Response to the Hunn/Brazier Report on Contracts with Non-Government Organisations

Response to the Hunn/Brazier Report on Contracts with Non-Government Organisations

Contents

1. Executive Summary

Questions raised in Parliament in 2003 about clauses relating to advocacy for specific pieces of legislation in contracts with some Non-Government Organisations (NGOs) led the Director General of Health to commission a review of all NGO contracts in the health sector and their compliance with public service standards. The reviewers, Hunn and Brazier, identified problems with six contracts, and recommended the Ministry of Health no longer contract with NGOs to provide advocacy services. (This paper is concerned only with issues raised for the health sector, although clearly there are similar issues for other policy domains).

This report outlines the role of NGOs in New Zealand society and the centrality of advocacy to that role. Important contributions that they have made as actors in the policy process and in the policy community are identified, both in general and specifically in the public health domain. The report concludes that placing the same constraints on NGOs as on the core public service Ministry that funds them puts at risk the valuable contribution that NGOs make to sound public decision-making. Indeed it puts in doubt the *raison d'etre* for the existence of some NGOs.

Taking such an approach would be in conflict with the outcomes sought under the framework for public health provided by domestic legislation, with the approach already endorsed by government in the public health strategy, and with New Zealand's international commitments under the Ottawa Charter and Agenda 21. To comply with the latter, similar political systems in Canada and Scotland have opted to explicitly recognise the importance and validity of advocacy in their approach to the relationships between government and NGOs. They also fund advocacy, as part of ensuring a vibrant civil society. For these reasons, we recommend the New Zealand Ministry adopt an alternative interpretation from Hunn and Brazier's recommendations on what is appropriate in contracting with NGOs.

The following guidelines are proposed for Ministry of Health contracting with NGOs in the public health area in relation to their advocacy or community voice role:

- Acknowledge that programmes of education and associated activities designed to raise awareness and influence behaviour to achieve improved health status in the New Zealand population are of long standing, are embedded in statute, and are as being of crucial importance.

- Recognise that government funding of non-government organisations to achieve these objectives has a long history that predates the widespread resort to contracting out of departmental activities from the late 1980s.

- Contracts with non-government organisations in the public health field should therefore, where relevant, acknowledge that one of the roles of such organisations is to advocate for the cause of improved public health (generally and/or in specific areas). This community voice constitutes the input into policy development that is consistent with the Government's commitments under the Ottawa Charter and Agenda 21.

- The Ministry should acknowledge that in order for NGOs to achieve improved health outcomes that are their reason for being, NGOs may undertake 'advocacy' that may include *inter alia*:
    a) conducting public campaigns in support of best practice to promote public health objectives
    b) submissions to ministers, department and crown entities
    c) submissions to select committees
    d) providing information and opinion to individual MPs and political parties

  as well as education programmes and awareness publicity.

- Contracts should recognise the purposes of the organisation and specify that Ministry funding is provided to assist the organisation in activities designed to achieve public interest purposes and no others – as these purposes contribute to the outcomes to which the Ministry is committed.

- Contracts should be clear that the *operational* decisions of the NGO (including advocacy of the various forms described above) are the responsibility of the NGO. The Ministry should not specify the nature of 'advocacy' as opposed to 'education'.

- In funding for community voice, line-by-line performance measures should be minimised to avoid the impression that the Government is dictating the operational activities of the NGO.

- Instead, a more generic approach should be adopted, such as contracting with NGOs for "effective advocacy of a public health perspective and influencing public health policy development through research-based input into social, political, regulatory and legislative processes."

- Financial accountability should then be exercised through regular reports by the NGO and structured reviews by the Ministry to ensure that the contribution being made by the organisation can be classified as public good and helps to achieve the Government's public health goals.

2. Background and Overview

The Ministry of Health is currently in the process of reassessing the appropriateness of contracting for advocacy by non-governmental organisations. The issue arose when questions were raised in Parliament on 8 October 2003 about whether clauses in Ministry contracts with three tobacco control groups requiring the lobbying of MPs in relation to the Smokefree Environments (Enhanced Protection) Amendment Bill breached public service standards of political neutrality.

The Director-General of Health immediately commissioned a review of contracts with non-government organisations and their compliance with public service standards. Specifically the review was to establish:

a) What were/are the terms of the contracts in question and was there a breach of the Public Service Code of Conduct as they apply to public service departments?

b) What are the implications for the Ministry's contracting processes, including monitoring, that then arise?

On 26 November 2003 the Ministry published the report by Don Hunn and Steve Brazier on the results of the review. Hunn and Brazier considered that the advocacy and lobbying clauses in six contracts were unacceptable under public service standards and in their view could compromise the political neutrality of the Ministry.

What was notable about these clauses was their high degree of specificity: they set milestones about which political actors (MPs) were to be influenced by the NGO, in regard to which piece of legislation, by what means, how often and in what time frames. Hunn and Brazier considered these clauses were inappropriate because they interpreted the Public Service Code of Conduct as meaning not only that the Ministry of Health must not seek to directly influence the opinions of Members of Parliament, but also that it must not arrange for or fund NGOs to undertake this function on its behalf.

Key specific recommendations in the Hunn/Brazier report were that:

- *"'Lobbying' clauses in contracts with Action Smoking and Health, Aparangi Tautoko Auahi Kore, Smokefree Coalition, Alcohol Healthwatch, Manakau City Council & Obesity Action Coalition be suspended pending negotiation.*

- *The Ministry should draw up guidelines for future contracting with NGOs that:*
  - *Explicitly exclude lobbying activities*
  - *Cease the use of the word 'advocacy' in contracts and substitute a precise statement of the services being purchased*
  - *Ensure that services purchased are specific to information provision activities*
  - *Ensure that the Ministry staff receive instruction and training on the avoidance of lobbying requirements and on substituting advocacy with*

more precise expectations.

- *The Ministry should consult with NGOs on the new contracting guidelines to ensure that consensus regarding their future freedom to function is achieved."*[1]

This response to the Hunn/Brazier report proposals regarding how advocacy should be dealt with in Ministry contracts with NGOs was commissioned in January 2004 by the New Zealand Drug Foundation and the Cancer Society with financial assistance from the JR MacKenzie Trust. While the report confines its analysis to the health sector, the commissioners note that the issues raised in the Hunn/Brazier report are wider than the health sector and have relevance for many social service and environmental organisations.

Diane Salter, Managing Director of Strategic Policy Consulting, wrote the report and she was supported by a reference group involving[2]:

- John Martin, lecturer in Public Policy at Victoria University and former Deputy Director General of Health

- Colin Hicks, ethics course coordinator at the School of Government at Victoria University

- Philippa Howden-Chapman, Associate Professor, Department of Public Health, Wellington School of Medicine and Health Sciences, University of Otago, and Chair of the Board of the New Zealand Drug Foundation.

- Carolyn Watts, Health Promotion Programme Manager, Cancer Society of New Zealand.

In order to assess the appropriateness of the new approach proposed by Hunn and Brazier, this report commences by outlining the role of NGOs in New Zealand society and the centrality of advocacy to that role. Important contributions that they have made as actors in the policy process and in the policy community are identified, both in general and specifically in the public health domain. The report notes that placing the same constraints on NGOs as on the core public agency that funds them puts at risk the valuable contribution that NGOs make to sound public decision-making. Indeed it puts in doubt the *raison d'etre* for the existence of some NGOs.

The report goes on to note the link between the outcomes specified in the framework for public health in New Zealand legislation, and the centrality of advocacy as an important role for NGOs in achieving public health outcomes in international agreements like the Ottawa Charter and Agenda 21 to which New Zealand is a signatory. This has recently been formally recognised in the Government's Public Health Strategy. Evidence is provided of other similar political systems opting to

[1] Brazier S and Hunn D (November 2003), *Contracts with Non-Government Organisations – Compliance with Public Service Standards*, Wellington, Ministry of Health, p.4.

[2]Alex Matheson, Dr Ralph Chapman, and Professor Chris Cunningham provided additional helpful comments.

explicitly recognise the importance of NGO advocacy in their approach to the relationships between government and NGOs. For these reasons, in the final section of the report we recommend the Ministry adopt an alternative interpretation of what is appropriate in how it contracts with NGOs to that recommended by Hunn and Brazier.

3. Features of Non-Government Organisations

Collectively NGOs constitute what is sometimes called the "third sector" – distinct in character from either public sector or private sector organisations – and a vital part of a healthy civil society.

NGOs are voluntary, non-profit-making organisations, independent of government and of politically partisan bodies. The members of each NGO (whether individuals or institutions) act together to achieve a common purpose.

The fields of activity of NGOs are very diverse, with the Johns Hopkins international classification identifying twelve broad categories[3]:

- Culture, cultural inheritance and art
- Sports, tourism and recreation
- Education and research
- Health protection
- Social services
- Environment
- Development and housing
- Human rights and their protection (civic advocacy)
- Philanthropy organisations with voluntary participation
- International activities
- Business and professional organisations and units
- Others not included in the above categories.

An important characteristic of NGOs is their focus on the achievement of some public good for populations, rather than private benefit that accrues to and serves only the interests of an individual person or business. There are three key principles or values that underpin the concept of promoting the public good, or public interest, that NGOs share:

- The pursuit of social justice, or fairness.
- A commitment to honour, integrity and forthrightness, as expressed through free, frank and evidence-based advice.
- Benevolence, or 'other regarding' behaviour, rather than 'self regarding' or self interested behaviour.

With value systems based on these principles, NGOs advocating for the health and wellbeing of groups within the population have more in common with public service

[3] Salamon, Lester M & Anheier, Helmut K., "In Search of the Non-Profit Sector 1: The Question of Definitions", *Voluntas,* (3) 2, (1992): 125-151.

organisations - with whom they also share a reliance on public trust and confidence – than they do with those private enterprises that primarily seek to maximise profit for shareholders.

In New Zealand the NGO sector constitutes some thousands of voluntary organisations. There is no single reliable source of information about the size of the sector, but 14,919 charitable trusts are registered with the Companies Office, and there are 22,646 incorporated societies. These, however, underestimate total numbers as the following reveals:

> *"Officials in the Ministry of Economic Development, the agency now responsible for managing the registry, estimate there are a large number of apparently formal societies and other bodies that have not kept up their registered status and are therefore not included in these figures. The figures also do not include some of the formal Iwi/Maori organisations such as those registered under the Maori Trusts Board Act 1995, the Maori Community Development Act 1962 and Te Ture Whenua Act 1993."*[4]

In most democratic countries NGOs play a vital leadership role in developing and participating in policies, programmes and services that improve and enhance society. In New Zealand it touches the lives of hundreds of thousands of people each day. Many organisations deliver services to and advocate on behalf of individuals and groups of individuals who are disadvantaged and marginalised, and whose voices might otherwise have a difficult time being heard. This is particularly true in the health sector. In addition, NGOs work to protect and promote entities that are voiceless, such as wild species, heritage buildings and water.

NGOs have been instrumental in the development of most of the public services we rely on today as essential aspects of a caring society: schools, hospitals, assistance to the disadvantaged, and care of children in need. All of these began as volunteer initiatives. NGOs bring their knowledge, expertise, and compassion in working with communities and individuals to public policy debates and identify priorities to government. A strong NGO sector is vital to a healthy nation.

The New Zealand Government recognised this in December 2001 when the Prime Minister and the Minister responsible for the Community and Voluntary Sector, Hon. Steve Maharey, signed the Statement of Government Intentions for an Improved Community-Government Relationship. It set a vision of strong and respectful relationships between government and community, voluntary and iwi/Maori organisations, noting explicitly that:

> *"An independent and vibrant community sector is essential to a healthy civil society. Government and the community sector depend on each other to achieve shared goals of social participation, social equity and strengthened communities…..Government will be an active partner in building a relationship based on honesty, trust and integrity – tika and pono –*

[4] From Community and Voluntary Sector Working Party (April 2001), *Communities and Government: Potential for Partnership/Whakatoopu Whakaaro*, Report of the Community and Voluntary Sector Working Party, Ministry of Social Development, p.41.

compassion and caring – aroha and manaakitanga, and recognition of diversity."[5]

4. How the NGO Sector Contributes to Public Policy

The NGO sector plays a crucial role in representing the views of its stakeholders to government, in particular those of unheard and minority views. The sector's strength derives from the diversity of its membership and sources of support. Reflecting the many faces of New Zealand, the people who work and volunteer in the sector are drawn from a range of backgrounds and bring with them a wealth of experience, expertise, knowledge and ideas.

Their closeness to the experience, interests and concerns of their constituents gives them an important perspective on policy issues affecting the lives of New Zealanders. Often because they are working at the grass roots or flax roots level, NGOs will become aware of trends and emerging issues earlier than the government. In short, it is difficult to argue that such groups are not "essential in any modern state…."[6] They perform a valuable role of 'intermediation'[7] in our pluralist society.

5. The Role of Advocacy in Achieving Positive Outcomes

To achieve positive outcomes in the public interest, NGOs typically engage in advocacy. A working definition of advocacy that is particularly relevant is that of the American Advocacy Institute[8]:

> *"Advocacy is pursuit of influencing outcomes - including public policy and resource allocation decisions within political, economic, and social systems and institutions - that directly affect people's lives.*
>
> *Advocacy consists of organised efforts and actions based on the reality of "what is." These organised actions seek to highlight critical issues that have been ignored and submerged, to influence public attitudes, and to enact and implement laws and public policies so that visions of "what should be" in a just, decent society become a reality. Human rights - political, economic, and social – are an overreaching framework for these visions. Advocacy organisations draw their strength from and are accountable to people - their members, constituents, and/or members of affected groups.*

---

[5] NZ Government (December 2001), *Statement of Government Intentions for an Improved Community-Government Relationship.*

[6] Pross, A P (1992), *Group Politics and Public Policy*, Toronto, OUP, p. 2.

[7] Richardson J J (1993), *Pressure Groups,* Oxford, OUP, p. 13.

[8] Refer www.advocacy.org/definition.htm

Advocacy has purposeful results: to enable social justice advocates to gain access and voice in the decision making of relevant institutions; to change the power relationships between these institutions and the people affected by their decisions, thereby changing the institutions themselves; and to bring a clear improvement in people's lives."

It is important to recognise that having the capacity to engage in advocacy on public policy issues is not a peripheral activity for NGOs, across the wide field of activities they are engaged in, in New Zealand society. Rather, advocacy is part of their core business. Frequent contact with policy makers at the political and official level is at the heart of that business.

6. The Public Health Dimension to NGO Advocacy

Public health is defined as the *"science and art of preventing disease, prolonging life and promoting health through the organised efforts of society."*[9] In addition to the provision of and access to health services, those organised efforts include a wide variety of government interventions that affect individual or group behaviours, and/or the environment that people work, live or undertake recreation and leisure in. The role of government in public health includes the regulation of activities, including business activities, which increase the risks of injury or ill health.

It is in the arena of public health that the appropriateness of the advocacy role of NGOs, particularly where the activities in question are funded by the Government, has recently come into question. Yet this is the very arena where the contribution of public health advocacy is long recognised as having been extremely important in achieving improved health outcomes in New Zealand, and around the world.

Examples of value added by NGO advocacy in health

The Royal New Zealand Plunket Society provides a long-standing example of the important role NGOs take in public health. Dr Frederick Truby King, and his wife Bella, formed Plunket in 1907, to focus on tackling the escalating death rate among babies and children, by developing improved health regimes based on the support and education of mothers. By 1912, 60 branches had been formed around the country, each with a Plunket nurse, actively working with mothers and babies. Six Karitane hospitals were established to provide support and training. Plunket's efforts were rewarded, over time, with a reduction in New Zealand's infant mortality rates from 88 per thousand in 1907 to 32 per thousand three decades later.

Over the years the Plunket Society has been an active voice in public policy related to maternal and child health and early childhood education. This is an essential element

[9] Acheson D, (1988), *Public Health in England,* Report of the Committee of Enquiry into the Future Role of the Public Health Function, London, HMSO.

in achieving their mission of ensuring that New Zealand children are amongst the healthiest in the world and their purpose of supporting the development of healthy families. Over many years and on many issues, they have made submissions to Executive Government - at Ministerial and officials level - and to the legislature – appearing at Select Committee hearings and briefing individual MPs. These contributions have resulted in decisions being taken that are better informed about the likely impacts of alternative options on infant and maternal health than would otherwise have been the case.

Further, NGOs have played an important role in advocacy for a broad range of tobacco control interventions over the past 25 years, and successive governments have made a contribution to the funding of their work in this area. Both the Cancer Society of New Zealand and the National Heart Foundation have publicly advocated for tobacco control as well as funding other bodies to carry out more intensive advocacy. They led advocacy to reduce the advertising and promotion of cigarettes and also the measures to protect workers from second-hand smoke. They financially supported ASH during the 1980s; the Coalition Against Tobacco Advertising and Sponsorship which was important in advocacy for the Smokefree Environments Act in 1989-1991 and in the mid-1990s funded the Smokefree Coalition. Without this advocacy, it is doubtful whether the Government would have gained sufficient public support to carry through the legislative changes. These measures were important in achieving the greatest decline in the prevalence of smoking in the OECD in the 1990s and thereby saved hundreds of premature deaths.

Internationally, based on research in a range of sectors, there is a wealth of political and management literature that has concluded that community and non-government organisations like these should be supported by Governments committed to effective regulatory systems to protect public health and the environment. The underlying rationale is that they play a vital watchdog role that makes the government's regulatory role more cost effective. Community and NGO involvement shifts regulatory dynamics from a cat and mouse relationship between government and business to more productive tripartite partnerships in which the business/community relationship tends to encourage corporate compliance.[10]

In regard to making such relationships work in practice, recognition of the imbalance of relative power within the political systems of governments with market economies provides a valid argument for government funding. Around the world, industry groups, such as tobacco, alcohol, food and pharmaceuticals, have very sophisticated and well-funded advocacy plans, which explicitly include lobbying of politicians. The structural dominance of business and the vested interests involved has given rise to the encouragement by governments of countervailing voices.[11] Without this there is no counterpoint put forward regarding the public health impacts on populations of excessive access to and consumption of such products.

---

[10] Refer Ayres, I. & Braithwaite, J. (1992) *Responsive regulation: Transcending the deregulation debate.* Oxford, Oxford University Press. Also refer Hill, L. & Stewart, L. (1998), Responsive regulation theory and The Sale of Liquor Act, *Social Policy Journal of New Zealand*, 11: pp 49-65.

[11] Lindblom, C (1977), *Politics and Markets*, New York, Basic Books.

An illustration of these dynamics at the international level is provided by the WHO's efforts to develop a Global Strategy on Diet, Physical Activity and Health. This plan to promote healthy food and lifestyles was recently drawn up with the help of member states (including New Zealand), nutritional experts and the food industry. It was developed because of clear evidence showing that poor diets and lack of exercise are the leading causes of cardiovascular disease, type 2 diabetes and certain cancers. The draft Global Strategy was considered by member states at the 2003 WHO meeting. It recommends a lower intake of sugar, sodium and artery-clogging trans-fatty acids and suggests governments set taxation and subsidy policies to promote healthy eating habits. [12]

The WHO Executive had hoped the Global Strategy would be approved at the last WHO meeting, but the United States questioned the findings on which the UN agency's plan is based, and called for more research to be done, thus delaying the adoption of the Strategy. WHO members said US opposition reflected pressure by its domestic food industry, particularly the sugar industry[13].

NGOs from all over the world, including the American Cancer Society, are currently engaged in providing further evidence of the impacts on morbidity and mortality of the commercial promotion of certain types of food. The advocacy of NGOs in this case is vital to the ability of the WHO to develop and promote policies to prevent further illness and deaths.

Achieving public health outcomes and the contribution of NGO advocacy

The Ottawa Charter for Health Promotion, developed and adopted at the first International Conference on Health Promotion in Ottawa, Canada in November 1986 by WHO, provides an internationally accepted model for public health planning and action. The Government's New Zealand Public Health Strategy utilises the model for public health planning provided by the Ottawa Charter, because its usefulness in health promotion and public health planning has been demonstrated internationally.

The Ottawa Charter defines health promotion as:

> *"the process of enabling people to increase control over, and to improve, their health. To reach a state of complete physical, mental and social well-being, an individual or group must be able to identify and realise aspirations, to satisfy needs, and to change or cope with the environment. Health is, therefore, seen as a resource for everyday life, not the objective of living. Health is a positive concept emphasising social and personal resources, as well as physical capabilities. Therefore health promotion is not just the*

[12] For details on the WHO strategy refer *International Obesity TaskForce Press Statement- for immediate release January 17 2004* at http://www.iotf.org (Professor Philip James, Chairperson)

[13] Refer to open letter from the American Institute for Cancer Research for information regarding factors delaying the WHO decision, at http://www.aicr.org/index.lasso

responsibility of the health sector, but goes well beyond healthy lifestyles to wellbeing."[14]

The Ottawa Charter emphasises that the capacity to advocate is a crucial element in effective health promotion. Under the heading of 'Advocacy' the Charter specifically says:

> *"Good health is a major resource for social, economic and personal development and an important dimension of the quality of life. Political, economic, social, cultural, environmental, behavioural and biological factors can all favour health or be harmful to it. Health promotion aims at making these conditions favourable through* ***advocacy*** *for health."*[15]

The importance of mobilising many players to mediate for health is also emphasised:

> *"The prerequisites and prospects for health cannot be ensured by the health sector alone. More importantly, health promotion demands co-ordinated action by all concerned: by governments, by health and other social and economic sectors, by non-governmental and voluntary organisations, by local authorities, by industry and by the media. People in all walks of life are involved as individuals, families and communities. Professional and social groups and health personnel have a major responsibility to mediate between differing interests in society for the pursuit of health."*[16]

In New Zealand, the framework for health endeavours is provided by the Public Health and Disability Act 2000, whose primary objectives are:

> *a) to achieve for New Zealanders-*
> *i) the improvement, promotion and protection of their health;*
> *ii) the promotion of the inclusion and participation in society and independence of people with disabilities;*
> *iii) the best care and support for those in need of services;*
> *b) to reduce health disparities by improving the health outcomes of Maori and other population groups;*
> c) *to provide a community voice in matters in relation to personal health services, public health services and disability support services.*[17]

A crucial issue that needs to be taken into account in deciding the future status of advocacy in NGO contracts is what role such advocacy contributes to achieving the public health outcomes the Ministry is charged with achieving.

---

[14] Ottawa Charter, p. 1, available on www.who.int/hpr/NPH/docs/Ottawa_charter_hp.pdf

[15] Ottawa Charter, *op. cit*, p.1.

[16] Ottawa Charter, *op.cit.*, pp. 1-2.

[17] Section 3 Purpose, New Zealand Public Health and Disability Act 2000.

Further, the Public Health Strategy, released by the Government in October 2003, explicitly recognises and endorses the central role that evidence-based advocacy by NGOs should play in achieving public health action. According to the strategy, public health action:

> *"…is an investment in the future wellbeing and prosperity of New Zealanders…(and):*
>
> - *focuses on populations not individuals*
> - *takes into account the wider determinants of health*
> - *uses a mix of tools at different levels*
> - *integrates health protection approaches with health promotion approaches*
> - *promotes community action*
> - *develops life skills*
> - *reinforces positive attitudes regarding health*
> - *builds healthy public policy*
> - *is collaborative in nature*
> - *provides advice to other sectors on how their policies affect health*
> - *is based on evidence*
> - *promotes healthy environments."*[18]

In the Strategy, the Ministry of Health identifies specific objectives, and the key actions that key actors should take in order to achieve improved public health outcomes. These actors include District Health Boards, hospital and community health service providers, territorial authorities, regional councils, educational institutions, iwi and hapu, Public Health Units (PHUs), Primary Health Organisations (PHOs) and NGOs. For each of the key objectives in the Public Health Strategy, the crucial nature of public health advocacy and NGOs contributing to such evidence-based advocacy being a key action to achieve the objective is explicitly stated.

The first objective of the Public Health Strategy is to strengthen public health leadership at all levels and across all sectors, and key actions identified for NGOs include:

- *Provide advice, support and information to DHB planners, PHOs, other agencies to encourage leadership in public health action.*
- *Provide public health leadership and advocacy around specific public health and community issues.*[19]

The second objective of the Public Health Strategy is to encourage effective public health through public health services and action across the health sector. The very first key action in this element of the strategy for PHUs, PHOs and NGOs is to:

- *Focus on public health outcomes, and base public health planning and strategy development on evidence and best practice.*[20]

---

[18] The Public Health Strategy, www.moh.govt.nz., p. 17.

[19] The Public Health Strategy, *op cit*, p. 50.

The third objective is to build healthy communities and healthy environments, and the key actions for PHUs, PHOs and NGOs include:

- *Undertake public health advocacy to raise the profile of public health and environmental health issues.*
- *Provide high quality, timely and evidence-based support and advice to other agencies around community and public health and the determinants of health.*

The fifth objective is to achieve measurable progress on public health outcomes, and again, and in order to ensure that DHBs and community health service providers, territorial authorities and regional councils and others are able to be effective in achieving their planning actions, a key action for NGOs (along with PHOs and PHUs) is to:

- *Influence and advocate for public health action to improve health outcomes.*[21]

The framework provided by the Ottawa Charter, the Public Health and Disability Act and the Public Health Strategy are consistent with and endorse the concept of health-related NGOs playing an active role in the political process to promote health and reduce health inequalities. This role clearly extends beyond what might be called 'direct' advocacy in the sense of health promotion and education directed at citizens, to change their behaviour.

This role is also consistent with the ethical responsibility of public health practitioners who are often members of health-related NGOs, to seek government action on health issues. Where evidence indicates that such interventions would improve the public health, the ethical response is to communicate that evidence to those parties who play a role in the political and social decision-making process on the issue. This same ethic applies to public health practices in services contracted by Ministry of Health that are government services, i.e. public health units based in hospitals.

In regard to the broad framework that should govern decisions about NGOs and contracting, at the international level, Principle 10 of Agenda 21 (the Rio Declaration on Sustainable Development which New Zealand is a signatory to) states that:

> *"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level."*[22]

---

[20] The Public Health Strategy, *op cit*, p. 63.

[21] The Public Health Strategy, *op.cit., p. 71*

[22] For the details of the United Nations Rio Declaration on Sustainable Development, refer www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.

Population groups such as women and youth are specifically referred to and Principle 22 specifies that states should recognise and support indigenous communities to enable their effective participation.

The UN Resolution on Further Implementation also emphasises the importance of input from NGOs (and also indigenous peoples, women and youth) in the:

> *"elaboration, promotion and sharing of effective strategies, policies, practices and processes."*[23]

It is not apparent that when Hunn and Brazier were recommending that advocacy be removed from all future Ministry of Health contracts with NGOs, they had taken into account the extent to which there is such explicit and well-established government policy regarding the validity of NGO advocacy, that is grounded in an international consensus regarding its efficacy as a means of helping achieve improved public health outcomes.

Implications for Iwi/Māori Organisations

The Hunn/Brazier report is also notably silent on Treaty of Waitangi issues. An issue requiring analysis in deciding on future contracting approaches is the dual nature of the relationship between an iwi non-government organisation and the Crown including its agents. The government when it contracts with an iwi social service is contracting with a service provider who is also a Treaty partner. That particular contractual relationship is subject to the Crown policies in relation to NGOs and the Crown policies in relation to its Treaty partner.

As noted earlier, in December 2001, the Government stated its commitment to building strong and respectful relationships with the community sector in its Statement of Government Intention for an Improved Community Government Relationship. Departments and ministries were expected to apply the principles of the Treaty of Waitangi, and the Government was committed to creating a genuine partnership with iwi/Māori organisations, as well as community and voluntary organisations.

Genuine partnership includes the capacity for both parties to engage in dialogue and decision making at all levels. Professor Mason Durie has identified participation in society, including decision-making, as one of four aspects of effective health promotion for and by Māori.[24]

---

[23] Refer www.un.org/document/ga/res/spec/aress19-2.htm.

[24] Mason Durie (1999) Te Pae Hahutonga: A model for Maori Health Promotion. *Health Promotion on the Move*. Papers of the 1999 Health Promotion Forum conference, Napier 12-21 October; Helen Moewaka Barnes (1999) Maori drink drive programme evaluation from a Maori perspective. Kettel Bruun Society symposium on Community Action Research and the prevention of alcohol and other drug problems. Alcohol & Public Health Research Unit. July; Robert Bush (1997) Can we achieve sustainable harm reductions in local communities? *Drug & Alcohol Review* 16: 109-111.

The voice of Maori is specifically provided for in the New Zealand Public Health & Disability Act 2000, in recognition of Treaty principles, to enable Maori to contribute to decision making on, and to participate in the delivery of health and disability services (S.4). This Act defines public health services as including regulatory functions (S.6).

The Government's commitment to Treaty partnership, participation and protection is a theme taken up in 2003 in the Ministry of Health's Framework for Public Health Action under the New Zealand Heath Strategy.[25] This also takes the Ottawa Charter as its model for public health planning, encouraging community action to create supportive environments, reorient health service and build health public policy. This is developed further in the Māori Public Heath Action Plan drawing on Māori models of health.[26]

These public health plans require the active involvement of iwi and community organisations, yet note the socio-economic and ethnic inequalities that undermine both health and participation. It is unrealistic to expect Māori and voluntary organisations representing the least healthy members and in some cases the most needy in society to provide effective 'public health leadership and advocacy around specific public health and community issues' either without funding support, or without engaging in dialogue about policy, services and public health regulation with political decision makers. As the Ottawa Charter states:

> *"Health promotion goes beyond health care. It puts health on the agenda of policy makers in all sectors and at all levels, directing them to be aware of the health consequences of their decisions and to accept their responsibilities for health".*

Hunn and Brazier's assumption that this policy work in support of government goals can be funded separately by iwi and community organisations themselves because they 'will have established a capital base' is unrealistic and does not acknowledge that the Treaty settlement process is incomplete.[27] In New Zealand there are few large private charities that can function independently from government funding. Iwi social services are in general struggling to meet their service delivery commitments and have limited resources for advocacy – in terms of either time or money.

---

[25] Ministry of Health (2003) Achieving health for all people, Whakatutuki te oranga hauora mo ngā tāngata katoa: A framework for public health action for the New Zealand Health Strategy. Wellington: Ministry of Health.

[26] Ministry of Health (2003) Achieving health for all people, Whakatutuki te oranga hauora mo ngā tāngata katoa: A framework for public health action for the New Zealand Health Strategy. Wellington: Ministry of Health.

[27] Brazier S and Hunn D (November 2003), *Contracts with Non-Government Organisations – Compliance with Public Service Standards*, Wellington, Ministry of Health, p.8.

7. The Reasoning in the Hunn/Brazier Report Regarding Political Neutrality

The Hunn/Brazier report suggests that those contracted by the Ministry should be subject to the same standards and conventions, principles and practice as public servants, particularly in regard to political neutrality. There is some support for this position. The Protected Disclosures Act 2000 provides for protection to extend to private sector contractors, and generally speaking, contracts should be let on the basis that contractors will conduct themselves in ways befitting a public official. It is implied that public service departments should not use contracting to lessen or minimise standards otherwise deemed to be appropriate for public officials.

There are, however, limits to the Brazier/Hunn suggestion. Such an exception may be with respect to political neutrality. According to SSC document "Fact Sheet No.1 Political Neutrality", published in September 2003 at about the time as Brazier and Hunn were undertaking their review, the essence is for public officials to "perform their jobs professionally and without bias towards one political party or another". The crux is a matter of displaying non-partisanship (without fear or favour) in all respects (not just in the provision of advice, but in deeds and interests, etc). The function of that particular convention is to build and preserve confidence by successive administrations in the advice of public service departments and their officials, not for its own sake, but because it was and is recognised that the alternative "spoils" system of political appointments has too many drawbacks in a country of our size.

To retain a professional, well-informed public service organisation is crucial to good government. In return for adopting (and being seen to adopt and maintain) a non-partisan position, or political neutrality, the public service enjoys certain benefits (or used to) — merit systems of appointment (the merit principle also extends to the provision of advice 'on its merits'), some security of tenure, and so forth.

To extend this convention holus-bolus to NGOs makes little sense. The Public Service is an institution of the New Zealand Government. The convention exists to maintain a professional service with the function of serving successive governments of whatever political persuasion. NGOs, on the other hand, are outside the institutions of government; they have as one of their functions the role of influencing those institutions.

The Cabinet Office Manual has this to say:

> **"Political neutrality**
> *2.147 Public servants must act in such a way that their department maintains the confidence of its current Minister and also of future Ministers. Advice given to Ministers must be honest, impartial and comprehensive. Although regard must be had to the policies and priorities of the government of the day, the advice given by officials should be "free and frank", so that Ministers can take decisions based on all the facts and an appreciation of all the options.*
> *2.148 Officials must provide any factual or statistical material requested but should not be required to offer comment or opinion on clearly political topics, such as policies mooted by other parties in Parliament."*

In the Public Service context, political 'neutrality' is not well understood, and it is *"not always easy to interpret and apply the political neutrality principle in practice and to identify the boundary between what is, and what is not, politically neutral advice or behaviour."*[28]. The term 'political neutrality' generally refers to the need for public officials to conduct themselves in non-partisan ways, whether at work or in their private lives. It may also signify a number of practices, such as the application of the merit principle as noted above.[29]

The Hunn/Brazier report identifies the specific constraints that they consider the political neutrality convention imposes on advocacy for the Ministry of Health:

> *"Advocacy in this context, and in this country's political environment has to be defined as the process by which the Ministry brings health and disability services to the attention of the Minister and recommends, after robust analysis, certain political directions for the Government. It does not mean advocating to the public or legislators in general.".*[30]

Furthermore, according to the Hunn/Brazier report:

> *"The constitutional conventions and guidelines that make clear that public service agencies must remain politically neutral are largely derived from a background of adversarial two party politics.*
>
> *The MMP environment has meant that policy is now often established by consensus between different parties who do not necessarily have alignment on all issues. This involves a consultative political environment and provision of information to more than one political grouping.*
>
> *This does not change the Ministry's obligation to remain politically neutral. Negotiations between political parties are the responsibility of the Minister, to whom the Ministry provides information and advice.*
>
> *The Minister may instruct the Ministry to brief members of other political parties (individually or via the Select Committee process) and provide them with information either on legislative issues or in the general public interest. This occurred during the SARS outbreak. In this respect the Ministry acts only under the Minister's instructions and does not have an independent relationship with any other political group or individual. ……..*
>
> *Implicit in the process by which policy is formed, legislation proposed by government or private members, and passed by Parliament, is a continuum of*

---

[28] SSC (September 2003) *Political Neutrality*, Fact Sheet No.1, Wellington.

[29] See also: *Public Service Principles, Conventions and Practice Guidance Series* published by the SSC (1995); The *Cabinet Office Manual,* s.2.147.; and the *New Zealand Public Service Code of Conduct*.

[30] Brazier S and Hunn D (November 2003), *op cit,* p. 7.

information gathering and dissemination, policy analysis, advocacy and lobbying……" .[31]

Hunn and Brazier go on to say that:

> *It is clear that the public service and the Ministry may not involve itself directly or indirectly at the lobbying end of the continuum, nor allow perceptions to exist that it is doing so, nor contract others to do so in its place."* [32]

While the Hunn and Brazier interpretation of what political neutrality means for public servants is open to argument, the analysis earlier in this paper also raises serious questions about whether the big leap they then make in assuming that any form of contracting with NGOs for public health advocacy breaches constitutional conventions regarding political neutrality is valid. It is not obvious that this approach as such has any significant costs that could outweigh the considerable health benefits that have resulted in the past from NGO advocacy, and can be expected in the future. That is not to say that the detail of particular contracting arrangements in the past has always been appropriate.

8. Alternative Approaches in Other Similar Constituencies

In contrast to Hunn and Brazier, we believe that the Public Service can fulfil its obligation to be politically neutral, while continuing to contract for NGO services including a generically defined advocacy role. The two are not necessarily in conflict – as a review, for example, of the approach taken in the Canadian and Scottish contexts reveals.

Canada, like New Zealand, has Westminster-style government comprising of the institutions of democratic decision-making, with a separation of constitutional powers between the executive, legislative and judicial branches. There the Government embarked on a Voluntary Sector Initiative in 2002 with a goal of improving the quality of life in Canada by strengthening the relationship between the voluntary (or NGO) sector and the government and enhancing the capacity of the voluntary sector.

As part of this initiative, the Canadian Government has signed an Accord with the voluntary sector that includes 'Independence' as one of its underlying principles, about which it specifically says:

> ***"****The Government of Canada is accountable to all Canadians for its actions and has a responsibility to identify issues of national concern and mobilise resources to address them, establish policies and make decisions in the best interests of all Canadians;*

[31] Brazier S and Hunn D (November 2003), *op cit,* p. 8.

[32] Brazier S and Hunn D (November 2003), *op cit,* p. 9.

Voluntary sector organisations are accountable to their supporters and those they serve in providing services, organising activities and giving collective voice at the local, national and international level;

The independence of voluntary sector organisations includes their right within the law to challenge public policies, programs and legislation and to advocate for change; and

Advocacy is inherent to debate and change in a democratic society and, subject to the above principles, it should not affect any funding relationship that might exist."[33]

Furthermore, advocacy is explicitly included amongst the voluntary sector purposes and activities that may be funded by the Government of Canada – along with programme and service delivery, strengthened sustainable capacity, strategic investment, alliances and partnerships, policy dialogue, research, innovation and capital expenditures.

In regard to 'Advocacy', the Canadian Government's funding guidelines say:

"Funding may be provided to promote representative voices on emerging issues that are important to the delivery of departmental and agency mandates, and for advocating for changes in public policies. Advocacy is defined as 'the act of speaking or disseminating information intended to influence individual behaviour or opinion, corporate conduct or public policy and law.' "[34]

The Scottish context provides another example of the recognition by a Westminster-style government that the government and the voluntary or non-government sector play different, but complementary roles in the development and delivery of public services. The Scottish Government has signed a compact with the voluntary sector that includes a commitment to basic values, including:

- *"**A democratic society** which acknowledges the value of voluntary sector activity and upholds the right of individuals to associate freely with one another in pursuit of a common purpose.*
- ***Active citizenship** involving the widest possible participation by people in the lives of their national and local communities*
- ***Pluralism** which welcomes the diversity of identities and interests in Scotland, including minority groups such as ethnic minorities and people with*

[33] Refer www.vsi-isbc.ca, in the section "Government-Voluntary Sector Relationship / The Accord and Codes".

[34] Refer www.vsi-isbc.ca, in the section "Funding/Financing/ Code on Funding – Appendix 4: Voluntary Sector Purpose/Activities Funded by the Government of Canada". This references the definition of advocacy as being Working Together: A Government of Canada/Voluntary Sector Joint Initiative: Report of the Joint Tables, Voluntary Sector Task Force, Privy Council Office, Government of Canada, August 1999.

disabilities, and upholds the right of each interest to speak on its own behalf".[35]

Later in the Scottish Compact, there is explicit recognition of the independent nature of voluntary or non-government organisations and their role in public policy:

> "*In working with voluntary organisations, volunteers and community development groups, the Government will…..*
> *- Recognise and support the sector's independence, including its right to comment on and challenge Government policy."*[36]

So in two other constitutionally similar environments – Canada and Scotland - the government does not see NGOs contracted by government agencies as being bound by the same constitutional conventions as public servants. Rather there is an explicit acknowledgement that the roles of core government agencies and NGOs are distinct from one another, and that NGO advocacy plays an important role in democratic decision-making that is sufficiently valuable that it should be fostered rather than limited.

The Canadian and Scottish approaches make it clear that while public servants' primary responsibility is to provide free, frank and politically neutral advice to the government of the day, NGOs are responsible to their members, drawn from and accountable to communities of common interest that have strong public interests. While it is reasonable to expect both to conduct themselves in professional ways, and be well informed in providing information and advice, NGOs are independent of government while public servants are not. This is precisely why NGOs have long been seen by governments as appropriate vehicles to advocate and promote particular health and other interests in the context of a democratic, pluralist society.

Providing NGOs remain non-partisan (that is, not linked to any party of a particular political persuasion), they may build and retain credibility as participants in public policy issues and development by engaging with both the executive and the various groups represented in the legislature. Public servants, as Hunn and Brazier rightly identify, may not because of the centrality of their relationship of duty to the Government of the day.

9. Implications in the New Zealand Political Environment

In the New Zealand context of an MMP political environment, in which a minority Government must obtain support from opposition parties in order to pass any legislation, it is particularly important that NGOs can communicate with all groups in the legislature to ensure they are well informed about the health and social impacts of policies under consideration.

---

[35] The full text of the Compact between Government and the Voluntary Sector in Scotland is available on www.scotland.gov.uk/library/documents-w3/comp-04.htm.

[36] Canadian Government, op cit.

NGOs provide decision-makers (policy makers and politicians) the much needed 'community voice': feedback from the community grassroots on what is happening, what is needed, and how current or new policies are working out on the ground. This is a role that government departments have difficulty undertaking.

To the extent that NGOs are advancing a public interest, and not a sectional interest, there is a good case for strong public funding of them.

10. Contracting Trends and Implications in New Zealand

Funding health sector NGOs is nothing new, however the form of the 'contracts' has changed overtime. In the 1980s the usual form of funding was a *grant*: either an undifferentiated sum designed to help 'defray expenses' or a sum that explicitly or implicitly was the aggregation of a series of input items (for example for the Plunket Society, the number of nurses and cars).

The recipient of such a grant would be expected to provide audited accounts to demonstrate that the funds had not been misapplied and there would normally be a procedure by which the department and recipient 'evaluated' what was being done in terms of shared public health goals. On this basis grants would be maintained, increased, decreased or terminated.

From the late 1980s, particularly since the advent of the Public Finance Act 1989, the approach has shifted from block grants to contracts specifying outputs and outcomes. With a focus on greater accountability for the expenditure of public monies very specific line by line output measures of performance have been introduced into contracts with 'third parties'.

There are a number of questions about the utility of this approach, including the tendency to encourage a 'tick box' ethos. More importantly, there is a significant risk that unduly tight accountability measures detract from the 'arms length' nature of the relationship. Put bluntly, the more the funder ties up the operational choices of the NGO, the more the funder must accept responsibility for what is done. And the *reductio ad absurdum* of this is that the government agency might as well revert to having the external activities carried out in house. This would, however, result in loss of access to the community voice that NGOs provide in addition to service delivery.

The latest Treasury 'Guidelines for Contracting with Non-Government Organisations for Services Sought by the Crown' (December 2003) provides some appropriate guidance on the balance to be struck. They begin by emphasising that:

> *"The desired outcomes should inform the entire contracting process. Each Government agency should have a clear view of the way in which the services*

being purchased will contribute to the achievement of the outcomes, and that should be reflected in the agreement." [37]

However the Guidelines also make clear that while the definition of services in the contract should reflect the key elements of the service, in addition:

> *"It will need to strike a careful balance between:*
> *- Including enough detail to ensure there is certainty (for both the NGO and the Government purchaser) as to the nature and scope of the service.*
> *- Allowing the NGO flexibility."*[38]

In regard to advocacy, we acknowledge that the high degree of specificity in the contracts identified as problematic by Hunn and Brazier (specifying which specific bits of legislation to advocate for, how and with whom) does provide risks of accusations of being insufficiently politically neutral. Such issues can, however, be avoided by taking a more generic approach. For example, contracting for "effective advocacy of a public health perspective and influencing health public policy development through research-based input into social, political, regulatory and legislative processes" would allow an NGO to function effectively in the public interest.

11. Recommended Future Approach to Contracting with NGOs

In light of these reflections, we believe the Ministry should explicitly adopt the following guidelines for the funding of third parties in the public health area in relation to their advocacy or community voice role:

- Acknowledge that programmes of education and associated activities designed to raise awareness and influence behaviour to achieve improved health status in the New Zealand population are of long standing, and are embedded in statute as being of crucial importance.

- Recognise that government funding of non-government organisations to achieve these objectives has a long history that predates the widespread resort to contracting out of departmental activities from the late 1980s.

- Contracts with non-government organisations in the public health field should therefore, where relevant, acknowledge that one of the roles of the organisation is to advocate for the cause of improved public health (generally and/or in specific areas). This community voice constitutes the input into

[37] The Treasury (December 2003), *Guidelines for Contracting with Non-Governmental Organisations for Services Sought by the* Crown, p. 12.

[38] The Treasury (December 2003), *op.cit.*, p. 14.

policy development that is consistent with the Government's commitments under the Ottawa Charter and Agenda 21.

- The Ministry should acknowledge that in order for NGOs to achieve improved health outcomes that are their reason for being, NGOs may undertake 'advocacy' that may include *inter alia*:
    - conducting public campaigns in support of best practice to promote public health objectives
    - submissions to ministers, department and crown entities
    - submissions to select committees
    - providing information and opinion to individual MPs and political parties

  as well as education programmes and awareness publicity.

- Contracts should recognise the purposes of the organisation and specify that government funding is provided to assist the organisation in activities designed to achieve public interest purposes and no others – as these purposes contribute to the outcomes to which the Government is committed.

- Except where a particular service delivery programme is specifically funded (the subject desirably of a separate subsidiary contract) it should be made clear that the *operational* decisions of the NGO (including advocacy of the various forms described above) – within the broad objectives supported by the funding contract – are the responsibility of the NGO. The Ministry should not specify the nature of 'advocacy' as opposed to 'education'.

- In funding for community voice, line-by-line performance measures should be minimised to avoid the impression that the Ministry is dictating the operational activities of the NGO.

- Instead, a more generic approach should be adopted, such as contracting with NGOs for "effective advocacy of a public health perspective and influencing public health policy development through research-based input into social, political, regulatory and legislative processes."

- Financial accountability should then be exercised through regular reports by the NGO and structured reviews by the Ministry to monitor that the contribution being made by the organisation helps to achieve the Government's public health goals.