

Challenges Facing New Zealand Voluntary Agencies Today

Address to The Challenges to Charitable Status

Civic Society and the Role of NGOs
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The Importance of Civil Society and of Strong Voluntary Agencies in a Healthy Democracy

1. Robert Putnam in Making Democracy Work and Bowling Alone rigorously demonstrated the vital role that Civil Society and voluntary agencies have in strengthening democracy and in enhancing both social and economic development cf. Northern and Southern Italy.
2. Richard Florida has shown the social and economic benefits of having diversity in population composition and in voluntary agencies.
3. New Zealand has many examples from the Rugby World Cup, the Christchurch Student Army, the Maori Women's Welfare League and others where voluntary agencies and volunteers have achieved miracles.
4. The Sector's Value: \$11billion; 4.9% of GDP; 9.8% of New Zealand's workforce.
5. Political Science and Constitutional Law experts have long recognised the importance of a strong and independent Legislature and Judiciary to counterbalance the Executive. Others say a strong free Media is a vital Fourth Estate. Local Government, providing for community governance operating on the principle of subsidiarity, and Civil Society, operating as both the engine of change and of participation and also as the glue of social and economic cohesion, seem equally vital Fifth and Sixth Estates.

Benefits of Government Funding the Provision of Some Public Services through Voluntary Agencies

1. Funding is flexible and can come in whichever form is appropriate- grants, cheap loans, subsidies, agreements, contracts and preferential access to resources- contracting is not necessarily appropriate.
2. Funding recognises, enables and resources good work done by voluntary agencies, sometimes of kinds which the state could not do.
3. Funding enables the voluntary agencies' nimbleness and quick and effective responses to new issues and challenges.
4. Funding enables the voluntary agencies' provision of services that are tailored specifically to, and developed jointly with, particular communities in need.
5. Funding enables the voluntary agencies' ability to innovate, experiment, and even fail in the nature of its services without political blame and bureaucratic constraints.

Benefits of Government Funding the Provision of Some Public Services through Voluntary Agencies Continued

6. Funding enables client participation in decision-making and in the nature and process of delivery of services as voluntary agencies can do.
7. Funding enables community development and strength based approaches to be resourced and be effective in low income communities
8. Funding enables services unattractive to philanthropists such as to the brain injured or to problem gamblers to occur effectively, and not just to attractive children who are blind or have cancer.
9. Funding voluntary agencies services is usually cheaper partly because they usually pay staff less but mainly because of their extensive use of donations and of volunteers.
10. Funding can and should enable voluntary agencies to analyse, research and voice the needs of their clients for policy and regulatory change.

Challenges to Voluntary Agencies

- Pressure and threats not to undertake public advocacy activities as this could result in loss of funding or contracts.
- New and higher accounting and reporting standards-good but resource intensive.
- Competitive tendering for contracts and for funding.
- Contracting and funding opened up to private companies and overseas agencies.
- Introduction of Social Impact Bonds for some services.

Challenges to Voluntary Agencies Continued

- Requirements for Outcome Based Measurements and Reporting-again resource intensive.
- Cuts in Government funding and prioritising to children's services and to those judged most vulnerable.
- Privatisation of some services e.g. Corrections, some Social Housing.
- Harder to attract directors, members and volunteers as some, particularly women, need full-time work and others increasingly prefer individual or digital activities to be involved in.
- A tighter and more arbitrary definition of what is a charity is being applied.

The Challenges to Charitable Status

When Government bought in the Charities Commission their principal stated purpose was to promote and advise the charitable sector. A secondary purpose was to weed out bodies that were dormant, corrupt or not genuinely charitable. In practice a number of effective organisations have lost or are threatened with losing their charitable status.

The Challenges to Charitable Status

1. Although the Charities Act provides for advocacy as an ancillary purpose some organisations were deregistered for their advocacy activities- Greenpeace, the National Council of Women, Family First and the Sensible Sentencing Trust. At considerable cost to these bodies, the courts have reversed these.
2. Some organisations, like Community Law Centres, have decided they can only afford free services to the poorest by part charging the somewhat better off and are now threatened with deregistration.
3. Some community housing providers are threatened because they assist poor families into home ownership- apparently a private benefit, while low rentals aren't.
4. Sports organisations are threatened because they allegedly assist only their members for whom they sometimes charge fees.
5. Educational and religious bodies do routinely assist individuals who are not poor because they are specified in the 1601 Charitable Uses Act but government refuses to update the Act to include other purposes apart from general poverty relief.
6. Many Maori organisations are set up to assist “relatives” in their hapu but have rarely been challenged in practice.

State of the Sector Survey 2014 Snapshot

Survey conducted every three years by the voluntary sector peak bodies before general elections.

311 community and voluntary sector organisations responded.

1. 60% said they were not prepared to speak out publicly for fear of losing their funding or contracts.
2. 75% have more people accessing their services than 3 years ago but only 38% have more staff.
3. 81% are doing more work than is specified in their contracts.
4. 40% could not offer any wage increases in the previous 3 years.
5. 60% were running down their reserves to maintain services
6. 6% faced imminent closure because of financial pressures.
7. Many said competitive funding models were undermining collaboration.
8. Many said the government demanded outcomes that it was only prepared to part fund.

The Problem Gambling Foundation and Advocacy

The Problem Gambling Foundation's predecessor organisation, the Compulsive Gambling Society, was formed in Mt Eden Prison by prisoners convicted of gambling related offences.

It established the first NZ service for problem gamblers and successfully advocated for a nationwide system of free gambling service provision funded by the sections of the gambling industry in proportion to the measurable harm they caused.

It successfully advocated to the Clark Government for a new Gambling Act that recognised problem gambling principally as a public health issue rather than one of individual susceptibility.

It has had to battle for this model ever since. The National Government sacked ALAC and the Health Sponsorship Council and replaced them with the Health Promotion Agency which promotes individual responsibility rather than policy change that would affect the alcohol, fast food and gambling industries.

The Problem Gambling Foundation and Advocacy continued

The Mission of the Problem Gambling Foundation is minimising and then eliminating gambling related harm. It has a self terminating Mission like the Homosexual Law Reform Society had.

With MOH contracts funded from gamblers money it seeks to manage and reduce gambling problems. With the 13% of its funds it raises itself it seeks to express the views of its clients and develop insights from its analysis and research to challenge the industry and politicians for social and legislative change that would eliminate gambling harm. Although always advocating for policies and law changes rather than for political parties it has frequently been challenged by government for contravening political neutrality.

PGF is contracted to advise local government on policies to reduce gambling harm including tightening their District Gambling Venue Policies. When it advises government similarly, such as for pre-commitment systems and for not enabling a huge expansion of Sky City's pokies and gambling tables, it is slammed for not being politically neutral.

Examples of arguments over political neutrality of PGF

Date	Topic	PGF principal staff	MoH
25/02/2010	ODT \$2b pokie losses - DCC hearing - Accuracy - ODT misquote	Tony Milne	Barbara Phillips
17/06/2010	Sinking lid campaign in Porirua. A person who made a template submission who said he didn't do that. We replied that it would have been the person or a fraudstger and not PGF who actually submitted.	Tony Milne	Derek Thompson
22/06/2010	Sinking lid campaign in Porirua. A person on made a template submission who said he didn't do that. We replied that it would have been the person or a fraudstger and not PGF who actually submitted.		
11/08/2010	Presentation to European conference. Reminder that Graeme was not speaking for NZ MoH. Costs to be non MoH funds	Graeme Ramsey	Derek Thompson
8/11/2010	E-mail seeking support for Flavell Bill - Political neutrality.	Kristel Modderma	Derek Thompson
17/12/2010	Letter of complaint to Dunne - Political neutrality		Barbara Phillips
10/02/2011	People before pokies bill - Political neutrality and the Christchurch coalition	Tony Milne	Derek Thompson
11/02/2011	General e-mail to providers on Political Neutrality		Derek Thompson
17/02/2011	Instruction to staff re Newtown flyer - Political neutrality	Graeme Ramsey	Derek Thompson
18/02/2011	Instruction to staff re Newtown flyer	Graeme Ramsey	Derek Thompson
8/03/2011	People before Pokies support - Newtown News	Tony Milne	
7/04/2011	Ceasing using factsheet Pokies, Poverty.....	Graeme Ramsey	Derek Thompson
27/04/2011	Horowhenua submission - Accuracy of Grants figures for Pub Charity. Partly a mistake and partly mismatching theirs and our records		Derek Thompson
11/05/2011	Nelson mail - Unacceptable remarks	Phil Townshend	Derek Thompson
13/11/2011	Election forum		Dion Williams
28/05/2012	Pokie Free and Proud of It Deemed to be in breach of clause 12		Memo Musa

“Pokie Free and Proud of It” case

- A letter, dated 15 May 2012, from the Ministry was emailed to PGF 'expressing concerns with PGF's involvement in the Pokies Free and Proud of It event launch in association with Anglican Life in Christchurch'. The letter 'constitutes our written notice to you that, based on the information currently held, it is the Ministry's opinion that PGF is in breach of their obligations under clauses 12.2 and 12.3 of Section F of the Agreement'. A copy of the promotional flyer for this event was also attached. The letter stated 'this [the campaign] would seem to be advocating abolition, in direct contradiction to the Government's policy of harm minimisation'.
- In a letter dated 28 May 2012, Graeme Ramsey responded to this letter stating 'we are confident that PGF is not in breach of our agreement....and....'we must record that we are concerned at the suggestion that the PGF had previously breached its obligations'.
- The Ministry expressed concern that PGF was advocating for abolition of pokies and in Graeme's response to the Ministry, a copy of the press release and project plan was included; 'you will see that this clearly sets out the relationship of this campaign to our contract specifications and outcomes and nowhere does it say that abolition is being advocated for or sought'. The response letter outlined the purchase unit description 'supportive communities' contained on Page 73 of the PGF agreement and how this project is aimed directly at these activities and objectives.
- The Ministry subsequently responded via email dated 14 June 2012 to Graeme Ramsey stating 'the Ministry note the response received from the PGFNZ dated 28 May 2012...in considering your response we would not seek to terminate the agreement as a result....we consider there are still substantial issues that need to be addressed which we will detail in a letter to you within a week'.
- In a meeting record (from a meeting held on 26 July at the MoH in Wellington to deal with the dispute between PGF and the Ministry re alleged contract breach of political neutrality clause), it was recorded that 'the only outstanding issue is the continued use of 'pokie free and proud of it'...PGF agreed to recast this both in terms of 'brand' and the descriptions around it. They will seek MoH agreement to the recast'. This involved changing the 'branding' to 'this place is pokie free and proud of it'

Implications of the Recent High Court Decision on Problem Gambling Foundation vs Attorney- General

- Government contracting for public services can be subject to a broad scope of judicial review – not just for fraud, corruption and bad faith.
- The Lab Tests case was ruled not to apply as statutorily being principally a commercial context; but generally such Government agency contracts are a public function for public benefit and that public law principles of natural justice and procedural fairness apply.
- Ministry and Departmental contracting must comply with the published Government Rules of Sourcing and can be vitiated otherwise.
- Where a contrary finding has been made by a Court Government Departments must conduct a fresh and compliant process.
- In evaluating Requests and Tenders Ministries must comply fully with the evaluation criteria and processes they notified to applicants.

Implications of the High Court Decision on Problem Gambling Foundation vs Attorney- General - Continued

- The Ministry breached legitimate expectation in not following the evaluation criteria and methods it set out in the RFP and not informing the parties these had been changed.
- The Ministry's evaluation methodology and statistical analysis were materially flawed in its tender decisions.
- There was apparent bias in the composition of the evaluation panel.

The Attorney- General will almost certainly decide to appeal the Court Judgment. This is principally because the precedents it sets would severely limit the ability of the Government and Departments to make contracting decisions on a more ad hoc basis possibly using arbitrary post hoc criteria and processes- such as it did in granting SkyClty the International Convention Centre project.