).

<sup>55</sup> In qualitative terms, we consider that the Society's purpose to seek a change in government policy in regard to vaccination is not necessary to advance education on related topics (e.g. on the methods of raising immunity). In quantitative terms, we consider that the Society's purpose to criticise government is not incidental to its overall endeavour. Further, as the main purpose being pursued by the Society at present is to promote a point of view (which is not charitable in law), it is difficult to see any foundation for determining whether the purpose to seek a change in government policy is 'ancillary': such analysis would seem to presuppose that the entity in question is pursuing an independent valid charitable purpose.

#### **C.4 Removal from register in the public interest**

40. For the reasons given above, the Society does not have exclusively charitable purposes and does not meet the requirements for registration.
41. 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. This is particularly relevant for entities such as the Society which seek funds from the public.
42. Accordingly, the Board considers that it is in the public interest to remove the Society from the register as this will maintain public trust and confidence in the charitable sector.

#### **D. Charities Registration Board's determination**

43. The Board determines that the Society is not qualified for registration as a charitable entity because it is not established and maintained for exclusively charitable purposes as required by section 13(1)(b)(i) of the Act. The Board considers that the Society's main purpose is to promote a point of view in regards to vaccination, which does not advance education and is not a valid charitable purpose in New Zealand law. Further, the Society has a purpose to seek a change in the government's policy in regard to vaccination, which is a non-charitable purpose in New Zealand law. Neither of the Society's non-charitable purposes can be considered ancillary to any valid charitable purpose of the Society.
44. As the Society has independent (i.e. non-ancillary) non-charitable purposes, it does not meet registration requirements and it is in the public interest to proceed with the Society's removal from the Charities Register. As such, the grounds for removal under section 32(1)(a) of the Act are satisfied in relation to the Society.
45. The decision of the Board is therefore to remove the Society from the register, pursuant to section 31 of the Act, with effect from 19 October 2012.

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

Signed for and on behalf of the Board

.....  
Roger Holmes Miller

19 September 2012  
.....  
Date