

## Registration decision: Midwifery and Maternity Providers Organisation Limited

### The facts

1. Midwifery and Maternity Providers Organisation Limited (the Applicant) was incorporated under the Companies Act 1993 under the name of Midwifery and Maternity Providers Limited on 15 October 1997. The Applicant changed its name to the current form on 27 March 1998.
2. The Applicant applied to the Commission for registration as a charitable entity under the Charities Act 2005 (the Act) on 18 April 2008.
3. The Applicant's original objectives are found in clause 3 of its Constitution:

"3. **OBJECTIVES**

*The objectives of the MMPO Ltd are to assist midwives in promoting efficient midwifery services in New Zealand by the following means:*

- 3.1 *Ensuring midwives continue to have an environment where they can provide maternity care to women within the midwifery model of care as articulated in the NZCOM Standards for Practice, by providing information, management systems and support to midwives,*
- 3.2 *Providing the necessary information to purchasers of maternity services that enable and support midwives to provide a high quality, woman focused maternity care,*
- 3.3 *Supporting the sustainability of midwifery services throughout New Zealand including sustainability for Maori and rural women and those choosing a home birth,*
- 3.4 *Negotiating and providing payment systems and managing payments for maternity services on behalf of Lead Maternity Carer midwives and associated maternity service providers,*
- 3.5 *Collecting relevant maternity outcome data to ensure midwives can review their work against the standards of the profession and help women choosing midwifery led maternity care achieve high quality outcomes,*
- 3.6 *Ensuring all midwife members take part in quality assurance activities and are members of their national recognised professional body, the NZCOM,*
- 3.7 *Supporting the professional role of the NZCOM to position, develop and service the profession of midwifery in New Zealand,*
- 3.8 *Providing aggregated clinical information to member midwives and the New Zealand College of Midwives."*

4. The Applicant's website<sup>1</sup> describes its main functions as:

*"The Organisation's main functions:*

- To ensure midwives continue to have an environment where they can provide maternity care to women within the midwifery model of care.*
- To negotiate with maternity service purchasers for service contracts, which enable midwives to provide high quality, women focused maternity care.*
- To support the development of midwifery services throughout the country, particularly for Maori, rural women and those choosing a home birth.*
- To negotiate and manage payment for maternity services to Lead Maternity Carer midwives and associated maternity providers.*
- To collect relevant maternity outcome data so women who choose midwifery led maternity care can make an informed choice.*
- To ensure that midwife members take part in quality assurance activities and are members of their nationally recognised professional body, the NZCOM.*
- To support the professional role of the NZCOM to position, develop and service the profession of midwifery in New Zealand."<sup>2</sup>*

5. The Applicant's website also has a Services section describing what the Applicant can do for midwives, as follows:

*"What can the MMPO do for Midwives?*

- Streamline and manage payment claiming for Lead Maternity Carer (LMC) services on your behalf (secure electronic and hardcopy systems available)*
- Provide you with women-held maternity notes that enable you to meet your section 88 obligations*
- Streamline your data collection requirements and provide you with an annual report of your midwifery outcomes for NZCOM Midwifery Standards Review*
- Provide you with regular reports to analyse your outcomes compared with those of midwife LMC's nationally and in your region*
- Achieve electronic connectivity with colleagues, other health professionals and hospitals ...*
- Advice and assistance in midwifery practice management*
- Financial assistance and advice if you are establishing new LMC services in rural areas"<sup>3</sup>*

6. The Commission analysed the application for registration and on 11 July 2008, sent the Applicant a notice that may lead to a decline on the basis that:

- Clauses 3.4, 3.6, and 3.7 of the Constitution did not fall within the definition of charitable purpose under section 5(1) of the Act. In*

<sup>1</sup> <http://www.mmpo.co.nz>

<sup>2</sup> <http://www.mmpo.co.nz/aboutus.htm>

<sup>3</sup> <http://www.mmpo.co.nz/services.htm>

addition, although clauses 3.1, 3.2, 3.5 and 3.8 could be considered to advance education, they were principally for the benefit of members of the profession and not for the benefit of the public.

- The Applicant's Constitution did not prevent private pecuniary profit of any individual by limiting the issue, sale and/or ownership of shares to charitable organisations, in breach of section 13(1)(b)(ii) of the Act.
7. The Applicant responded in a letter dated 2 October 2008 advising that it had amended its Constitution to prohibit any possibility of private pecuniary profit of an individual, and had amended clauses 3.4 and 3.8 as follows:
- "3.4 *Enabling payment systems that support the viability of Lead Maternity Carer midwives and associated maternity service providers,*
  - 3.8 *Providing aggregated clinical information to member midwives and the New Zealand College of Midwives in order to strive towards improvement of maternity care outcomes for woman and babies."*
8. The Applicant argued that it is not a professional organisation.
- "Our reason for being is to attract self-employed midwives to use a practice management system that promotes:*
  - ⇒ a partnership approach to maternity care by including women, enabling them to self-care.*
  - ⇒ includes a clinical audit process which involves both women and midwives*
  - ⇒ enables consumers, the profession and health purchasers to review the care activities and outcomes of midwives (our annual report)."*

## **The issues**

9. 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 or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular, whether all of the Applicant'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 purpose**

10. Under section 13(1)(b)(i) of the Act, a society or institution must be established and maintained exclusively for charitable purposes.
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 aimed at benefitting the public or a sufficient section of the public.<sup>4</sup> A purpose that is aimed at benefitting private individuals will not qualify as charitable at law.

12. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and within the spirit and intendment of the purposes set out in the Preamble to the Statute of Charitable Uses 1601 (Statute of Elizabeth).<sup>5</sup>
13. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
14. In considering an application, section 18(3)(a) of the Act requires the Commission 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; ..."*

### Relevant cases

15. There have been a number of Court decisions involving professional bodies.
16. In *Royal College of Nursing v. St Marylebone Borough Council*<sup>6</sup> the English Court of Appeal had to decide if the College of Nursing was charitable or not. The objects were to promote the science and art of nursing and the better education and training of nurses, and to promote the advancement of nursing as a profession. The Court of Appeal held, affirming the decision of the divisional court, that both purposes were charitable because they were directed to the advancement of nursing for the relief of the sick. The Court stated that although the advancement of nursing as a profession might advance the professional interests of nurses in a trade union sense, this was incidental, and that the College did not cease to be a charity because, incidentally, and in order to carry out the charitable objects, it was both necessary and desirable to confer special benefits to the members.
17. In *Re Mason*<sup>7</sup> the Supreme 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, they fell short of making the society a charity. In that case the Court made a distinction between charitable institutions whose main object was the advancement of education which

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

<sup>5</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>6</sup> [1959] 1 WLR 1077, [1959] 3 All ER 663.

<sup>7</sup> [1971] NZLR 714, 721.

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>8</sup> and a college of nursing,<sup>9</sup> and examples of non-charitable institutions, such as an insurance institute<sup>10</sup> and a society of writers.<sup>11</sup> Promotion of charitable purposes 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>12</sup>

18. In *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*<sup>13</sup> the High Court held that although the advancement of the science of engineering was beneficial to the general public, a significant and non-incidental function of the institution was to act as a professional organisation for the benefit of engineers therefore it could not be said that the institution was established exclusively for charitable purposes.
19. In *Commissioner of Inland Revenue v Medical Council of New Zealand*<sup>14</sup> the Court of Appeal considered that the principal function of the Medical Council was the registration of medical practitioners. It held that the protection of the public in respect of the quality of medical and surgical services clearly fell within the broad category of purposes beneficial to the community. Any benefits to practitioners were incidental and consequential therefore the Council was an institution established exclusively for charitable purposes.
20. In *Tudor on Charities*<sup>15</sup> the authors noted that the United Kingdom Charity Commissioners have for some time accepted the New Zealand approach adopted by the Court of Appeal in the *Medical Council of New Zealand* case. However the authors have also noted:

*“... an institution whose main object is in the protection and advantage of those practising a particular profession is not a charity even though the carrying out of the main object results in benefit to the community. Because of this problem, several established charities have formed separate non-charitable bodies for negotiating purposes to preserve the charitable status of the original institutions. For example, the College of Radiographers is a charitable institution which promotes radiography and the Society of Radiographers is a non-charitable body which negotiates on behalf of its members.”*<sup>16</sup>

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<sup>8</sup> *Royal College of Surgeons of England v National Provincial Bank* [1952] AC 631; [1952] 1 All ER 984.

<sup>9</sup> *Royal College of Nursing v St Marylebone Corporation* [1959] 1 WLR 1077; [1959] 3 All ER 663.

<sup>10</sup> *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR.

<sup>11</sup> *Society of Writers to Her Majesty's Signet v Commissioners of Inland Revenue* (1886) 2 TC 257.

*Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380

<sup>13</sup> [1992] 1 NZLR 570.

<sup>14</sup> [1997] 2 NZLR 297.

<sup>15</sup> *Tudor on Charities*, 9<sup>th</sup> Edition, London, Sweet & Maxwell, 2003, para 2-083, p. 108.

<sup>16</sup> *Tudor on Charities*, 9<sup>th</sup> Edition, London, Sweet & Maxwell, 2003, para 2-083, p. 71.

21. In *IRC v Oldham Training and Enterprise Council*<sup>17</sup>, the Court held that promoting the interests of individuals engaged in trade, commerce or enterprise and providing benefits and services to them conferred private benefits on those individuals, regardless of any public benefit. The remoteness of any public benefit disqualified the Council from having charitable status.

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

22. Given the overall focus and related nature of the purposes in clause 3 of the Applicant's Constitution, these purposes must be considered in the context of the whole document and the activities of the Applicant.
23. As earlier noted, clauses 3.1 and 3.3 aim to provide assistance to midwives by "[e]nsuring midwives continue to have an environment where they can provide maternity care to women within the midwifery model of care" and "supporting the sustainability of midwifery services throughout New Zealand including sustainability of Maori and rural women and those choosing a home birth". Clause 3.6 aims to ensure that all midwife members take part in quality assurance activities and are registered with the New Zealand College of Midwives (NZCOM). Clause 3.7 aims to support NZCOM to develop the profession of midwifery for the wellbeing of mothers, babies and their whanau. The Commission considers these purposes may be charitable under the fourth head as being for the promotion of health.
24. Clauses 3.5 and 3.8 could be seen as advancing education by providing information and aggregated clinical information to member midwives and NZCOM. These would be charitable because they are providing a public benefit for pregnant women and their newborn babies.
25. Clause 3.2 aims to provide "the necessary information to purchasers of maternity services that enable and support midwives to provide a high quality, woman focused maternity care". Clause 3.4, as amended, enables payment systems that support the viability of midwives and associated maternity service providers. These purposes do not appear to fit under any of the four heads of charity.
26. It is noteworthy that the Applicant is structured as a professional organisation. Under clause 5.1, membership is limited to "midwives who are members of the NZCOM". Clause 5.2 further provides that "all midwives providing midwifery services through the MMPO Ltd will be required to sign an agreement with MMPO Ltd, which includes agreement to submit claims for processing that meet the terms of the current Maternity Notice, and those of the NZCOM Standards Review process".
27. Based on the information provided to the Commission and from the Applicant's website, it appears that the Applicant is the umbrella organisation undertaking the business aspects of the profession on behalf of individual midwives and on behalf of the New Zealand Council of Midwives.

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<sup>17</sup> [1996] STC 1218.

28. In *Institute of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue* Tipping J stated:

*"I consider that the following words of Lord Normand in the Glasgow Police Association case are highly material:-*

*"What the respondents must show in the circumstances of this case is 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. That is a view which I cannot take. The private benefits to members are essential."*

*While there can be no doubt that there are distinct public benefits from the objects and functions of IPENZ it is my view, after careful consideration of both the oral and documentary evidence, that the private benefits cannot be disregarded as incidental."*

29. The Commission considers that the purposes and activities of the Applicant are distinguishable from those considered in the *Medical Council of New Zealand* case<sup>18</sup> because in that case, the Medical Council was not involved in negotiation for members. The Applicant's purposes and activities are more analogous with those in the case of the Society of Radiographers, where negotiating on behalf of members was held to be non-charitable.
30. The Commission concludes that the Applicant has six purposes, detailed in clauses 3.1, 3.3, 3.5, 3.6, 3.7 and 3.8, that are charitable because they advance education and promote public health and provide a public benefit. The Applicant has two non-charitable purposes, clauses 3.2 and 3.4, that are primarily for the benefit of its members and not for the public or a sufficient section of the public. These private benefits cannot be regarded as incidental or ancillary.

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

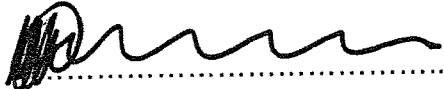
31. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not a society or institution that is established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. The Applicant has non-charitable purposes that protect and promote the interests of midwives (by negotiating, providing payment systems, advising and helping them financially). These are non-charitable purposes that are primarily aimed at furthering the interests of the Applicant's members and not at benefiting the public or a sufficient section of the public.

<sup>18</sup>

[1997] 2 NZLR 297.

**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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Trevor Garrett  
Chief Executive

26/1/09

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Date