

Registration Decision: The Centre for Independent Studies Limited

The facts

1. The Centre for Independent Studies Limited (the Applicant) was registered as an Australian Public Company on 9 August 1977.
2. The Charities Commission (the Commission) received the Applicant's complete application for registration as a charitable entity on 23 March 2009.
3. The Applicant's purposes are set out in clause 4.1 of its rules:

Objects

4.1 The objects of the Centre are:

- a) to undertake and prosecute scientific research and enquiry into the fundamentals and theory of a free society including, but not thereby limiting its application, the philosophical, historical, economic, legal and social aspects of such society with particular relevance to the Commonwealth of Australia;*
- b) to publish and disseminate information, material, papers, research material and allied writings to members of the Centre, corporations and to the general public;*
- c) to hold seminars, lectures and conferences relating to and pertaining to such scientific enquiries and applications of scientific method as may be carried on from time to time by the Centre;*
- d) to collect and raise subscriptions, donations, and membership fees and dues from members of the public and Members of the Centre, with such funds to be expended in accordance with this Constitution;*
- e) to be non-political, non-sectarian and non-racial and to not take any step or make any decisions whereby it shall in any manner whatsoever align itself with any political party, religious, racial or other group; and*
- f) to aid, assist and help persons engaged in the full or part-time service of universities or institutions of tertiary or secondary education or students thereof in any manner whatsoever to promote the carrying out of enquiry and research and study consistent with the enquiries and research referred to in this clause.*

4. Clause 62.2 of the Applicant's rules provides:

If any surplus remains following the winding up of the Centre, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another corporation (within the meaning given in the Corporations Act) that:

- a) *has similar objects, as stated in its constitution (or other applicable constituent document) to the objects of the Centre as described in this Constitution and to objects incidental or conducive to those objects; and*
- b) *is required by its constitution (or other applicable constituent document) to apply its income and property only in promoting its objects; and*
- c) *is prohibited by its constitution (or other applicable constituent document) from paying any dividend or making any distribution to its members; and*
- d) *is accepted [sic] or approved by the Commissioner of Taxation of the Commonwealth of Australia for the purposes of Division 30 of the Tax Act (including, for the avoidance of doubt, any entity specifically listed by name in that Division), such corporation to be determined by the Members at or before the winding up and, in default, by application to the Supreme Court of New South Wales for determination.*

5. The Commission analysed the application and on 23 June 2009, sent the Applicant a notice that may lead to decline on the basis that it did not have exclusively charitable purposes, did not have sufficient connection to New Zealand and that its rules did not provide for surplus assets to be distributed solely for charitable purposes on winding up.

6. On 25 February 2010, the Applicant responded to the Commission's notice. This response disagreed with the Commission's conclusion that the Applicant had non-charitable purposes, but made no argument as to why this was the case. It made no comment as to the Commission's conclusion that the Applicant did not have sufficient connection to New Zealand and that its rules did not provide for surplus assets to be distributed solely for charitable purposes on winding up. The response instead made proposals relating to a possible future application for another entity.

7. On 20 April 2010, the Applicant confirmed that the letter of 25 February 2010 was its response to the Commission's notice that may lead to decline of 23 June 2009.

The issues

8. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* (the Act).

9. In this case, the key issues for consideration are whether the Applicant is a society established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act, and whether the Applicant has a sufficient connection to New Zealand. Specifically, the issues are:
- 1) Do the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act?
 - 2) Do the Applicant's rules provide for surplus assets to be distributed solely for charitable purposes on winding up?
 - 3) Does the Applicant have a sufficient connection to New Zealand?

The law on charitable purposes

10. Under section 13(1)(b) of the Act, a society must be established and maintained exclusively for charitable purposes and must not be carried on for the private pecuniary profit of any individual.
11. In order for a purpose to be charitable, it must fall within the definition of charitable purpose set out in section 5(1) of the Act.
12. 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 public benefit. This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
13. Section 5(3) of the Act provides that for an entity to have charitable purposes, 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 the entity's activities at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

Charities Commission's analysis

15. The Commission has considered whether the purposes set out in clauses 4.1(a) to (f) of the Applicant's rules could be charitable under the head of advancement of education.
16. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. Education does not include advertisements for particular goods or services or promotion of a particular point of view.¹

¹ *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

17. In New Zealand, in the case of *Re Collier (deceased)*, Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:

*It must first confer a public benefit, in that it somehow assists in the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore, deceased [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value.*²

18. The 'About CIS' webpage on the Applicant's website states that:

*The Centre for Independent Studies is the leading independent public policy 'think tank' within Australasia. The CIS is actively engaged in support of a free enterprise economy and a free society under limited government where individuals can prosper and fully develop their talents. By critical recommendations to public policy and encouraging debate amongst leading academics, politicians and journalists, the CIS aims to build a better society... the Centre has produced valuable research work which has shaped and influenced public policy.*³

19. The various publications, opinion pieces and events listed on the Applicant's website⁴ show its activities to be primarily concerned with advocating particular courses of government policy. For example, the Commission notes articles listed on the website include criticisms of the Federal Australian government's proposed cartels legislation ("The Folly of Criminalising Cartels"⁵), the New South Wales state government's management of public hospitals ("Radical surgery: The Only Cure for New South Wales hospitals"⁶) and the Federal Australian Government's funding of the Australian car industry ("With No Particular Place To Go: The Federal Government's Ill-Conceived Support for the Australian Car Industry"⁷).
20. The Commission acknowledges that clause 4.1(e) states that the Applicant is to be "non-political" and not to be aligned with any political party, and that clauses 61(a) to (c) prevent directors or members of the Council of Advisers from holding major roles within a political party. However, established case law holds that political objects are not confined to matters of party philosophy.⁸ Further, as is stated by Dixon J in *Royal North Shore Hospital of Sydney v Attorney-Genera (NSW)*:

*...[w]here funds are devoted to the use of an association of persons who have combined as a political party or otherwise for the purpose of influencing or taking part in the government of the country, it is evident that neither the good intentions nor the public purposes of such a body can suffice to support the trust as charitable.*⁹

² [1998] 1 NZLR 81 at 91-92.

³ <http://www.cis.org.au/aboutcis/aboutcis.html>.

⁴ <http://www.cis.org.au>.

⁵ http://www.cis.org.au/issue_analysis/IA111/IA111.pdf.

⁶ http://www.cis.org.au/policy_monographs/pm91.pdf.

⁷ http://www.cis.org.au/issue_analysis/IA108/IA108.pdf.

⁸ *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 695.

⁹ (1938) 60 CLR 396 at 426.

21. The Commission considers that based on its activities, the Applicant is an association of persons who have combined for the purpose of influencing government. Therefore its purposes do not satisfy the requirements under section 13(1)(b) of the Act.

Winding up

22. As noted above, section 13(1)(b) of the Act provides that a society or institution will only qualify for registration if the society or institution 'is established and maintained exclusively for charitable purposes' and 'is not carried on for the private pecuniary profit of any individual'. This means that in the event of winding up, any surplus assets must be given to a charitable purpose or purposes.
23. The Commission considers that the provision for surplus assets to be distributed to another corporation that "*is accepted or approved by the Commission of Taxation of the Commonwealth of Australia for the purposes of Division 30 of the Tax Act (including, for the avoidance of doubt, any entity listed by name in that Division),*" in clause 62.2(d) would allow the transfer of assets to organisations that did not have charitable purposes. The Commission notes that while Division 30 of the *Income Tax Assessment Act 1997* (Cth) contains numerous entities with charitable purposes, Subdivision 30-DA sets out tax deductions for political parties (along with independent candidates and members). As political parties do not have charitable purposes, clause 62.2(d) would allow for the transfer of assets to organisations that did not have charitable purposes.
24. The various other provisions under clause 62.2 do not ensure that assets will be given to charitable purposes on wind-up. The provisions only ensure that the corporation receiving the assets will have similar objects to the Applicant, that it is required by its constitution to apply its income and property only in promoting its objects, and that it is prohibited by its constitution from paying any dividend or making any distribution to its members.
25. The Applicant therefore does not satisfy the requirement of section 13(1)(b) of the Act that in the event of winding up any surplus assets must be given to a charitable purpose or purposes.

Connection to New Zealand

26. The Commission has resolved that only entities that are established in New Zealand and/or have a very strong connection to New Zealand are eligible for registration under the Act.
27. In order to be constituted in New Zealand the Applicant would need to be established as a body corporate under a New Zealand Act. The number provided on the Applicant's application form (001495012) is in fact the Applicant's Australian Company Number (ACN) on the Australian Securities & Investments Commission's companies register.

28. In assessing whether an overseas applicant has a strong connection with New Zealand, the Commission considers factors including:
- Whether the applicant has a centre of administration in New Zealand;
 - How many of the applicant's officers are resident in New Zealand;
 - How much of the applicant's property is held in New Zealand; and/or
 - If the applicant has any other strong connection with New Zealand.
29. The Commission notes that clause 4.1(a) of the Applicant's rules states that the entity seeks to undertake its activities "with particular relevance to the Commonwealth of Australia", and also considers relevant the numerous references in the Applicant's rules to Australian legislation such as the *Income Tax Assessment Act 1997 (Cth)*, the *Corporations Act 2001 (Cth)* and the *Trustee Act 1925 (NSW)*. Further, as noted above, the Applicant is established as a body corporate under Australian legislation.
30. The Commission has taken into account the various publications, opinion pieces and events listed on the Applicant's website¹⁰ and concludes that a considerable majority (and the primary focus) of the Applicant's activities relate, as stated in clause 4.1(a), to Australia.
31. The Commission acknowledges the existence of the Applicant's New Zealand Policy Unit, whose page on the Applicant's website states:

In 2006, the CIS established its New Zealand Policy Unit to focus specifically on NZ issues. The unit's work so far has focused on tax, government spending, tertiary education, and social policy. Already, this work has stimulated debate and attracted widespread media coverage.

The New Zealand Policy Unit also contributes to the CIS's events and publishing activities. It puts out regular papers in the Issue Analysis series, opinion pieces in major New Zealand news outlets, and articles in Policy magazine. The CIS's annual John Bonython lecture is now held in Auckland as well as Sydney each year, and the Centre offers scholarships for young New Zealanders to attend its Liberty & Society conferences in Sydney.

In 2008, the CIS held a forum in Auckland entitled 'Big ideas to Super-size New Zealand's Economy,' featuring former RBNZ governor Dr Don Brash, New Zealand Institute CEO Dr Andrew Skilling, EPMU general secretary Andrew Little, and CIS policy analyst Phil Rennie.

The expansion of CIS activities in New Zealand is about promoting continuous public policy improvement and fostering debate on important issues. As in Australia, the CIS provides an independent voice for change.¹¹

¹⁰ <http://www.cis.org.au>.

¹¹ http://www.cis.org.au/nz_policy/nz_policyunit.html.

32. However, for the reasons given above, the Commission does not consider that the activities of the Applicant's New Zealand Policy Unit satisfy the requirements for a very strong connection to New Zealand.

Charities Commission's determination

33. The finding of the Commission is that the Applicant has failed to meet the essential requirements for registration as a charitable entity in that the Applicant is not a society established and maintained exclusively for charitable purposes as required by section 13(1)(b) of the *Charities Act 2005*, and the Applicant does not have a sufficient connection to New Zealand.

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

Signed for and on behalf of the Charities Commission



Trevor Garrett
Chief Executive

11/6/10
Date