

## Registration decision: The New Zealand Society of Authors (Pen New Zealand Incorporated)

### The facts

1. The New Zealand Society of Authors (Pen New Zealand Incorporated) (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 6 February 1947. The Applicant applied to the Charities Commission (the Commission) for registration on 4 October 2007.
2. The Applicant's Rules provide as follows:
  - 2(c) The Charitable Purpose of the Society shall be:  
To advance the cultural understanding, appreciation and development of the creative art of writing in the community.*
  - 2(d) To achieve this purpose the Society will:*
    - i) educate and advise writers;*
    - ii) foster and promote writing in New Zealand;*
    - iii) protect and promote the interests of writers;*
      - (1) negotiate with publishers and broadcasters as a group and, from time to time, individually;*
      - (2) negotiate with government on behalf of writers;*
    - iv) promote friendly co-operation and mutual support among writers in all countries in the interests of freedom of artistic expression and international goodwill;*
    - v) do such other things as are incidental or conducive to the above objects."*
3. The Commission analysed the application and on 5 May 2008 sent the Applicant a letter advising that its application for registration might be declined because:
  - (a) the Applicant's purposes did not meet registration requirements in section 5(1) of the Charities Act 2005 (the Act); and
  - (b) the winding up provision at clause 22 of the Rules did not meet the requirements of section 13(1)(b) of the Act.
4. In a letter dated 19 May 2008, the Applicant submitted that it provides public benefit through its community activities. The Applicant also proposed an amendment to the wording of the winding up provision that would satisfy the requirements of section 13(1)(b) of the Act.

## The issue

5. The issue that the Commission has to consider is whether the Applicant is a society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular,
  - (a) whether the applicant has exclusively charitable purposes; and
  - (b) if there are non-charitable purposes, whether those purposes are ancillary to a charitable purpose.

## The law on charitable purpose

6. Section 13(1)(b)(i) of the Act provides that to meet the essential requirements for registration, a society or institution must be established and maintained exclusively for charitable purposes.
7. Section 5(1) of the Act provides that "charitable purpose includes 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". And section 5(3) of the Act provides that any non-charitable purpose must be merely ancillary to a charitable purpose.
8. Also, to be charitable at law, a purpose must be aimed at benefiting the public or a sufficient section of the public.
9. In addition, in considering an application, section 18(3) of the Act states that "the Commission must have regard to:
  - (i) the activities of the entity at the time at which the application was made; and
  - (ii) the proposed activities of the entity; and
  - (iii) any other information that it considers relevant ..."
10. The Commission must therefore have regard to the activities of the Applicant in determining whether it has exclusively charitable purposes.
11. There have been a number of Court decisions involving professional bodies. In *Re Mason*<sup>1</sup> the Court made a distinction between an institution whose main object was the advancement of education and one whose main object was not charitable because it was for the protection and advantage of those practising in a particular profession.
12. In *Inland Revenue Commissioners v City of Glasgow Police Athletic Association*<sup>2</sup>, the Court considered that the promotion of charitable purpose must be its predominant object and any benefits to individual

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<sup>1</sup> [1971] NZLR 714

<sup>2</sup> [1953] AC 380

members of non-charitable character which result from its activities must be of a subsidiary or incidental character.

13. Further, in *Institute of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue*<sup>3</sup> the Court stated that where it is established that an entity has significant and non-incidental purposes and activities that are for the benefit of the members then that entity is not exclusively charitable.

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

14. The Applicant's purpose in clause 2(c) of its Rules is capable of broad interpretation. Clause 2(d) of the Rules sets out a number of activities or functions to achieve the stated purpose. The Commission has considered the Applicant's activities as detailed in the Rules and on its website in order to determine whether the Applicant's purpose is charitable.
15. Clause 6 of the Applicant's Rules sets out the criteria for membership. 'Full membership' is available to authors who are published, produced commercially or of sufficient professional standing. There is also 'associated membership' for those interested in writing and 'student membership' for writers enrolled in a recognised creative writing course. In the Applicant's submission of 19 May 2008, the Applicant advised that new members who are unpublished but who seek to become published authors are welcome. As such, the Applicant can be seen to have a focus on those who are, or are seeking to be, published or produced commercially.
16. In its letter dated 19 May 2008, the Applicant detailed the public benefit provided by authors through their books and publications, through government support for authors, and a range of community-based activities.
17. The Applicant referred to its website, [www.authors.org.nz](http://www.authors.org.nz), in its application. On the website, the Applicant states that it is the principal advocate for the professional interests of writers and has represented the professional interests of New Zealand writers for almost 70 years. It records that it has representatives on a number of organisations that have purposes impacting on published writers. For members, the Applicant provides information on tax matters and commercial contracts, provides a scale of recommended fees for writers to charge in regard to services provided, and has negotiated discounts on books and stationery from commercial outlets. It also provides a mentoring programme, and manuscript assessment and appraisal programmes, for members.

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<sup>3</sup> [1992] 1 NZLR 570

18. The Applicant also works closely with industry partners, government and Creative New Zealand to ensure that the professional interests of writers are strongly represented on all issues.
19. The degree of emphasis given to the interests of the Applicant's members in clause 2(d) of the Rules, the nature of the membership and the Applicant's activities as detailed on the website, are such as to suggest strongly that it the Applicant is not established exclusively for the charitable purpose of advancing education.
20. The Commission considers that a primary (and not incidental) purpose of the Applicant is to "protect and promote the interests of writers" (refer clause 2(d)(iii)). This purpose does not fall within one of the four categories of charitable purpose recognised at law, and appears to be primarily aimed at furthering the interests of the Applicant's members and not at benefiting the public or a sufficient section of the public.
21. The Commission therefore concludes that the Applicant has a charitable purpose that is advancing education and a non-charitable purpose that is to 'protect and promote the interests of writers', and the non-charitable purpose is not ancillary to a charitable purpose.

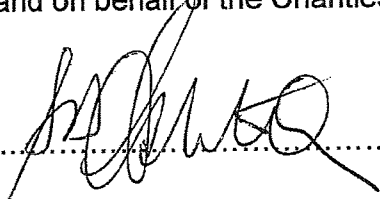
### **Charities Commission's determination**

22. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. A primary purpose of the Applicant is to "protect and promote the interests of writers". This is not a charitable purpose as it does not fall within one of the four categories of charitable purpose recognised at law and is considered to be primarily aimed at furthering the interests of the Applicant's members and not at benefiting the public or a sufficient section of the public.

**For the above reasons, the Commission declines the Applicant's application for registration as a charitable entity.**

Signed for and on behalf of the Charities Commission

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Sid Ashton  
Chair



9-7-08  
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Date