

## Deregistration decision: Enterprise Central Network Incorporated

### The facts

1. Enterprise Central Network Incorporated (the Society) was established as an incorporated society on 29 September 1998.
2. The Society was registered as a charitable entity under the Charities Act 2005 (the Act) by the Charities Commission (the Commission) on 28 August 2008, with registration backdated to 30 June 2008.
3. Clause 4 of the Society's constitution sets out the purposes of the Society, as follows:

*"The objects of the Society shall be, within New Zealand:*

- 4.1 *To provide professional, administrative and or other support for members of the Society consistent with the general purposes of the Society.*
- 4.2 *To promote an "enterprise culture" as in [sic] innovative contributor to employment, self-employment and participation in the community.*
- 4.3 *To promote effective management practices in private and community enterprise.*
- 4.4 *To foster a sense of self-responsibility by developing and supporting community led [sic] and driven small business and economic activity programmes and ventures amongst members as a means to achieve self-employment and add value to overall community development.*
- 4.5 *To foster and encourage professional collaboration, information sharing, networking and collegiality between members for advancing and promoting the general purposes of the Society.*
- 4.6 *To partner, collaborate and liaise with any organisation in New Zealand or overseas, whether incorporated or not, government, or non-government or commercial, whose aims and purposes are generally consistent with those of the Society.*
- 4.7 *To plan, implement, promote, co-ordinate and support business and social research within New Zealand where such research is consistent with the general purposes of the Society.*
- 4.8 *To inform and publicise progress made by the Society in advancing its objects.*
- 4.9 *To hold purchase acquire by gif, devise bequeath or otherwise take on lease any property real or personal in the name of the Society which shall be deemed expedient for the purposes of the Society and to sell exchange mortgage pledge lease hire out and grant any option over any such property and to erect any buildings on any land included in such property with power to alter or pull down buildings and to rebuild the same and generally to raise and employ funds for any purpose within New Zealand as authorised by these objects.*

4.10 *To do all such things as are conducive or incidental to the attaining the said objects or any of them."*

4. Some time after the Society's registration, the Commission received information from another applicant for registration with similar purposes to the Society. That information led to a decision by the Commission to review the Society's eligibility for registration.
5. The Commission reassessed the Society's purposes and the grounds for registration, drawing on information available on the Society's website and its financial records published on the Companies Office website. This information gave more insight into the Society's purposes than was possible at the time of registration.
6. The Commission reached the preliminary conclusion that while the Society was carrying out some charitable activities, it appeared to be promoting the private interests of business owners.
7. On 7 October 2009, the Commission sent the Society a notice of intention to remove from the register on the basis that the Society's purposes were not exclusively charitable and allowed the Society to provide business development services to business owners and operators, which is not charitable.
8. On 8 November 2009, the Society responded to the notice making the following submissions:

*"Essentially, ECN's main purpose has always been to co-ordinate and collaborate with a wide cross section of community organisations. To facilitate and provide networking opportunities on a monthly basis and to share collegial support, information and resources for the benefit of the representatives of the community organisations, and ultimately for their own communities, for the advancement of educational and employment initiatives.*

...

*ECN also designs, develops and delivers training programmes for community based organisations and groups by providing educational training for such groups to better manage their charitable trusts, societies or organisations. These organisations fundamentally provide services for the relief of poverty, advancement of education, training or employment support services. These may include community centres, family support and budget services, social services, health agencies, unemployed workers groups, art & creative societies, youth groups and environmental organisations. ECN's role in this capacity is to design educational workshops and support for community organisational teams who provide charitable services for the community at large.*

*ECN also offers mentoring services for organisations and community ventures that are funded to undertake charitable work that is of benefit to the community.*

*ECN designs and develops educational programs for the unemployed and for those disadvantaged in the workplace. The "Be Your Own Boss Skills of Enterprise" is a program offered to unemployed (disabled or disadvantaged)*

*people in receipt of a benefit. It provides a framework and training for individuals to explore self-employment options. On a 1-1 basis, this program also mentors those who proceed with their idea and create a small enterprise. Those who attend such programs are often in severe circumstance and this option provides sound educational benefits and relief from poverty. For those who do not proceed in business it offers training and educational opportunities that will enhance that person's ability to find employment.*

*ECN and its members have undertaken research projects that investigate employment opportunities in the wider Waikato region. These often result in brokering community initiatives for the advancement of education or the relief of poverty through employment creation.*

*ECN provides the administration for the Enterprise Training Program for the Waikato region on behalf of sub-regional representatives that deliver the program."*

## **The issue**

9. The Commission must consider whether the Society is not, or is no longer, qualified for registration as a charitable entity under section 32(1)(a) of the Act. In this case, the key issue for consideration is whether the Society is established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular, whether all of the Society's purposes fall within the definition of charitable purpose in section 5(1) of the Act, and if there are any non-charitable purposes, whether these are ancillary to a charitable purpose.

## **The law on charitable purposes and deregistration**

10. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(b), a society or institution must be established and maintained for exclusively charitable purposes and must not be carried on for the private pecuniary gain of any individual.
11. 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 to benefiting the public or a sufficient section of the public.
12. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for registration as a charitable entity.
13. Section 32(1)(a) of the Act provides that the Commission may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.

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<sup>1</sup> See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

14. When considering whether a registered entity continues to qualify for charitable status, section 50(2) of the Act empowers the Commission to examine and enquire into matters in connection with charitable entities or persons, including:

- (a) the activities and proposed activities of the charitable entity or person:*
- (b) the nature, objects, and purposes of the charitable entity:*
- (c) the management and administration of the charitable entity:*
- (d) the results and outcomes achieved by the charitable entity or person:*
- (e) the value, condition, management, and application of the property and income belonging to the charitable entity or person."*

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

15. The Commission has assessed the Society's stated purposes, drawing on information available on the Society's website, the Society's financial records for the years ending 2006 and 2007, information provided by the Society in response to the notice of intention to remove the Society from the register, and the relevant case law.
16. The Commission considers that clauses 4.6, 4.8, 4.9 and 4.10 are powers. The Commission considers that clauses 4.1, 4.5 and 4.7 are ancillary to the Society's primary purposes, which are contained in clauses 4.2, 4.3 and 4.4. The Commission considers these primary purposes disclose an overarching purpose of promoting economic development through the provision of business development and mentoring programmes and other support services to businesses. The primary purposes do not disclose an intention to advance religion. Therefore, the primary purposes have been considered under the relief of poverty, the advancement of education and any other matter beneficial to the community.

#### Relief of poverty

17. To be charitable under the relief of poverty, a purpose must be directed at people who are poor, in need, aged, or suffering genuine hardship, and it must be capable of providing relief.
18. The Society's expressed purposes do not disclose an intention to provide economic development services to any particular disadvantaged beneficiary group. Rather, the primary purposes of the Society are aimed at providing services to a range of enterprises or business and economic development programmes in the community without any qualification as to disadvantage or need. In addition, the Society has not provided any evidence that its area of operation (Waikato and Bay of Plenty) is a geographic location suffering economic disadvantage.
19. The Society has submitted that it helps the unemployed and those disadvantaged in the workplace through activities such as the "Be Your Own Boss Skills of Enterprise" program. The Commission acknowledges that some of the Society's activities may relieve poverty. However, the

Society's website and financial records give a broader view of the Society's purposes, activities and beneficiary classes. The Commission considers this further information indicates that one of the primary activities of the Society is to provide services to private business owners.

20. For instance, the Society's website<sup>2</sup> states that the Society -

*"Comprises member organisations and businesses throughout the Central North Island that are committed to supporting the Governments focus on employment by the delivery of quality services to their community customer base. These services include community economic and employment programmes and initiatives as well as **business development and training support to small to medium enterprises (SMEs).**"*

*A Training Provider to New Zealand Trade and Enterprise, ECN has the Lead Provider Contract to deliver the Enterprise Training Programme in the Waikato Region. To ensure local business needs are catered for, ECN has a team of service providers strategically located throughout the region. **The Enterprise Training Programme focuses on providing management upskilling to owner / operators of small and medium enterprises (SMEs).**"*

21. The Society's financial records for 2006 and 2007 also indicate that services provided by the Society to private business owners are not ancillary to its charitable activities, representing the larger part of the Society's income and expenditure.
22. In the financial year ended 30 June 2007, the Society had total income revenue of \$863,922. Of this, \$847,872 is recorded as being contract revenue from "Industry NZ" and \$5,298 from "Other Contract Income". \$762,062 of total income was paid out to "subcontractors". The percentages of income derived from "Industry NZ" and "Other Contract Income" and the percentage of income paid out to "subcontractors" for the 2006 financial year are similar to the 2007 percentages.
23. These figures are consistent with the Commission's view that the Society's primary purpose is to provide support services to enterprise programme providers, whose primary purpose is to deliver the Trade and Enterprise NZ "Enterprise Training Programme" to private business owners and managers.
24. Given that the greatest part of the Society's income consists of grants from Industry NZ for disbursement to subcontracting enterprise agencies for the provision of business development services and programmes, the Commission does not consider that the Society's activities are exclusively charitable under the relief of poverty.
25. The Commission notes that the Society's overdue annual return for the 2008 financial year, received on 10 February 2009, shows a similar pattern of income and expenditure to that of 2006 and 2007.

<sup>2</sup> <http://www.enterprisecentral.co.nz/>

### Advancement of education

26. In order for a purpose to advance education, it must provide some form of education and ensure that learning is passed on to others.
27. The Commission acknowledges that some of the Society's activities may advance education, for example, providing training programmes and workshops for community based organisations and groups. However, the Commission considers that the primary purposes of the Society outlined in clauses 4.2, 4.3 and 4.4 do not disclose an intention to advance education

### Any other matter beneficial to the community

28. In order to be considered charitable as "any other matter beneficial to the community", purposes must be beneficial to the community and 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)<sup>3</sup>, namely:
- 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.
29. However, not all organisations having purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. According to *Charity Law in Australia and New Zealand*:

*"... it is not all objects of public utility that are charitable, 'for many things of public utility may be strictly matters of private right, although the public may indirectly receive a benefit from them.' Nor are essentially economic or commercial objects within the spirit of the Preamble."*<sup>4</sup>

<sup>3</sup> *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Trust 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 Trust of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

<sup>4</sup> Gino Dal Pont, 2000, Oxford University Press, p 178; citing *Nightingale v Goulburn* (1847) 5 Hare 484, 490 and *Re Davis (deceased)* [1965] WAR 25, 28.

30. In cases such as *Re Tennant*<sup>5</sup> and *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation*<sup>6</sup>, economic development of a community has been held to be charitable under “any other matter beneficial to the community” where essential services are provided or where the community is under a particular disadvantage.

31. *Re Tennant*<sup>7</sup> related to a rural community and the provision of a creamery. In that case, Hammond J stated:

“Obviously each case will turn on its own facts. I would not be prepared to say that there may not be cases which would fall on the other side of the line because of private profit making of some kind. But here the settlor was attempting to achieve for a **small new rural community** what would then have been central to the life of that community: a cluster complex of a school, public hall, church and creamery.” [Emphasis added]

32. Similarly, in *Tasmanian Electronic Commerce Centre Pty Ltd v Federal Commissioner of Taxation*<sup>8</sup>, the Australian Federal Court of Appeal decided that the entity was charitable because it was created to provide internet and communications infrastructure for Tasmania, a particularly economically disadvantaged area. Heeney J wrote:

“As has been seen, the genesis of TECC was the provision of large amounts of Federal funding to assist “regional, rural and remote communities” a current euphemism for those parts of Australia which are economically disadvantaged or, put more bluntly, poor, compared with the rest of the nation ... Tasmania is a particular case in point. The combination of small population and long distances from markets and raw materials meant that conventional manufacturing industry was always to be at a disadvantage”.

33. There is no evidence that the Society is either providing essential services or assisting an area that is under any particular disadvantage.

#### Public or Private Benefit

34. In order to fall under “any other matter beneficial to the community”, the benefits must be to the community rather than to private individuals. Any private benefits arising from the Society’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.<sup>9</sup> 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.<sup>10</sup>

<sup>5</sup> [1996] 2 NZLR 633.

<sup>6</sup> (2005) FCA 439; [2005] 59 ATR 10 (Australian Federal Court of Appeal) at pp 25-26, para 59-60.

<sup>7</sup> *Re Tennant* [1996] 2 NZLR 633, 640.

<sup>8</sup> (2005) FCA 439; [2005] 59 ATR 10 (Australian Federal Court of Appeal) at pp 25-26, para 59-60.

<sup>9</sup> *Inland Revenue Commissioners v Oldham Training and Enterprise Council* (1986) STC 1218; *Travel Just v Canada Revenue Agency* 2006 FCA 343 [2007] 1 CTC 294.

<sup>10</sup> *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

35. The Courts have found the promotion of industry and commerce to be charitable under any other matter beneficial to the community when it is for public benefit and not for the benefit of private individuals.
36. Thus, in *Inland Revenue Commissioners v Yorkshire Agricultural Society*<sup>11</sup> the improvement of agriculture was held to be charitable when it was for the benefit of the public at large. However, Lord Hanworth made it clear that the promotion of agriculture for private profit or benefit would not be charitable.
37. In *Crystal Palace Trustees v Minister of Town and Country Planning*<sup>12</sup> a body of trustees was entrusted with the control and management of Crystal Palace and park as a public place for education and recreation, and for the promotion of industry, commerce and art. Danckwerts J stated:

*"it seems to me that the intention of the Act in including in the objects the promotion of industry, commerce and art, is the benefit of the public, that is, the community, and is not the furtherance of the interests of individuals engaging in trade or industry or commerce by the trustees".*

38. In *Hadaway v Hadaway*<sup>13</sup> the Privy Council held that assisting persons carrying on a particular trade or business or profession would not be charitable unless there was a condition that this assistance could only be made for a purpose which was itself charitable. In that case, the court held that any eventual benefit to the community was too remote:

*"The promotion of agriculture is a charitable purpose, because through it there is a benefit, direct or indirect, to the community at large: between a loan to an individual planter and any benefit to the community the gulf is too wide. If there is through it any indirect benefit to the community, it is too speculative."*

39. In *Commissioners of Inland Revenue v White and Others and Attorney General*<sup>14</sup> it was held that the entity's purpose to "promote any charitable purpose which will encourage the exercise and maintain the standards of crafts both ancient and modern, preserve and improve craftsmanship and foster, promote and increase the interest of the public therein" was charitable. However, in that case, Fox J stated:

*"The three cases which I have last mentioned seem to me to establish that the promotion or advancement of industry (including a particular industry such as agriculture) or of commerce is a charitable object **provided that the purpose is the advancement of the benefit of the public at large and not merely the promotion of the interests of those engaged in the manufacture and sale of their particular products. ... The charitable nature of the object of promoting a particular industry depends upon the existence of a benefit to the public from the promotion of the object"** [Emphasis added].*

<sup>11</sup> [1928] 1 KB 611.

<sup>12</sup> [1951] 1 Ch 132, 142.

<sup>13</sup> [1955] 1 WLR 16, 20 (PC).

<sup>14</sup> (1980) 55 TC 651, 659.



40. In that case, Fox J found that the purposes of the Association were capable of providing a public benefit and that any private benefit of individual craftsmen was not an object of the Association.

41. In *Commissioners of Inland Revenue v. Oldham Training and Enterprise Council*<sup>15</sup>, the Court held:

*"[T]he second main object, namely promoting trade, commerce and enterprise, and the ancillary object, of providing support services and advice to and for new businesses, on any fair reading must extend to enabling Oldham TEC to promote the interests of individuals engaged in trade, commerce or enterprise and provide benefits and services to them [...] Such efforts on the part of Oldham TEC may be intended to make the recipients more profitable and thereby, or otherwise, to improve employment prospects in Oldham. But the existence of these objects, in so far as they confer freedom to provide such private benefits regardless of the motive or the likely beneficial consequences for employment, must disqualify Oldham TEC from having charitable status. The benefits to the community conferred by such activities are too remote"* [Emphasis added].

42. In *Commissioner of Taxation v Triton Foundation*,<sup>16</sup> the Federal Court of Australia held that a foundation set up to assist inventors provided sufficient public benefit. In reaching this conclusion, the court noted that the Foundation's purposes were particularly directed at young people, but were also available to "any member of the community who had the desire or inclination to use them", and a number of the resulting inventions had been of benefit to the community.

43. In *Travel Just v Canada (Revenue Agency)*,<sup>17</sup> the Canadian Federal Court of Appeal considered a case relating to an entity whose purposes were the creating of model tourism development projects and the production and dissemination of tourism information. The Court found that promoting commercial activity with a strong flavour of private benefit was not a purpose beneficial to the public and expressed doubt that the dissemination of information as described would qualify as either publication of research or an educational purpose.

44. The Commission considers that the Society's purposes and activities first and foremost confer private benefits on business owners without regard to the consequences for employment in the region. Any benefits conferred on the community at large are too remote to give the purposes a charitable nature.

### Conclusion

45. The Commission concludes that some of the activities undertaken by the Society could support a charitable purpose. However, the Society's main purposes as set out in clauses 4.2, 4.3 and 4.4. are not charitable and do not provide sufficient public benefit. The Society has therefore failed to

<sup>15</sup> (1996) 69 Tax Cases 231, 251.

<sup>16</sup> (2005) 147 FCR 362.

<sup>17</sup> 2006 FCA 343 [2007] 1 C.T.C 294, 2007 D.T.C. 5012 (Eng.) 354 N.R. 360.

meet an essential requirement for continued registration as a charity in that it is not established and maintained exclusively for charitable purposes as required by section 13(1)(b)(i) of the Act.

Public interest

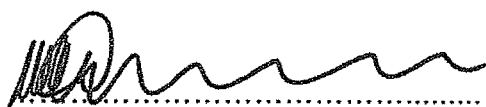
46. Section 10(1)(a) of the Charities Act obliges the Commission to promote public trust and confidence in the charitable sector. The Commission considers that public trust and confidence in registered charitable entities will be diminished if entities that do not meet the essential requirements for registration remain on the register.

**Charities Commission's determination**

47. The Commission determines that the Society is not, or is no longer, 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.
48. Under section 35(1) of the Act, the Commission is satisfied that it is in the public interest to proceed with the Society's removal from the register and that one ground for removal from the register has been satisfied, that is, the Society is not qualified for registration as a charitable entity.
49. The decision of the Commission is therefore to remove the Society from the Register, pursuant to section 31 of the Act, with effect from 18 March 2010.

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

Signed for and on behalf of the Charities Commission



Trevor Garrett  
Chief Executive

18/3/10  
Date