

**Deregistration Decision: Family First New Zealand (CC10094)**

1. The role of the independent Charities Registration Board (“the Board”) is to maintain the integrity of the Charities Register by ensuring that entities on the Charities Register qualify for registration. The Board’s decision is to remove Family First New Zealand (“Family First”) from the Charities Register because it does not advance exclusively charitable purposes.
2. The Board considers that Family First has a purpose to promote its own particular views about marriage and the traditional family that cannot be determined to be for the public benefit in a way previously accepted as charitable. Family First has the freedom to continue to communicate its views and influence policy and legislation but the Board has found that Family First’s pursuit of those activities do not qualify as being for the public benefit in a charitable sense.
3. The Board can direct charities to be removed from the Charities Register when they do not advance a charitable purpose for the public benefit<sup>1</sup> and it is in the public interest to remove them.<sup>2</sup> A purpose is charitable if it advances public benefit in a way that is analogous to cases that have previously been held to be charitable.<sup>3</sup>
4. In making its decision, the Board has followed the guidance of the Supreme Court in *Re Greenpeace of New Zealand Incorporated* (“*Greenpeace*”),<sup>4</sup> and the High Court in *Re Family First New Zealand* (“*Re Family First*”) and *Re the Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia* (“*FAAR and FRSSH*”).<sup>5</sup>
5. Following the three step process of Ellis J in *FAAR* and *FRSSH* the Board has considered:
  - a. whether Family First’s stated purposes are capable of being charitable;
  - b. whether Family First’s activities are consistent with or supportive of a charitable purpose; and
  - c. if Family First’s activities are found not to be charitable, whether they can be said to be merely ancillary to an identified charitable purpose.<sup>6</sup>

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<sup>1</sup> Section 13(1)(a) of the Charities Act 2005 (“the Act”), section 32(1)(a) of the Act.

<sup>2</sup> Section 35(1) of the Act.

<sup>3</sup> *Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“*Greenpeace*”) at [17], [30], and [31]; *Re Family First New Zealand* [2015] NZHC 1493 (“*Re Family First*”) at [86]-[89].

<sup>4</sup> *Greenpeace*.

<sup>5</sup> *Re Family First, Re the Foundation for Anti-Aging Research and the Foundation for the Reversal of Solid State Hypothermia* [2016] NZHC 2328 (“*FAAR and FRSSH*”).

<sup>6</sup> *FAAR and FRSSH* at [88].

6. Although the Supreme Court in *Greenpeace* has made clear that an organisation that advocates for the advancement of a charitable purpose is capable of being registered,<sup>7</sup> the Court also cautioned that “[a]dvancement of causes will often, perhaps most often, be non-charitable”<sup>8</sup> because it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.<sup>9</sup> The Supreme Court approved the reasoning of Keifel J in *Aid/Watch Incorporated v Commissioner of Taxation* (“*Aid/Watch*”)<sup>10</sup> that “reaching a conclusion of public benefit may be difficult where activities of an organisation largely involve the assertion of its views”.<sup>11</sup>
7. In *Re Family First* the High Court directed the Board to reconsider Family First’s registration in light of the Court’s judgment and the judgment in *Greenpeace*.<sup>12</sup> Collins J indicated that the analogical analysis which the Board undertakes should be informed by examining whether Family First’s activities are objectively directed at promoting the moral improvement of society<sup>13</sup> and advancing education.<sup>14</sup>
8. In making its decision the Board has referred to cases decided before *Greenpeace*.<sup>15</sup> In considering these cases the Board has taken into account the finding in *Greenpeace* that the political purpose exclusion that had been applied in some of those cases no longer applies.<sup>16</sup> However, the Supreme Court in *Greenpeace* has indicated that the reasoning in these cases is still relevant to the determination of public benefit.<sup>17</sup>

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<sup>7</sup> *Greenpeace* at [72].

<sup>8</sup> *Greenpeace* at [102].

<sup>9</sup> *Greenpeace* at [73].

<sup>10</sup> *Aid/Watch Incorporated v Commissioner of Taxation* [2010] 241 CLR 539 at [68]-[69] (“*Aid/Watch*”).

<sup>11</sup> *Greenpeace* at [73].

<sup>12</sup> *Re Family First* at [102].

<sup>13</sup> *Re Family First* at [89].

<sup>14</sup> *Re Family First* at [94].

<sup>15</sup> For example: *National Anti- Vivisection Trust v Inland Revenue Commissioners* [1948] AC 30 (“*Anti- Vivisection*”); *McGovern v Attorney General* [1982] Ch 321 (Ch) (“*McGovern*”); *Re Wilkinson (Deceased), Perpetual Trustees Estate and Agency Co of New Zealand Ltd v League of Nations Union of New Zealand* [195] NZLR 10065 (SC); *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522 (SC) (“*Knowles*”); *Re Draco Foundation (NZ) Charitable Trust* (2011) 25 NZTC 20-023 (HC) (“*Re Draco*”).

<sup>16</sup> *Re Family First* at [86].

<sup>17</sup> See for example: *Greenpeace* at [73] and [101] referring to the reasoning of the court in *Molloy v Commissioner of Inland Revenue* 1 NZLR 688 (“*Molloy*”) and *McGovern* respectively; *Aid/Watch* at [69].

9. The Board has carefully considered all of the submissions of Family First and the information on its activities collected by Charities Services.<sup>18</sup> The Board has based its conclusions on the facts before it and the application of the law. This decision is separated into the following sections:
- a. Background
  - b. What are the purposes of Family First?
  - c. Does Family First have a charitable purpose to promote moral and mental improvement?
  - d. Does Family First have a charitable purpose to advance education?
  - e. Is removing Family First from the Charities Register in the public interest?

### **Background**

10. Family First was registered as a charity on 21 March 2007 by the then Charities Commission.<sup>19</sup> On 15 April 2013 the Board made the decision to deregister Family First because it did not advance exclusively charitable purposes. That decision was appealed to the High Court by Family First. On 22 June 2015 the High Court directed the Board to reconsider its decision and give effect to the judgment of the Supreme Court in *Greenpeace* and its own judgment.<sup>20</sup>
11. On 18 December 2015 Charities Services wrote to Family First requesting updated information on Family First's activities. Family First provided this information on 15 February 2016. On 5 April 2016 Charities Services notified Family First that it did not meet registration requirements and could therefore be removed from the Charities Register.<sup>21</sup> Family First provided submissions on 27 July 2016 contesting these grounds.
12. On 23 November 2016, Charities Services provided papers to the Board outlining Family First's submissions and Charities Services' analysis. Having fully considered the papers, on 28 April 2017 the Board directed Charities Services to notify Family First it did not consider Family First met registration requirements.<sup>22</sup>

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<sup>18</sup> Charities Services, Ngā Rātonga Kaupapa Atawhai, is part of the Department of Internal Affairs, and administers the Act.

<sup>19</sup> The Charities Registration Board ("the Board") and Charities Services took over the functions of the Act in 2012.

<sup>20</sup> *Re Family First* at [102].

<sup>21</sup> Letter to Family First dated 5 April 2016.

<sup>22</sup> Letter to Family First dated 18 May 2017.

13. The notice sent on 18 May 2017 outlined in detail the reasons the Board considers Family First does not qualify for registration. That notice canvassed the submissions of Family First and the information on its activities as collected by Charities Services. Family First advised Charities Services on 30 June 2017 that it did not intend to make any further submissions and would rely on its earlier submissions to Charities Services.

**What are the purposes of Family First?**

14. The stated purposes of Family First are:<sup>23</sup>
- A. To promote and advance research and policy supporting marriage and family as foundational to a strong and enduring society.
  - B. To educate the public in their understanding of the institutional, legal and moral framework that makes a just and democratic society possible.
  - C. To participate in social analysis and debate surrounding issues relating to and affecting the family being promoted by academics, policy makers, social service organisations and media, and to network with other like-minded groups and academics.
  - D. To produce and publish relevant and stimulating material in newspapers, magazines, and other media relating to issues affecting families.
  - E. To be a voice for the family in the media speaking up about issues relating to families that are in the public domain.
  - F. To carry out such other charitable purposes within New Zealand as the Trust shall determine.
15. Family First submits these purposes are analogous to purposes previously accepted as charitable by the courts:<sup>24</sup>
- a. the promotion of moral and mental improvement; and
  - b. the advancement of education.
16. The Board has also considered whether Family First's activities advance other purposes beneficial to the community<sup>25</sup> in areas such as public health<sup>26</sup> and promoting good citizenship,<sup>27</sup> and concluded this is not the case.<sup>28</sup>

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<sup>23</sup> Family First's Trust Deed, clause 4.

<sup>24</sup> Family First's submissions to Charities Services dated 27 July 2016.

<sup>25</sup> Letter to Family First dated 5 April 2016 (Appendix: Family First of New Zealand – Review of Submissions).

<sup>26</sup> *Commissioner of Inland Revenue v Medical Council* (1996) 2 NZLR 297 (CA).

<sup>27</sup> *The Earl Mountbatten of Burma Statute Appeal Trust* [1981] Ch Com Rep 24-25 at [68-70]; and *Re Webster* [1954] 1 WLR 1500 (Boy Scouts Association Case).

## Does Family First have a charitable purpose to promote the moral and mental improvement of society?

17. The Board recognises that purposes to promote moral and mental improvement are capable of being charitable under the fourth head of charity (other purposes beneficial to the community).<sup>29</sup>
18. The cases establish, however, that not all purposes directed at moral improvement will necessarily benefit the public in a charitable sense.<sup>30</sup> Where an entity's purpose is to *advocate* for a cause directed at moral improvement, the courts may not be able to find public benefit.<sup>31</sup>
19. Acknowledging advocacy for points of view can advance a charitable purpose, the Supreme Court in *Greenpeace* held to assess whether the purpose can be said to be of public benefit within the previous cases depends on a wider consideration of whether the purpose advances a benefit to the public. Although advocating an *end* of moral improvement may have been accepted by the courts as charitable, the *means* promoted to achieve that *end* and the *manner* in which the cause is promoted must also be considered in relation to the previous cases.<sup>32</sup>
20. To assess whether Family First advances a purpose analogous to the promotion of moral or mental improvement, the Board examined whether Family First's activities are objectively directed at promoting moral and mental improvement for the public benefit, as set out in the cases. Collins J in *Re Family First* noted there was force to the submissions that "advocating its conception of the traditional family is analogous to organisations that have advocated for the 'mental and moral improvement' of society."<sup>33</sup> As directed by Collins J, the Board has also been conscious of the High Court's direction not to "carefully match" Family First's activities with organisations that have previously achieved registration as charitable entities.<sup>34</sup>

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<sup>28</sup> Detailed in the letter to Family First dated 18 May 2017 at [46] and [79].

<sup>29</sup> *Re Hood* [1931] 1 Ch 240 ("*Re Hood*"); *Re Price* [1943] 1 Ch 422 ("*Re Price*"); *Commissioner of Inland Revenue v Falkirk Temperance Café Trust* 1927 SC 261 ("*Falkirk*"); *Re Scowcroft* [1898] 2 Ch 638 ("*Re Scowcroft*"); *Re South Palace Ethical Society* [1980] 3 All ER 918 ("*Re South Palace*"), [1980] 1 WLR 1565; *Re the Grand Lodge of Antient Free and Accepted Masons in New Zealand* ("*Re Grand Lodge*") HC WN CIV 2009-485-2633 [23 September 2010].

<sup>30</sup> *Re South Palace*.

<sup>31</sup> *Knowles; Molloy; National Anti-Vivisection; Re Positive Action for Pornography and the Minister of National Revenue* (1988) 49 DLR (4<sup>th</sup>) ("*Re Positive Action*"); *Greenpeace* (which cited the minority decision of Kiefel J in *Aid/Watch*). The Board also notes relevant commentary in Donald Poirier *Charity Law in New Zealand* (Department of Internal Affairs 2013) ("*Poirier*") at 280-282; Hubert Picarda *The Law and Practice Relating to Charities* (Fourth Edition Bloomsbury Professional 2010) at page 220-221; Jean Warburton *Tudor on Charities* (Ninth Edition London Sweet & Maxwell 2003) at 2-103 - 2-106.

<sup>32</sup> *Greenpeace* at [76].

<sup>33</sup> *Re Family First* at [87].

<sup>34</sup> *Re Family First* at [89].

21. The Board considers the moral and mental improvement cases fall into three groups: the temperance cases, the ethical or philosophical systems cases, and the advocacy cases.
22. The temperance cases were decided on the basis of the public benefit in reducing alcohol consumption. The temperance cases of *Re Scowcroft* and *Re Hood* both involved the promotion of temperance primarily as a way to advance Christian principles,<sup>35</sup> and *Commissioner of Inland Revenue v Falkirk Temperance Café Trust* involved the provision of a facility – a teetotal café.<sup>36</sup>
23. The cases on the ethical or philosophical systems involved the promotion of a system of beliefs through educational means, similar to advancing a religion. *Re Price* involved the advancing of the teachings of Rudolf Steiner as a means to promote mental and moral discipline.<sup>37</sup> *Re South Place Ethical Society* involved the promotion of study, the dissemination of ethical principles and the fostering of a rational religious sentiment.<sup>38</sup> *Re the Grand Lodge of Antient Free and Accepted Masons in New Zealand* involved advancing virtues such as good citizenship, honest work, morality, wisdom, brotherly love and compassion (although in that case the organisation was found not to be charitable as it was limited to a private group).<sup>39</sup>
24. In contrast, the courts have generally not found public benefit in the advocacy cases which involve promoting a particular point of view underpinned by ethical or moral philosophies. *Knowles and Another v Commissioner of Stamp Duties* involved advocating for the prohibition of alcohol;<sup>40</sup> *Molloy v Commissioner of Inland Revenue (“Molloy”)* involved advocating against changing the status quo in relation to abortion;<sup>41</sup> *Aid/Watch* involved an organisation seeking to change the aid programme of the Australian government; and *National Anti- Vivisection Trust v Inland Revenue Commissioners* involved advocating against animal testing.<sup>42</sup>

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<sup>35</sup> *Re Scowcroft* and *Re Hood*

<sup>36</sup> *Falkirk*

<sup>37</sup> *Re Price*

<sup>38</sup> *Re South Place*

<sup>39</sup> *Re Grand Lodge* at [58].

<sup>40</sup> *Knowles*

<sup>41</sup> *Molloy*

<sup>42</sup> *Anti-Vivisection*. Although the activities of Aid/Watch were held to advance charitable purposes by a majority of the High Court of Australia, the Supreme Court in *Greenpeace* preferred the minority view of Kiefel J which did not consider a public benefit was evident: *Greenpeace* at [73].

*Family First's means of promoting moral improvement*

25. Family First's main activity is advocacy on issues that it considers will promote and protect its positions on marriage and its definition of the traditional family, and it submits that this is analogous to the moral and mental improvement cases.<sup>43</sup> Family First's "Family Policy Priorities" are stated on its website as:<sup>44</sup>
- a. "Promoting marriage and families" (which includes advocacy on a wide range of issues in relation to marriage, divorce, child abuse, the availability of alcohol, tobacco and gambling, taxation of families, aged care and sex education).
  - b. "Promoting life" (which includes advocacy against abortion, to maintain the status quo on euthanasia and against embryonic cell research).
  - c. "Promoting community values and standards" (which includes advocacy to change prostitution laws, reducing the availability of pornography and for stricter broadcasting standards and censorship).
26. Family First advocates on its Family Policy Priorities through its website (through publishing media releases and articles from other news sources that support its views, and publishing opinion pieces written to support its viewpoint);<sup>45</sup> holding annual conferences and church leaders' events; sending pamphlets to families and churches; an online television channel; providing columns for the Christian Life Magazine; maintaining its partner websites;<sup>46</sup> emailing newsletters to its supporters; conducting opinion polls; commissioning reports and making submissions on legislation.<sup>47</sup>

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<sup>43</sup> Family First's submissions to Charities Services dated 27 July 2017.

<sup>44</sup> <https://www.familyfirst.org.nz/about-us/family-policy-priorities/> [accessed 17 November 2015]; it also lists "issues" that it advocates on related to these priorities <https://www.familyfirst.org.nz/issues/> [accessed 17 November 2015].

<sup>45</sup> <https://www.familyfirst.org.nz/> [accessed 16 August 2017].

<sup>46</sup> For example: <https://www.chooselife.org.nz/>; <http://rejectassistedsuicide.org.nz/>; <http://www.protectmarriage.org.nz/>; <http://www.protectgoodparents.org.nz/> [accessed 16 August 2017].

<sup>47</sup> These activities are based on those reported to Charities Services in Family First's submissions and its Performance Report for the year ending 31 March 2016.

### *The temperance cases*

27. The temperance cases were decided in the context of the advancement of religion<sup>48</sup> and the advancement of education.<sup>49</sup> Each case generally involved the provision of tangible facilities and support promoting and assisting in the avoidance of alcohol (e.g. the provision of a teetotal café, a reading room, a billiards room, a lecture room,<sup>50</sup> and a building to be used for the furtherance of conservative principles and religious and mental improvement, to be kept free from intoxicants and dancing).<sup>51</sup> In *Greenpeace*, this type of purpose was considered to most plausibly be charitable for the promotion of public health.<sup>52</sup> The Board also considers the temperance cases acknowledge the public benefit in relieving need for those suffering from addictions.<sup>53</sup> Apart from a few specific policy issues,<sup>54</sup> the Board does not consider that Family First's activities to advocate on a wide range of issues to promote its point of view on marriage and the traditional family can be found to be similar to a purpose to promote temperance, promote health or relieve need through the provision of tangible facilities and health assistance.

### *Advancing philosophical or ethical systems*

28. The promotion of philosophical or ethical systems has been held to advance moral improvement where the systems promote rationalist, humanist philosophies, encourage a religious communal and benevolent approach to life,<sup>55</sup> or advance spiritual philosophies.<sup>56</sup> These purposes have been carried out through the provision of reading rooms, library rooms, lectures and musical performances allowing members of the public to consider the application of these practices, principles or belief in their lives in a structured manner.<sup>57</sup> Although the Board accepts that Family First adopts an ethical philosophy, its primary activity is not educating on this philosophy, but advocating its own point of view on issues it considers will promote and protect marriage and its definition of the traditional family. The Board does not consider that adopting an ethical philosophy, and then using it to advocate on specific positions is consistent with the public benefit promoted in the ethical or philosophical systems line of cases.

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<sup>48</sup> *Re Hood* and *Re Scowcroft*.

<sup>49</sup> *Falkirk* and *Re Scowcroft*.

<sup>50</sup> *Falkirk*.

<sup>51</sup> *Re Scowcroft*.

<sup>52</sup> *Greenpeace* at [96].

<sup>53</sup> See for example: *Poirier* at 272.

<sup>54</sup> For example: advocacy to directly support those with gambling addictions, victims of crime, and the elderly: (<http://www.familyfirst.org.nz/issues/> [accessed 16 August 2017]).

<sup>55</sup> *Re Grand Lodge*.

<sup>56</sup> *Re Price*.

<sup>57</sup> See for example *Re South Palace* and *Re Grand Lodge*.



### *Advocacy for specific viewpoints*

29. The courts have held that advocating for certain specific views associated with ethical philosophies and religion cannot be held to be for the benefit of the public. The Supreme Court in *Greenpeace* confirmed that:<sup>58</sup>

...Even without a political purpose exclusion, the conclusion in *Molloy* (that the purpose of the Society for the Protection of the Unborn Child was not charitable) seems correct. The particular viewpoint there being promoted could not be shown to be in the public benefit in the sense treated as charitable.

30. The reasoning of the Court of Appeal in *Molloy* was that:<sup>59</sup>

...the issue in relation to abortion is much wider than merely legal. And the fact, to which we have already referred, that this public issue is one on which there is clearly a division of public opinion capable of resolution (whether in the short or the long term) only by legislative action means that the Court cannot determine where the public good lies and that it is relevantly political in character.

31. Similar decisions were reached in the New Zealand High Court in *Re Collier*,<sup>60</sup> the Canadian Federal Court of Appeal in *Re Positive Action for Pornography and the Minister of National Revenue ("Re Positive Action")*<sup>61</sup> and the minority decision of Kiefel J in *Aid/Watch*. In these cases, the courts considered they were not in a position to determine whether one view, rather than another, was for the benefit of the public.<sup>62</sup> The Board considers this is directly applicable to the advocacy of Family First. Family First advocates for specific positions on abortion, euthanasia, pornography, and other issues where the public benefit in either side of the argument has not been established by evidence.

32. In contrast, the House of Lords majority in *Anti-Vivisection* acknowledged there was identifiable public benefit in the organisation's advocacy.<sup>63</sup> In a split decision, the majority held that the verifiable scientific and medical benefits that arise from testing on animals outweighed the moral elevation in preventing animal cruelty.<sup>56</sup> This case can be contrasted with the other cases where the courts found that there were two sides to the argument, but did not consider themselves to be in a position to determine which side should take precedence.

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<sup>58</sup> *Greenpeace* at [73].

<sup>59</sup> *Molloy* at [45].

<sup>60</sup> *Re Collier* 1 NZLR 81 (HC) ("*Re Collier*").

<sup>61</sup> *Re Positive Action*.

<sup>62</sup> *Aid/Watch* at [85].

<sup>63</sup> *Anti-Vivisection* at [46]-[47]; [49].

33. The Board considers that the advocacy undertaken by Family First is more similar to the facts of *Molloy, Re Collier*,<sup>64</sup> *Re Positive Action* and *Aid/Watch* and that it is not possible to establish a public benefit analogous to moral improvement in the advocacy of Family First. Most of the advocacy of Family First concerns advocacy on issues where there are two sides to an argument on a topical social issue, neither of which has been determined to be for the benefit of the public.

*Summary of purpose – moral and mental improvement*

34. The Board considers that advocacy carried out by Family First is the type that the Supreme Court in *Greenpeace* anticipated would not be capable of being found to be in the public benefit. Specifically, Family First's advocacy involves the advancement of causes, which the Supreme Court has indicated will often, perhaps most often, be non-charitable. The Supreme Court has indicated that this is for the reasons given by the authorities: it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.<sup>65</sup>
35. The Board considers that a direct analogy can be made with Family First's advocacy on issues it considers will promote its view of marriage and the traditional family and the advocacy described in the cases involving advocacy on specific viewpoints associated with ethical or religious belief systems.

*Ancillary test*

36. The Board has also considered whether Family First's advocacy purpose is ancillary to another charitable purpose.<sup>66</sup> Family First has submitted that 75% of its time is spent on advocacy, and 25% on administration fund raising and support and data base management.<sup>67</sup> The "outputs" listed in Family First's Performance Report for the year ending 31 March 2016 indicate it considers its focus is on releasing newsletters, media releases and other media pieces on various family issues, an issues-based conference, and a campaign on euthanasia.<sup>68</sup> As identified above, any advocacy that is capable of advancing a public benefit is a very small part of Family First's overall endeavour.<sup>69</sup> Given the proportion of Family First's time, resources and reported output put into promoting its point of view on marriage and the traditional family, the Board does not consider this purpose can be considered secondary or incidental to another charitable purpose.

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<sup>64</sup> *Re Collier* at 91-92.

<sup>65</sup> *Anti-Vivisection* at [67].

<sup>66</sup> Section 5(3) of the Act

<sup>67</sup> Family First's letter dated 15 February 2015.

<sup>68</sup> Family First Performance Report for the year ending 31 March 2016.

<sup>69</sup> From the 21 Issues listed on Family First's website, only three of these appear to be directed at assisting those in charitable need: for example, SkyCity Pokie Deal, Gambling Harm, and Stop the Abuse (<http://www.familyfirst.org.nz/issues/> [accessed 16 August 2017]).

## Does Family First have a charitable purpose to advance education?

37. Family First submits that even if it does not have a purpose to promote moral and mental improvement under the fourth head, its purposes are charitable for the advancement of education. Collins J in *Re Family First* noted the Board should consider whether a report from the New Zealand Institute of Economic Research (“NZIER”) is sufficient to qualify Family First’s activities as including the advancement of education for the public benefit. The Board has considered the NZIER report and Family First’s other reports in determining whether Family First has a purpose to advance education.
38. The advancement of education falls within the description of charitable purpose at section 5 of the Act, and is capable of being charitable. The most recent New Zealand decision on whether an entity does advance education is *FAAR and FRSSH*, which applied the summary of the law from *Re Collier*.<sup>70</sup> In *Re Collier*, Hammond J stated that for research to qualify as educational:<sup>71</sup>
- ...it must first confer a public benefit, in that it somehow assists 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 minimum standard.”<sup>72</sup>
39. Where it is established that an entity does have a purpose to advance education, it is presumed this will lead to a benefit to the public. *Re Collier* and *FAAR and FRSSH* confirm that although there is a wide scope to what can be educational in charities law, there are limits.
40. The research must be sufficiently structured to assist the training of the mind or advancement of research: the compiling and publishing of facts already in the public domain will not amount to research.<sup>73</sup>

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<sup>70</sup> *FAAR and FRSSH* at [56]; [1998] *Re Collier* at 91-92.

<sup>71</sup> *FAAR and FRSSH* at [63].

<sup>72</sup> *Re Collier* at 91-92.

<sup>73</sup> See for example: *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10; (1999) 169 DLR (4th) 34 at 118 adopted by Ronald Young J in *Re Draco* at [75].

41. Purposes to promote a point of view are also not educational.<sup>74</sup> The Board acknowledges that the *Greenpeace* decision confirmed that publishing one side of the debate may be charitable where it can be shown to be in the public benefit in the sense treated as charitable.<sup>75</sup> The distinction is made, however, between an organisation that advances education objectively, and organisation that promotes a cause.<sup>76</sup> The Board considers that an organisation that promotes a cause through the dissemination of research that promotes a point of view cannot claim an educational purpose; and rather it is that view that must advance a public benefit.
42. The Board considers the minority approach of Kiefel J and Heydon J in *Aid/Watch* is useful in making this distinction. Although Kiefel J considered that the generation of public debate might be said to be advancing education, *Aid/Watch*'s activities involved advocating for its views on aid to be accepted by decision makers, which was not charitable. Keifel J noted that although *Aid/Watch* had provided reports on aid projects, "the views of [*Aid/Watch*] were published on its website as part of a campaign to persuade others of its views, not to educate them."<sup>77</sup>
43. The Board considers that in order for a purpose to advance education, the information must be presented in a balanced, objective and neutral manner, so that the reader can form a view themselves, rather than expressing one-sided perspective intended to persuade the public to a particular point of view.<sup>78</sup> To summarise the relevant case law, in order to determine whether the research reports seek to promote Family First's point of view, or advance genuine, objective educational research, the appropriate areas of analysis are:
- a. the nature of the research to determine whether if it is objective, neutral and balanced;
  - b. whether it has been reviewed by objective third parties; and
  - c. how Family First disseminates its views to the public, to determine whether it seeks to educate or persuade to a point of view.

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<sup>74</sup> *Greenpeace* at [74], [98]; *Aid/Watch* at [62] and [84]; *Re Hopkinson* [1949] 1 All ER 346; *Re Bushnell* [1975] 1 WLR 1596; *Southwood v Attorney General* [2000] EWCA Civ 204 at [66]; *Full Fact v CCEW* Case No. CA/2011/0001 [26 July 2011].

<sup>75</sup> *Greenpeace* at [74], [98].

<sup>76</sup> *Greenpeace* at [103]; *Aid/Watch* at [62] and [84].

<sup>77</sup> *Aid/Watch* at [84].

<sup>78</sup> *Aid/Watch* at [68] and [84].

44. It is this approach that the Board has applied to the papers that Family First submits advance education.<sup>79</sup>

#### *Assessment of Family First's reports*

45. The Board does not consider Family First advances education through its reports; rather it seeks to persuade readers and decision makers to its point of view.
46. While the Board accepts that the research in the reports may meet the “minimum standard” criterion described in *Re Collier* and *FAAR* and *FRSSH*, some aspects of Family First's reports are not sufficiently structured to advance research, and simply constitute summaries of facts in the public domain to support a point of view.<sup>80</sup>
47. The Board also considers most of the reports can be characterised as “propaganda or cause under the guise of research” as described in *Re Collier*.<sup>81</sup> Most of the reports do not have an independent and objective starting point. In the reports, research and data (from other studies) is presented in a way that seeks to persuade the reader to a particular point of view on issues such as euthanasia, gender identity and the anti-smacking law. The reports do not provide balanced, objective discussion of these topics. The reports do not appear to contain original research and in each report research is selected from other studies and presented in a way designed to support Family First's point of view. The reports have not been peer-reviewed by an appropriately qualified, independent person.
48. The research papers are also published with media releases focussing on the parts of the research that support Family First's policy outcomes. The Board considers this is similar to the non-charitable research discussed by Keifel J and Heydon J in *Aid/Watch*.<sup>82</sup>

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<sup>79</sup> In the course of analysis, the Board has considered the following reports: Lindsay Mitchell, *Child Poverty and Family Structure: What is the evidence telling us?* (Family First New Zealand, May 2016); Bob McCoskrie, *Defying Human Nature: An Analysis of New Zealand's 2007 Anti-Smacking Law* (Family First New Zealand, February 2016) (“*Defying Human Nature*”); Glen T. Stanton, “*Boys Girls Other*”: *Making Sense of the Confusing New World of Gender Identity* (Family First New Zealand, June 2015); Dr Aric Sigman, “*We need to talk*”: *Screentime in New Zealand – Media Use: An Emerging Factor in Child and Adolescent Health* (Family First New Zealand, February 2015); Professor Rex Ahdar, *Killing Me Softly: Should Euthanasia Be Legalised* (Family First New Zealand, May 2014); Miram Grossman, MD, *R18: Sexuality Education in New Zealand: A Critical Review* (June 2013); Dr Aric Sigman, *Who Cares Mothers, Daycare and Child Wellbeing in New Zealand* (Family First New Zealand, February 2012); Dr Aric Sigman, *Young People and Alcohol What does the Medical Evidence Tell Us about the Legal Drinking Age in New Zealand?* (Family First New Zealand, February 2011); Nikki Bray and others, *21 Reasons Why Marriage Matters* (Family First New Zealand and others, September 2009); Dr Patrick Nolan, *The Value of Family: Fiscal Benefits of Marriage and Reducing Family Breakdown in New Zealand* (NZIER and Family First New Zealand, October 2008): from <http://www.familyfirst.org.nz/research/> [accessed 20 November 2016].

<sup>80</sup> See for example: *Defying Human Nature*, Appendix 1 “Substantive review of reports”, Family First of New Zealand – Review of Submissions sent in the letter of 18 May 2017 at [19].

<sup>81</sup> *Re Collier* at 91-92.

<sup>82</sup> *Aid/Watch* at [62] and [84].

49. The Board acknowledges the NZIER report is capable of advancing education. The report was prepared by an independent body and presents a statistical analysis of the relationship between marriage and family breakdown in New Zealand. It demonstrates the cost of policies relating to the family to the New Zealand taxpayer. It has been peer-reviewed (although internally within NZIER) and appears to have taken into account academic commentary. The NZIER report proceeds from an independent, objective starting point and does not appear to directly promote a point of view. It acknowledges gaps in the research and is cautious in drawing its conclusions.
50. Although the Board accepts that the NZIER report is capable of advancing education, the Board does not accept Family First advances education through the report. As with the other reports, the media release accompanying the report does not present the results objectively, and instead uses them in a manner that advances Family First's views.<sup>83</sup> Further, Family First does not acknowledge the gaps in the research.
51. The Board provided detailed analysis of the content and structure of the reports to Family First,<sup>84</sup> and it has not contested this analysis.

*Summary of purpose – education*

52. Although the Board considers that the NZIER report is an objective report that is capable of advancing education, the Board does not consider that this of itself qualifies Family First as having a purpose to advance education. The Board considers that Family First's other reports lack an independent and objective starting point in their analysis and seek to persuade the reader to a particular point of view (consistent with that of Family First's policy priorities) and as such are simply Family First publishing its own views.

**Public interest**

53. The Board has considered whether it is in the public interest to remove Family First from the Charities Register and is satisfied it is in the public interest to do so.<sup>85</sup> As Family First's activities have been determined by the Board not to advance a charitable purpose, it is no longer qualified for registration as a charitable entity.<sup>86</sup>

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<sup>83</sup> For example: Family First Media Release 11 February 2016 <https://www.familyfirst.org.nz/2016/02/analysis-shows-failure-of-anti-smacking-law/> [accessed 20 November 2016].

<sup>84</sup> Appendix 1 "Substantive review of reports", Family First of New Zealand – Review of Submissions sent in the letter of 18 May 2017.

<sup>85</sup> Section 35(1) of the Act.

<sup>86</sup> Section 10(h) of the Act.

54. The Board considers that public trust and confidence<sup>87</sup> in the charitable sector would not be maintained if entities which did not meet the requirements for registration remained on the Charities Register.<sup>88</sup> Further, allowing such entities to remain registered would not encourage and promote the effective use of charitable resources.<sup>89</sup>
55. Family First has not made any submissions on whether it would be in the public interest to remove it from the Charities Register.

#### Determination

56. The Board determines that Family First is not qualified for registration as a charitable entity because it is not established for exclusively charitable purposes as required by section 13(1) of the Act.
57. As Family First has independent (non-ancillary) non-charitable purposes, it is in the public interest to proceed with Family First's removal from the Charities Register. The grounds for removal are satisfied in relation to Family First. Family First has a purpose to promote its views about marriage and the traditional family that cannot be determined to be in the public benefit in a way previously accepted as charitable. This purpose is not considered to be ancillary to another charitable purpose. Family First does not advance education in a charitable manner.
58. The decision of the Board is therefore to remove the Family First from the Charities Register, pursuant to section 31 of the Act, with effect from 18 September 2017.

Signed for and on behalf of the Board

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Roger Holmes Miller

21st August 2017  
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Date

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<sup>87</sup> Section 3(a) of the Act.

<sup>88</sup> See for example: *Re New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] at [76].

<sup>89</sup> Section 3(b) of the Act.