

## Registration decision: Science Technicians' Association of New Zealand Incorporated (SCI43574)

### The facts

1. Science Technicians' Association of New Zealand Incorporated ("the Applicant") was incorporated under the *Incorporated Societies Act 1908* on 25 January 2012.
2. The Applicant applied to the Charities Commission ("the Commission") for registration as a charitable entity under the *Charities Act 2005* ("the Act") on 16 February 2012.
3. The Applicant's purposes are set out in clause 2 of its rules document:
  - (a) *To identify and promote the on-going professional development needs of science technicians throughout New Zealand.*
  - (b) *To encourage and promote links with wider science and technology community.*
  - (c) *To provide information and advice to science technicians on resources, methods and systems.*
  - (d) *To provide professional stimulation of science technicians through opportunities for sharing professional ideas and opinions.*
  - (e) *To collect, analyse and disseminate information about science technicians in New Zealand and overseas schools.*
  - (f) *To endorse guidelines for science technician qualifications, role descriptions, professional development and support, resource requirements, deployment ratios, career structure and progression.*
  - (g) *To be available to consult with the Ministry of Education, Government agencies and other organisations on matters concerning science technicians.*
  - (h) *To promote safe work practices and environments as required by the HSNO Hazardous Substance and New Organism resolutions (HSNO) and the Code of Practise for School Exempt laboratories (CoP).*
  - (i) *To run the biennial conference of STANZ. This shall be hosted by regional groups.*
4. The Commission analysed the application and on 11 June 2012 sent the Applicant a notice advising that its application may be declined on the basis that the purposes set out in clause 2 do not indicate an intention to provide public benefit, rather they promote the interests of science technicians.
5. In a letter dated 25 June 2012, the Applicant responded to the notice, submitting the following:

## **History**

*The Science Technicians' Association of New Zealand (STANZ) was formed as a standing committee of New Zealand Association of Science Educators (NZASE), CC44455, who at the time of formation had a not for profit tax exemption. STANZ was set up as a not for profit organisation and it was assumed as our parent body is a charitable organisation, this status would also apply to STANZ.*

*The National Executive is made up of technicians who have voluntarily offered to give of their time to serve a two year term. There is no financial remuneration paid to those on the Executive nor are there any paid employees.*

*As a standing committee of NZASE, we are bound by their rules and constitution. After repeated problems with STANZ funds being paid into incorrect NZASE bank accounts (due to accounting software used by many schools) it was felt that the two organisations needed independent bank accounts. In order to establish separate bank accounts, STANZ was required to register for an IRD number. This was done, and a bank account duly opened. The STANZ National Executive looked at our organisation's status, and committed to becoming an incorporated society. Ideally the Executive of NZASE should have applied for both the incorporation and the charitable status on our behalf, as a standing committee is in effect a branch of the parent organisation.*

*However members of the NZASE Executive are busy volunteers, and requested that STANZ apply on their own behalf with their blessing. Incorporation was achieved, and then an application for charitable status was submitted.*

*Today's technician is responsible for diluting concentrated acid for use in classroom, the safe storage and handling of all hazardous chemicals, assembling/repairing specialist science equipment such as van der Graf generators, distillation set-up, titration equipment to name but a few. The position, today, is probably the one most responsible for ensuring school science laboratories comply with the HSNO Act.*

*There is no specific training available for school technicians who come from a varied background. Many have tertiary science background but that can range from previous employment as a laboratory technician in a hospital, university or teaching, all of which provide valuable skills for being a school science technician but none provide the knowledge for all the position entails and it was out of this need that STANZ was born. STANZ run a biennial conference organised by Science Technicians for Science Technicians to try to fill the gaps in the on-the-job training that many technicians receive, often given by those who have little or no knowledge about how to do the job.*

*The majority of science technicians in New Zealand are working in solo positions. The Royal Society set up a list-serve for science technicians to exchange ideas as this is the fastest way to get an answer to questions. Using this means of communication is enabling technicians to deliver a first class service to the children of New Zealand.*

*Any improvement in technician education makes for a safer secondary school science department, a better working environment for the science teachers and this has a flow on effect for science education for the wider community.*

*A science technicians' work is not confined to middle and senior science preparation. In schools which start at pre-school and go through to Year 13, the technician often prepares science work for junior school classes. In other instances, the secondary school technician may assist at the local primary or intermediate school. Many technicians are also involved with judging at regional Science Fairs and most technicians are involved in helping students prepare exhibits for Science Fair. In different regions, technicians are involved with local environmental activities as a part of their job such as Trees for Survival and the Enviro-school programme.*

*All of these activities enable students at New Zealand schools to have the best exposure to science at all levels and to spark an interest in science at an early stage. If science technicians were not in the modern school, the level of science education would be at a much lower level than is currently offered by the New Zealand secondary school.*

[emphasis added]

**Charitable purpose:**

*STANZ was set up in order to provide support to technicians who support science learning in schools.*

*STANZ provides professional development for technicians who have a diverse background and realistically cannot be well versed in all aspects of science as demanded by the role.*

*School science technicians believe in providing quality education to the children of New Zealand and believe that each child in New Zealand is entitled to such. The purpose of STANZ is to provide the backup for this and as there is no training available, provide training in the form of a biennial conference.*

**The Society's purpose and activities:**

*The term "professional" was put into our mission statement as an attempt to encourage the wider public to consider the position of technician in a secondary school as something more than a Mum and Dad who came to school to earn a little pocket money. This statement was approved by NZASE. The modern day school science technician is responsible for much more than glassware, textbooks and other school resources.*

*The only private benefit to STANZ members is gaining better knowledge to enhance the learning outcome of children at New Zealand schools.*

## The issues

6. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issue for consideration is whether the Applicant is a society that was established and maintained exclusively for charitable purposes and is not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act. In particular, the issues are:
  - (a) whether the Applicant's purposes fall within the definition of charitable purposes in section 5(1) of the Act; and
  - (b) whether the Applicant provides a public benefit.

## The law on charitable purpose

7. Under section 13(1)(b) of the Act, a society 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.
8. 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 at benefiting the public or a sufficient section of the public.
9. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
10. In considering an application for registration, section 18(3)(a) of the Act requires the Charities Registration Board ("the Board") to 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 is relevant; ...*

## Charities Registration Board's analysis

11. The Board considers that the Applicant's purposes set out in clause 2 do not indicate an intention to relieve poverty or advance religion. The Applicant's purposes have therefore been considered in relation to the advancement of education and other matters beneficial to the community.

### Advancement of education

12. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced.

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

13. 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, as long as there is a balanced, and systematic process of instruction, training, and practice.<sup>2</sup> In order to advance education, learning must be passed on to others.
14. In *In Re Shaw (deceased)*, the court held that "if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education."<sup>3</sup>

Other matters beneficial to the community

15. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose 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>4</sup>
  - 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.<sup>5</sup>
16. Not all organisations that have 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*:

<sup>2</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>3</sup> [1957] 1 WLR 729. (See also *Re Hopkins' Will Trusts* [1965] Ch 669, [1964] 3 All ER, [1964] 3 WLR 840; *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73, [1971] 3 All ER 1029, [1971] 3 WLR 853; *McGovern v Attorney-General* [1982] 1 Ch 321, 352.)

<sup>4</sup> *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society 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 Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

<sup>5</sup> *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

*[I]t 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>6</sup>*

17. Over the years, the courts have recognised many new charitable purposes that are substantially similar to those listed in the Statute of Elizabeth, acknowledging that what is accepted as a charitable purpose must change to reflect current social and economic circumstances.

### Professional associations

18. In order to be charitable, the benefits from an entity's purposes and activities must be to the community rather than to private individuals. Any private benefits arising from an entity's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.<sup>7</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>8</sup>

19. Dal Pont states:

*Since the earliest times the conferral of private benefits has been inconsistent with charity, focusing as it does on public benefit. Hence, an association that exists mainly to advance the interests of, or otherwise benefit, its members is not charitable, even if carrying out its objects results in benefit to the community.<sup>9</sup>*

20. There have been a number of court decisions involving professional bodies.
21. In *Inland Revenue Commissioners v City of Glasgow Police Athletic Association*,<sup>10</sup> it was held that for a professional association to be charitable it must show "that so viewed objectively, the association is established for a public purpose and that the private benefits to members are unsought consequences of the pursuit of the public purpose and can therefore be disregarded as incidental."
22. In *Chartered Insurance Institute v Corporation of London*,<sup>11</sup> the court held that if a purpose is aimed at "education in a particular aptitude...primarily designed for the acquisition of some professional advantage", this would not qualify as a charitable purpose.<sup>12</sup>

<sup>6</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.

<sup>7</sup> *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

<sup>8</sup> *Gilmour v Coats* [1949] AC 426; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

<sup>9</sup> Gino Dal Pont, *Law of Charity*, LexisNexis Butterworths, Australia, 2010, p326.

<sup>10</sup> [1953] AC 380

<sup>11</sup> [1957] 1 WLR 867.

<sup>12</sup> *Ibid* at 876.

23. In *Re Mason*,<sup>13</sup> the High Court considered that while the objects of the Auckland District Law Society were “entirely wholesome and likely to lead to the ultimate benefit of the public in that the members of the legal profession in this country will be encouraged to be more competent and more ethical in the practice of the law, they fall short of making the Society a charity.”<sup>14</sup> To illustrate his analysis, McMullin J wrote:

*The test of whether a library is a charity is whether it tends to the promotion of education and learning for the public or a sufficiently wide section of the public or whether it benefits only a more limited number of persons. If it is the first class, it will be charitable, if in the second class it will not be charitable.*<sup>15</sup>

24. In that case, the court made a distinction between charitable institutions whose main object was the advancement of education which provided a clear public benefit and non-charitable institutions whose main object was the protection and advantage of those practising in a particular profession. McMullin J cited examples of charitable institutions, such as an institute of pathology<sup>16</sup> and a college of nursing,<sup>17</sup> and examples of non-charitable institutions, such as an insurance institute<sup>18</sup> and a society of writers.<sup>19</sup> Promotion of charitable purpose must be its predominant object and any benefits to individual members of non-charitable character which result from its activities must be of a subsidiary or incidental character.<sup>20</sup>
25. In *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*,<sup>21</sup> the High Court held that although the advancement of the science of engineering was beneficial to the general public, a function of the institution was to perform a significant professional role which produced private benefits to engineers, and therefore it could not be said that the institution was established exclusively for charitable purposes.<sup>22</sup>
26. In *New Zealand Computer Society Inc*, MacKenzie J discussed the Medical Council case:

*In IPENZ v CIR Tipping J drew a distinction between, “learned society” functions and professional or “protective society” functions. The latter are intended to confer private benefits on members of the society, and thus are not charitable, while the former are aimed at developing or advancing the body of learning that is central to*

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<sup>13</sup> [1971] NZLR 714.

<sup>14</sup> *Ibid*, at 725.

<sup>15</sup> *Ibid*, at 722.

<sup>16</sup> *Royal College of Surgeons of England v National Provincial Bank* [1952] AC 631; [1952] 1 All ER 984.

<sup>17</sup> *Royal College of Nursing v St Marylebone Corporation* [1959] 1 WLR 1077; [1959] 3 All ER 663.

<sup>18</sup> *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR 867.

<sup>19</sup> *Society of Writers to Her Majesty's Signet v Commissioners of Inland Revenue* (1886) 2 TC 257.

<sup>20</sup> *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380.

<sup>21</sup> [1992] 1 NZLR 570.

<sup>22</sup> *Ibid* at 583.

the organisation's profession, making them charitable. In that case the learned society functions included advancement of the science of engineering, facilitating and disseminating publications, making awards, facilitating the activities of technical groups, and arranging conferences. Professional society functions included **promotion of professional proficiency, accrediting and training of professional engineers**, maintaining the image of the profession, and providing welfare functions for members. In the end, the question was whether the non-charitable purposes were "significant in themselves or simply inevitable and unsought consequences of the pursuit of the principal public and charitable object". Tipping J concluded that the "private benefits [could not] be disregarded as incidental".<sup>23</sup>

...  
It is true, of course, that the public might derive some down-stream, or even direct, benefits from the Society's promotion of further education amongst professionals, its advocacy work, its **accreditation system, or its promotion of proper and ethical conduct**. However, I think that any such benefits are merely ancillary and cannot constitute independent charitable purposes.<sup>24</sup> [Emphasis added]

27. The Board is of the view that the Board's purposes and activities fall into the non-charitable category described in *Re Mason, Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* and *New Zealand Computer Society Inc* because the primary benefits are for the occupational group concerned, rather than the general public.
28. Both the Applicant's rules document and its website state that the main object of the Applicant is to "represent the professional interests of all secondary school science technicians".
29. In line with the analysis of learned society and professional society functions in the Computer Society case, the Board considers that clauses 2(a)-(h) of the Applicant's rules are primarily for the benefit of members of the occupational group.
30. The Board therefore considers that the Applicant's main object is to promote the interests of science technicians and not to "enhance learning...of children at New Zealand schools" (as stated in the Applicant's letter of 25 June 2012) and that the Applicant is a professional organisation which is not charitable under the advancement of education or other matters beneficial to the community.

#### Ancillary purposes

31. In *Greenpeace of New Zealand Incorporated*,<sup>25</sup> Heath J sums up when a purpose can be considered ancillary:

*I agree with Simon France in Re Grand Lodge of Antient Free and Accepted Masons in New Zealand, that both qualitative and quantitative assessment is required to determine whether the non-charitable purpose is "ancillary." In conducting that analysis, it is necessary to evaluate whether the non-charitable purpose are truly incidental or independent.*

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<sup>23</sup> HC WN CIV-2010-485-924 [28 February 2011], para 42.

<sup>24</sup> *Ibid*, para 56.

<sup>25</sup> HC WN CIV 2010-485-829 [6 May 2011].



*The use of the phrase “merely ancillary” in s 5(3) suggests the need to distinguish between a purpose that is a necessary incident of the charitable purpose from one which can be seen as an object in its own right – an independent purpose. The words used in s 5(4) of the Act, as examples of a purpose that will be regarded as ancillary, evidence the subservient or incidental nature of the object. That approach accords with the obvious Parliamentary intention that exclusive charitable purposes are required generally for registration to be effected.*

*A quantitative assessment is one designed to measure the extent to which one purpose might have a greater or lesser significance than another. That assessment is a question of degree. On the other hand, a qualitative assessment has regard to the particular function in issue. A qualitative assessment helps to determine whether the function is capable of standing alone or is one that is merely incidental to a primary purpose.<sup>26</sup>*

32. In *New Zealand Computer Society Inc*, MacKenzie J states:

*Simon France J in Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand considered that the question of whether a purpose was ancillary required both a quantitative and qualitative assessment. As noted by Dobson J in Re Education NZ Trust, the assessment is a “situation-specific analysis of the relative relationship between public and private benefits.”<sup>27</sup>*

33. In *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*,<sup>28</sup> the High Court framed the question as whether the non-charitable purposes were “significant in themselves or simply inevitable and unsought consequences of the pursuit of the principal public and charitable object.”<sup>29</sup>

34. In the *Computer Society and IPENZ* cases and *Chartered Insurance Institute v Corporation of London*,<sup>30</sup> it was held that advancement of professional proficiency and accreditation are not charitable purposes, and that any public benefit that flows from having an educated and qualified professional workforce is too remote to qualify as charitable.

35. In *New Zealand Computer Society Inc*, MacKenzie J states:

*It is true, of course, that the public might derive some down-stream, or even direct, benefits from the Society’s promotion of further education amongst professionals, its advocacy work, its accreditation system, or its promotion of proper and ethical conduct. However, I think that any such benefits are merely ancillary and cannot constitute independent charitable purposes.<sup>31</sup>*

36. The Board considers that, as the primary benefits provided through the Applicant’s purposes and activities accrue to the occupational group, and

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<sup>26</sup> Ibid, para 74.

<sup>27</sup> HC WN CIV-2010-485-924 [28 February 2011], para 16.

<sup>28</sup> [1992] 1 NZLR 570.

<sup>29</sup> [1992] 1 NZLR 570 at 583.

<sup>30</sup> [1957] 1 WLR 867.

<sup>31</sup> HC WN CIV-2010-485-924 [28 February 2011], para 56.

any public benefit that flows from these is incidental, they cannot be regarded as qualitatively ancillary to any charitable purpose. These private benefits are not an unsought consequence of the pursuit of a public and charitable object, but rather are significant in themselves.

37. In *In Re Education New Zealand Trust*,<sup>32</sup> regarding the quantitative aspect, Dobson J stated that “a 30 per cent constituency cannot realistically be characterised as ancillary, secondary, subordinate or incidental.”
38. In *Navy Health Limited v Deputy Commissioner of Taxation*,<sup>33</sup> also regarding the quantitative aspect, it was held that a 10 per cent constituency could not be regarded as ancillary.
39. The Board concludes that the private benefits that the Applicant provides to the occupational group is of such significance, qualitatively and quantitatively, that it cannot be viewed as ancillary to any charitable purpose, but is rather an independent purpose.

### The Applicant's submissions

#### *Promotion of safety*

40. In its letter of 25 June 2012, the Applicant states:

*Today's technician is responsible for diluting concentrated acid for use in classroom, the safe storage and handling of all hazardous chemicals, assembling/repairing specialist science equipment such as van der Graf generators, distillation set-up, titration equipment to name but a few. The position, today, is probably the one most responsible for ensuring school science laboratories comply with the HSNO Act.*

...

*Any improvement in technician education makes for a safer secondary school science department, a better working environment for the science teachers and this has a flow on effect for science education for the wider community.*

41. In the following cases, the court has considered the protection of the safety of the public provided by professional associations, and yet concluded that they are not charitable. In *General Medical Council v Inland Revenue Commissioners*,<sup>34</sup> it was held that the Council was not charitable despite the Council having “judicial disciplinary powers for the removal of persons who prove themselves unworthy of being upon the register”.<sup>35</sup> Likewise, in *General Nursing Council for England and Wales v St Marylebone Borough Council*,<sup>36</sup> the fact that the Council removed unsuitable people from the register did not prevent the court concluding that the Council was non-charitable. Furthermore, in *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*,<sup>37</sup> the High Court held that

<sup>32</sup> HC WN CIV-2009-485-2301 [29 June 2010].

<sup>33</sup> [2007] FCA 931.

<sup>34</sup> (1928) 97 LJKB 578 (CA).

<sup>35</sup> (1928) 97 LJKB 578 (CA) at 580.

<sup>36</sup> [1959] AC 540.

<sup>37</sup> [1992] 1 NZLR 570.

the Institution was not charitable despite the Institution dealing with professional conduct and discipline and requiring all members to conduct themselves with due regard to the public interest especially in matters of health and safety.<sup>38</sup>

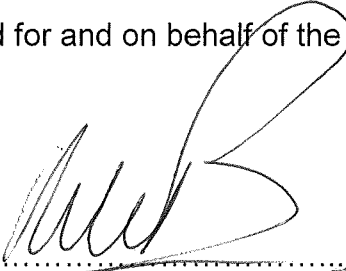
42. In line with the above cases, the Board does not consider that this promotion of safety renders the Applicant's purposes charitable.

### **The Board's decision**

43. The finding of the Board is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the Act.

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

Signed for and on behalf of the Charities Registration Board

  
.....  
Peter Burke  
General Manager - Charities

31/8/12  
.....  
Date

<sup>38</sup> [1992] 1 NZLR 570 at 574.