

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**CIV-2012-485-2293
[2013] NZHC 1986**

IN THE MATTER OF an appeal under section 59(1) of the
Charities Act 2005 against a decision of
the Charities Registration Board
concerning the Plumbers, Gasfitters and
Drainlayers Board

BETWEEN THE PLUMBERS, GASFITTERS AND
DRAINLAYERS BOARD
Appellant

AND THE CHARITIES REGISTRATION
BOARD
Respondent

Hearing: 24 April 2013

Counsel: A Low for the Appellant
P Gunn and D Consedine for the Respondent

Judgment: 8 August 2013

JUDGMENT OF GODDARD J

This judgment was delivered by me on 8 August 2013
at 2.30 pm, pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Solicitors: Short & Partners, Auckland
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Introduction

[1] This is an appeal by the Plumbers, Gasfitters and Drainlayers Board (the PGDB) against a decision of the Charities Registration Board (the Board) to remove the PGDB as a charitable entity under the Charities Act 2005 (the Act).

[2] The principal issue on appeal is whether or not the purpose or purposes of the PGDB is or are exclusively charitable.

Background facts

[3] The PGDB was established under s 133 of the Plumbers, Gasfitters and Drainlayers Act 2006 (the PGDA). It was registered as a charitable entity by the Charities Commission on 30 June 2008.¹ In broad terms, the PGDB is responsible for regulating sanitary plumbing, gasfitting and drainlaying (the subject industries).

[4] The nature and purposes of the PGDB are best understood from ss 3 and 137 of the PGDA. Section 3 provides that the purposes of the PGDA are 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 to regulate persons who carry out sanitary plumbing, gasfitting and drainlaying.

[5] Section 137 sets out the functions of the PGDB. It is necessary to set out the entire section to provide a full picture of the nature of the PGDB and its activities:

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:

¹ The Charities Commission has since been replaced by the Board.

- (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.

[6] On 20 June 2011 the Charities Commission received a complaint from a member of the public alleging that the PGDB was not entitled to be registered as a charitable entity. After reviewing the PGDB's purposes and activities, the Commission decided that it did not qualify for registration and on 20 February sent a notice of intention to remove it from the register.

[7] On 19 April 2012, the PGDB requested that the Commission reconsider its decision. That same year, the Act was amended to replace the Commission with the Department of Internal Affairs and the Board.² The functions of the chief executive of the Department and the Board largely replicate those of the Commission. On 2 October 2012, the Board decided to deregister the PGDB and that same month the PGDB lodged this appeal against the Board's decision. PGDB also applied to the Court for an interim order requiring it to remain registered on the Charities Register pending the final determination of its appeal.³ The Board did not oppose that interim order and PGDB has accordingly remained on the register.

The Charities Act 2005

[8] The Charities Act established the Charities Registration Board with responsibility for registration and monitoring of charities.⁴ The purpose of the Act is:⁵

- (a) to promote public trust and confidence in the charitable sector:
- (b) to encourage and promote the effective use of charitable resources:
- (c) to provide for the registration of societies, institutions, and trustees of trusts as charitable entities:
- (d) to require charitable entities and certain other persons to comply with certain obligations:
- (e) to provide for the Board to make decisions about the registration and deregistration of charitable entities and to meet requirements imposed in relation to those functions:
- (f) to provide for the chief executive to carry out functions under this Act and to meet requirements imposed in relation to those functions.

² Charities Amendment Act (No 2) 2012.

³ Charities Act 2005, s 60(1)(c).

⁴ Section 8.

⁵ Section 3.

[9] The Board is able to delegate any of its functions, duties or powers to the chief executive or any member of the Board.⁶ The chief executive's functions are set out in s 10. They include receiving and processing applications for registration as charitable entities; referring all applications for registration and proposals for deregistration as charitable entities to the Board for its decision; and monitoring charitable entities and their activities to ensure such entities continue to qualify for registration.

[10] The Act imposes both procedural and substantive requirements for the registration and monitoring of charities. An application for registration is made under s 17 of the Act and considered by the chief executive under s 18. In considering an application for registration, the chief executive must have regard to the activities of the entity at the time at which the application was made; to the proposed activities of the entity; and to any other information that he or she considers is relevant.

[11] After considering the application, the chief executive must recommend to the Board that it either grant or decline the application.⁷

[12] Section 50 of the Act empowers the Board to examine and inquire into any registered charitable entity, including its activities, proposed activities, and its nature, objects and purposes.

[13] The Act also provides for deregistration of registered entities. Under s 32(1), the Board may direct an entity be removed from the register in certain circumstances, including where the entity is not or is no longer qualified for registration as a charitable entity.⁸

[14] Where the Board intends to remove an entity from the register, the chief executive must give notice of that intention and of the grounds for removal.⁹ The

⁶ Section 9(1).

⁷ Section 19(1).

⁸ Section 32(1).

⁹ Section 33.

entity may object to the intended removal.¹⁰ If it does, the Board may proceed with the removal provided it is satisfied that removal is in the public interest and that one or more of the grounds for removal under s 32(1) have been met.

[15] Sections 5 and 13 govern the requirements for registration as a charity. The same requirements also apply to deregistration decisions under s 32(1)(a). Under s 13, an institution qualifies for registration if it is established and maintained exclusively for charitable purposes and is not carried on for the private pecuniary profit of any individual.

[16] Charitable purpose is inclusively defined in s 5(1) of the Act as 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.

[17] Subsections 5(3) and 5(4) clarify that an ancillary non-charitable purpose that is not an independent purpose of an entity does not prevent the entity from qualifying for registration.

[18] If the Board decides to deregister an entity, as occurred in this case, the entity then has a right of appeal to the High Court,¹¹ which has the power to confirm, modify or reverse the decision of the Board, to exercise any of the powers that could have been exercised by the Board, and to make any other order that it thinks fit.¹²

Relevant aspects of the law relating to charitable purpose

[19] As noted above, charitable purpose is inclusively defined in s 5(1) of the Act. That is a restatement of the established common law classification of charitable purposes outlined in *Commissioners for Special Purposes of Income Tax v Pemsel*.¹³ That classification was extracted from the Preamble to the Statute of Charitable Uses 1601 (43 Eliz I c 4) (the Preamble).

¹⁰ Section 34.

¹¹ Section s 59.

¹² Section 61(1) and (4).

¹³ *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 (HL).

[20] In this case the principal issue is whether PGDB's purposes are charitable under the fourth head, namely whether they relate to "any other matter beneficial to the community." It is well established that not every benevolent purpose is charitable.¹⁴ There are two requirements for charitable purpose under the fourth head. It must first be established that the benefits of the trust accrue to the public. This requires the application of a two-fold test:

- (a) the purposes of the trust must be such as to confer a benefit on the public or a section of the public; and
- (b) the class of persons eligible to benefit must constitute the public or a sufficient section of the public.¹⁵

[21] The second requirement is that the purpose must come within the spirit and intendment of the Preamble.¹⁶ The Preamble provides a list of charitable uses as follows:

The relief of the aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; the marriages of poor maids; the supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives and the aid and ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers, and other taxes.

[22] The requirement to be charitable within the spirit and intendment of the Preamble can be met in two ways. First, a purpose will be charitable if it is analogous to a purpose that has been held to be within the spirit and intendment of the Preamble. Second, charitable status will be presumed if the objects beneficial to the public are prima facie within the spirit and intendment of the Preamble. In such

¹⁴ At 565.

¹⁵ *Travis Trust v Charities Commission* (2009) NZTC 23,273 (HC) at [54] – [55].

¹⁶ *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [32] as cited in *Re Greenpeace of New Zealand Inc* [2012] NZCA 533, [2013] 1 NZLR 339 at [43]. Leave to appeal this decision was granted by the Supreme Court in *Re Greenpeace of New Zealand Inc* [2013] NZSC 12.

a case, the purpose will be charitable unless there are grounds for holding that it is outside the spirit and intendment of the Preamble.¹⁷

Board decision

[23] The Board decided to remove the PGDB from the Charities Register on the ground that it was not established and maintained exclusively for charitable purposes as required by s 13(1)(b)(i) of the Act. Its reasoning was as follows.

[24] The Board began by identifying the purposes of the PGDB. It considered examination of the whole context was necessary because s 3(a) of the PGDA was broad and vague. This involved looking at s 3(b) and the functions of the PGDB as outlined in s 137 of the PGDA.

[25] The Board determined that protection of the health and safety of the public through the regulation of the subject industries is not the PGDB's exclusive purpose. It found that the PGDB has an independent purpose to regulate plumbing, gasfitting and drainlaying for the benefit of individuals working within the subject industries because of the substantial 'private' benefits conferred on the occupational groups. These benefits were not considered to be merely incidental to the PGDB's purpose to protect the health and safety of the public.

[26] An important aspect of the Board's decision was its determination that the PGDB was different from the Medical Council of New Zealand (MCNZ). In *Commissioner of Inland Revenue v Medical Council of New Zealand* (the *Medical Council* case) the Court of Appeal found that the MCNZ was charitable.¹⁸ The Board distinguished the PGDB from the MCNZ on two grounds. The first ground was that the MCNZ was exclusively established for the protection of the public in relation to the quality of medical and surgical services. Benefits to the medical profession were incidental to that primary benefit to the public and not an independent purpose of the Council. Conversely, the Board found that PGDB has an independent purpose to regulate plumbing, gasfitting and drainlaying for the benefit of the subject industries.

¹⁷ *Re Greenpeace of New Zealand Inc* at [43].

¹⁸ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 (CA).

[27] The second ground was that the purpose of the MCNZ was beneficial to the community. The Board found that the public benefit in maintaining professional standards within the subject industries does not fall within the spirit and intendment of the Preamble. It accepted that provision of public utilities is a charitable purpose. But it determined that the regulation of individuals who may be employed in provision of public utilities is too remote from the provision of public utilities to come within the Preamble.

[28] The Board also considered that the decision in the *Medical Council* case, that it is a charitable purpose to protect the public in respect of the quality of medical and surgical service, does not extend to cover all industries that have public utility.

[29] The Board noted that there is a clear public benefit in the PGDB's regulation of the sanitary plumbing, gasfitting and drainlaying trades. But it found that the subject industries do not come within that limited class of industries, the advancement of which is recognised as charitable in law.

The arguments on appeal

[30] The appellant's appeal was advanced on the ground that the Board failed to properly analyse the purposes and activities of the PGDB. Its submissions in this regard fall into three separate categories.

[31] The first category is "independent purpose". On behalf of the appellant, Ms Low submitted that PGDB's primary purpose is to protect public health and safety by ensuring the competency of those engaged in the subject industries.

[32] Ms Low argued that its regulatory function is not an independent purpose. It is the means of achieving its primary purpose. She pointed to numerous provisions in the PGDA that, she says, demonstrate that regulation is intended to achieve the health and safety purpose of the PGDA.

[33] The second category is "benefits to the 'profession'". Ms Low submitted that the Board gave undue weight to the benefits of registration and licensing to those regulated by the PGDB. She accepted that its functions may benefit individuals

working within the subject industries. But she said these benefits are an inherent consequence of a system of registration. She submitted that providing such benefits to industry members is not a purpose of the PGDB. Rather, those benefits are merely incidental to the primary purpose of the PGDB.

[34] The third category is “public benefit/charitable purpose”. Ms Low submitted that maintaining professional standards in the subject industries is a charitable purpose because it falls within the spirit and intendment of the Preamble.

[35] As noted above, a purpose can fall within the spirit and intendment of the Preamble by analogy or the presumption of charitable status. Ms Low submitted that the PGDB is analogous to the MCNZ. She said that regulating the relevant industries protects the public from the risk posed by those industries in the same way that MCNZ protects the public by regulating the quality of medical and surgical services. Ms Low argued that in the medical arena and in the relevant industries, there is a clear and obvious danger to the public where unsafe practices are not regulated.

[36] Ms Low submitted that even if this is not the case, the Preamble recognises that some items of public utility are so essential to the safe and efficient functioning of the community that they should be deemed charitable.

[37] In response, the Board advanced two submissions. First, that the purpose of the PGDB to protect the public by regulating the relevant industries does not come within the definition of a “charitable purpose” Second, that the non-charitable purposes of the PGDB are not ancillary; rather, they are substantial and independent purposes.

[38] In support of the first submission, Mr Gunn argued that the PGDB’s functions and purposes are not charitable because they are only of indirect benefit to the community and because they are not purposes that are within the spirit and intendment of the Preamble.

[39] He submitted that is so because no member of the public directly benefits from the regulation of the relevant trades and the indirect benefit to the public arising from that regulation is too remote to attribute a charitable purpose to the PGDB.

[40] Further, the MCNZ is not analogous to the PGDB and therefore the appellant cannot argue that its purposes should also be considered to come within the spirit and intendment of the Preamble. Essentially, the MCNZ is distinguishable from the PGDB because:

- (a) The regulation of the relevant trades does not promote public health in the same way that the protection of the public in respect of the quality of medical and surgical services does.
- (b) The only purpose of the PGDB is to regulate the relevant trades. In contrast, the MCNZ did not just regulate the medical profession. It also advised University Councils on matters relating to medical education and was required to satisfy itself that the courses in medicine and surgery at any university in New Zealand were adequate.
- (c) The Court of Appeal in the *Medical Council* case determined that the Medical Council is not a public authority. The respondent points to statutory requirements prescribed by the PDGA, that provide for some Ministerial oversight of the PGDB. The respondent says that these statutory requirements indicate that the eleemosynary underpinning traditionally associated with the concept of charities is missing.

[41] In support of its second submission, the respondent largely echoed the Board's reasoning and determination that the PGDB's regulatory purposes are not merely ancillary to the charitable purpose of the promotion of public safety and health.

Approach on appeal

[42] The principles applicable to appeals of this nature are set out in the Supreme Court decision in *Austin, Nichols & Co Inc v Stichting Lodestar*.¹⁹ This approach requires a fresh appraisal of the evidence put before the tribunal from which an appeal is brought. The question is whether the Commissioner erred in its decision.²⁰

Discussion

[43] Whether PGDB is established and maintained exclusively for charitable purposes as required by s 13(1)(b)(i) of the Act turns on two questions:

- (a) Is the PGDB exclusively established for the protection of the public in relation to the quality of services in the subject industries?
- (b) Is the protection of the public in respect of the quality of services in the subject industries a benefit to the community?

[44] I will deal with each of these questions, and any sub-issues related to these questions in turn.

Is the PGDB exclusively established for the protection of the public in relation to the quality of services in the subject industries?

[45] The Board concluded that the PGDB has an independent non-ancillary purpose to regulate the subject industries for the benefit of plumbers, gasfitters and drainlayers.

[46] I take a different view. The starting point for determining the purposes for which a statutory body is established is the relevant constituting legislation.²¹ As noted above, s 3 provides for the purposes of the Act as:

¹⁹ *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [16].

²⁰ *Re Greenpeace of New Zealand Inc*, above n 16, at [60].

²¹ *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 (CA) at 148.

- (a) to protect the health and safety of members of the public by ensuring the competency of persons engaged in the provision of the subject industries; and
- (b) to regulate persons who carry out work in the subject industries.

[47] The next relevant consideration is s 137 of the Act. Mr Gunn highlighted that s 3 outlines the purposes of the Act and not the purposes of the PGDB and that s 137 does not refer to the health and safety purpose of the PGDA: rather, it is focused on the mechanics of the registration process. However, I do not find these features determinative. The key issue is whether the purpose of the functions outlined in s 137 is to benefit those working in the subject industries, or the public.

[48] The functions outlined by s 137 essentially involve registration, licensing, education, qualification, complaints and prosecution. The PGDB also establishes standards of competence and safe work practices and ideals. With the exception of the broadly expressed function, to “do any other things as may, in the Board’s opinion, be necessary for the effective administration” of the Act, every one of those functions is directed to promoting the proper regulation of the regulated trades in order to ensure those operating within it are competent and therefore the health and safety of the public is therefore safeguarded, so far as is possible.

[49] Whilst those functions will undoubtedly benefit those working within the subject industries, their main purpose is to maintain standards for the safety of the public. It is artificial to separate s 3(a) and s 3(b). Regulation is not an end in itself. Section 3(b) is clearly the means by which the purpose outlined in 3(a) is to be achieved: that is, by regulation.

[50] It is also instructive that these functions are markedly similar to the functions of the Medical Council of New Zealand. The functions of the Medical Council include: the maintenance of a formal system of registration of medical practitioners; the maintenance of discipline within the medical profession; the accreditation and surveillance of appropriate undergraduate and postgraduate education of medical practitioners; and the suspension of impaired medical practitioners and the

maintenance of systems for identifying, monitoring and rehabilitating impaired medical practitioners. Of those functions, McKay J remarked:²²

I readily accept ... that a principal function of the council is to provide and maintain a register of qualified medical practitioners. I can also accept that the maintenance of such a register is beneficial to those whose names are included in it... it does not follow, however, that these benefits were either the purpose of the legislation or the purpose of the establishment of the council. The restriction of the right to practise under the recognised descriptions, and the provision for registration of only those who are properly qualified, would seem to have as their obvious and primary focus the protection of the public ...

[51] The same analysis is able to be applied to the present case. The PGDB's functions may increase public confidence and thereby provide a flow-on benefit to those working in the subject industries. But those benefits are purely collateral and incidental consequences inherent within a system of registration. The provision of those benefits is not the purpose of registration.

[52] In this case, neither the Board, nor the respondent, could point to functions or activities performed by the PGDB that solely benefit those working in the subject industries. The *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* provides a useful comparison in relation to welfare services.²³ In that case, Tipping J referred to a corporate plan compiled by the Council in his assessment of what IPENZ was doing or intending to do. The plan detailed a committee for employment and welfare, whose purpose was to survey the needs of members in their gainful employment. Subsidiary functions of the committee were to conduct regular surveys of salaries and employment benefits, the maintenance of an overview of conditions and pay, and the conduct of an employment advisory service. The plan also detailed a committee for public affairs designed to promote the profession and the contribution it makes to society.²⁴ Tipping J also had regard to the rules of IPENZ. For example, s 19 dealt with the rights of members in disciplinary proceedings. It provided that each corporate member could seek the advice and support of IPENZ or of the council on any matter

²² *Commissioner of Inland Revenue v Medical Council of New Zealand*, above n 18, at 309.

²³ *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 (HC).

²⁴ At 575.

concerning his or her welfare.²⁵ In the present case, if the PGDB were established for the benefit of those working within the subject industries, it could be expected that s 137 would have made provision for similar services.

[53] IPENZ is a clear example of an institution established for the advantage and in the interests of those working in the subject industries. For the reasons outlined above, I do not find that the same applies to the PGDB.

Is the protection of the public in respect of the quality of services in the subject industries a benefit to the community?

[54] The above conclusion will not however assist the appellant unless the purpose of protecting the public by ensuring the competency of those working in the regulated trades is a benefit to the community.

[55] The first requirement is that the PGDB must exist for the benefit of the public. The two-fold test outlined at [20] above is satisfied here. The Board held that there is a clear public benefit in the PGDB's regulation of the subject industries. The class of persons eligible to benefit from the PGDB's purpose certainly constitute a sufficient section of the public.

[56] The second requirement is that the purpose must be within the spirit and intendment of the Preamble. The most efficient way of addressing this issue is to consider whether the PGDB's purpose is analogous to a purpose that has previously been held to be within the spirit and intendment of the Preamble. The appellant argues that the Medical Council's purpose is analogous to that of the PGDB.

[57] The Board distinguished the Medical Council from the PGDB for two reasons. The first reason was that the PGDB has an independent purpose to regulate for the benefit of those in the industry. I have already found that the PGDB's purpose is to regulate for the protection of the public and that any benefit to those working in the industry is merely incidental.

²⁵ At 574.

[58] The second reason was that it considered the protection of the public in respect of quality of medical and surgical services as distinguishable from maintaining professional standards within the subject industries.

[59] However, this analysis of the PGDB's purpose constitutes only half of the picture. As I have observed, it is artificial to describe the functions of the PGDB (regulation) while at the same time excluding the intended outcome to which those functions are directed. The relevant purpose here is the protection of the health and safety of members of the public.

[60] It follows that the correct question is whether the protection of the public in respect of quality of medical and surgical services is the same as the protection of the public in respect of services within the subject industries. On this point, the appellant accepted that the charitable purpose of protecting the health and safety of the public does not extend to all industries of public utility. In every case the Court must draw the line by examining the quality of the protection afforded by the institution or society and the risks against which that that institution or society is intended to guard. For instance, in *Re New Zealand Computer Society Inc* the importance of maintaining high standards in the IT profession was not considered analogous to the importance of maintaining high standards in the medical or nursing profession.²⁶

[61] The issue is the nature of risk that provision of services by the subject industries has for the public. Ms Low highlighted the possibility of a gas explosion; the potential impact on drinking water of unsafe plumbing practice and the potential risk to public health from unsanitary drainage. Although fixing a gas leak involves completely different skills and training to carrying out surgical procedures, both activities have the potential to pose a substantial risk to the public if not performed competently.

[62] Mr Gunn sought to further distinguish MCNZ on other grounds, highlighting the role of the Medical Council to advise University Councils on matters relating to medical education. The PGDB is also required to make recommendations to any

²⁶ *Re New Zealand Computer Society Inc* (2011) 25 NZTC 20-033 (HC) at [56].

person or body concerned with the education or training of any person wishing to enter the subject industries.²⁷ Thus the two functions have similarity.

[63] Mr Gunn also emphasised the ministerial oversight of the PGDB provided for by the Act. This oversight is however directed at ensuring regulation is effective in achieving the public protection aims of the PGDB. For example, s 34 requires the PGDB to submit to the Minister any proposed notice designating classes of registration²⁸ or providing for the prescription of minimum standards of registration and requirements for competent and safe work places.²⁹ If anything, this strengthens the appellant's position. It is an express recognition that the purpose is to regulate for protection of the public, and not to act directly in the interests of those working within the regulated trades.

Result

[64] For the reasons given the appeal is allowed and the decision of the Board to remove the PGDB as a charitable entity under the Act is set aside.

Goddard J

²⁷ Plumbers, Gasfitters, and Drainlayers Act 2006, s 137(n).

²⁸ Section 28.

²⁹ Section 30.