

Registration Number: CC33193

18 May 2017

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Dear Bob,

Notice of intention to remove Family First New Zealand from the Charities Register

1. Thank you for your patience in awaiting further correspondence regarding the review of Family First New Zealand (**the Trust**).
2. As indicated in our notice of 5 April 2016, Charities Services' view is that the Trust does not qualify for registration under the Charities Act 2005 (**the Act**). We presented our view to the independent Charities Registration Board (**the Board**), with your submissions provided on 26 July 2016, and all other materials considered during the review.¹
3. The Board considered the materials at its meetings in November 2016, February 2017 and April 2017. On 28 April 2017, the Board advised Charities Services that it should issue, in accordance with section 33 of the Act, a notice informing the Trust that (based on the information provided to the Board on November 2016) the Board considered that the Trust is no longer qualified for registration as a charitable entity, as the Trust is not of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes under section 13(1)(a) of the Act.² In the absence of a successful objection pursuant to section 34 of the Act, the Trust would accordingly be removed from the Charities Register (**the Register**).
4. Therefore, in accordance with section 33 of the Act, this is a notice informing the Trust of the Board's intention to remove the Trust from the Register because it is not qualified to continue to be registered and the grounds relied on by the Board in reaching this decision.

¹ Detailed in the Appendix.

² A ground for removal under section 32(1)(a) of the Act.



5. The notice also provides the Trust with an opportunity to object to the removal as well as information on how to respond or request further information from Charities Services. Any objection and any further information provided by the Trust will be fully considered by the Board before it makes a final decision on whether to remove the Trust from the Register.

Grounds for deregistration

6. The background to the review, and the grounds for deregistration are discussed in detail in the Appendix. This includes the assessment of the submissions provided by the Trust and the information the Board relied on when it made its decision.
7. In summary, the Board has assessed the stated purposes of the Trust, and considers the purposes demonstrate the Trust's primary purpose is to promote and protect the traditional family, as that term is understood by the Trust.³
8. The Board has also assessed the Trust's activities, and considers the focus of the Trust is promoting its point of view on what will best promote and protect its view of the traditional family on various social issues.
9. Accordingly, the Board considers the Trust's primary purpose is to promote and protect its view of the traditional family through advocating its point of view on various social issues. The Supreme Court decision of *Greenpeace SC* found that there was no absolute prohibition on a charity advocating for a point of view as its primary purpose.⁴ However, in assessing whether a purpose to advocate for a point of view can be said to be of public benefit within the spirit of the previous cases, it is necessary to consider the end that is sought, the means promoted to achieve that end, and the manner in which the cause is promoted.⁵
10. As outlined in our notice of 5 April 2016, the Board does not consider the Trust's purpose of promoting and protecting its view of the traditional family is charitable, as where a group seeks to achieve an abstraction, *Greenpeace SC* directs consideration of the means the group is using to achieve its end.⁶
11. In this case, the Trust's most recent submissions summarise its current activities as:
 - Advocacy to relevant authorities on strengthening marriage, parenting, CYFS, child abuse, family economics, aged care and sex education;
 - Promoting life (including advocacy against abortion, euthanasia and embryonic stem cell research)
 - Promoting community values (including advocacy in the areas of prostitution, pornography and censorship)

³ Specifically: clauses 5.3. (a), (b), (c), (d), (e), (f).

⁴ *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 ("*Greenpeace SC*"), at [71]

⁵ *Greenpeace SC* at [71].

⁶ *Greenpeace SC* at [102].

- Research papers on euthanasia and the impact of changes in s59 of the Crimes Act 1961.⁷
12. The Board considers these summarise the “means” the Trust is using to achieve its end of promoting the traditional family. The court directed the Board to reconsider whether or not the Trust’s objectives are objectively aimed at promoting the moral improvement of society, analogous to other entities which have been recognised as charities. However, the Board does not consider the Trust’s objectives are analogous to the “mental and moral improvement” cases. Specifically, the Board does not consider the cases imply a general position that any advocacy directed towards what a group considers will promote moral improvement is for the public benefit in a charitable sense. Rather, the previous cases show that the promotion of moral improvement may be charitable where it is directed at the promotion of an ethical philosophical system.
 13. The Supreme Court in *Greenpeace SC* considered the promotion of abstinence or moderation in relation to liquor is most plausibly justified on the basis of public health,⁸ but the Board notes that the courts never accepted that the promotion of prohibition as a law change would be charitable.⁹ Accordingly, the Board does not consider the courts have accepted any advocacy for a position based on ethical and religious basis is capable of being charitable.
 14. The Board considers the cases establish that the promotion of an ethical philosophy are capable of being charitable, where the promotion is focused on structured education into the doctrines of the philosophy, similar to how a church advances religion. The Board does not consider this is what the Trust is doing; rather the Trust’s activities are primarily directed at advocating the Trust’s own point of view on social issues.
 15. The Trust’s advocacy is closest in nature to the decision on the Society for the Protection of the Unborn Child, where the Court of Appeal found the particular viewpoints being promoted could not be shown to be in the public benefit in the sense treated as charitable.¹⁰ This analysis is detailed in the notice of 5 April 2016, and further explained in light of your submissions in the attached appendix.
 16. The Board also considered whether the Trust has an educational purpose, as directed by the court.¹¹ The Board notes *Greenpeace SC* referred favourably to the approach of the English Court of Appeal in *Southwood v Attorney General*.¹² In that case a research project which was academic in nature started from a point of view on disarmament, rather than an objective and unbiased consideration of the facts. The Court

⁷ The Trust’s submissions of 27 July 2016 at [12].

⁸ *Greenpeace SC* at [96].

⁹ *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522.

¹⁰ *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688

¹¹ *Re Family First New Zealand* [2015] NZHC 1493 (*Re Family First HC*)

¹² *Southwood v Attorney-General* [2000] WTLR 1199 (CA); *Greenpeace SC* at [97-102].

accordingly found it could not be considered genuinely educational – rather directed at persuading readers to its point of view. Although the Board accepts the report commissioned from the New Zealand Institute of Economic Research (**NZIER Report**) is sufficiently objective research capable of advancing an educational purpose, the Board considers that this is an exception as the remaining reports (of which there are many) promote the Trust’s points of view, rather than advancing genuine, objective educational research.

17. Taking into account the stated purposes and activities of the Trust, the Board considers the Trust’s non-charitable purpose to promote the traditional family is not ancillary to any potential charitable purpose (for the advancement of education) from the commissioning of the NZIER Report, nor its advocacy which is capable of being charitable.¹³

Objection to removal

18. As identified above, the Trust has the opportunity of objecting to the removal of the Trust from the Register. The Act lists the following grounds:
 - (a) That the grounds in which it is intended to remove the Trust from the Register have not been satisfied;
 - (b) That, for any other reason, it would not be in the public interest to remove the Trust.¹⁴
19. The Trust may decide to provide further submissions that demonstrate it is eligible for continued registration. The Trust may also decide to assess the information the Board relied on to make its assessment and make a submission whether it considers the information is relevant to the assessment of eligibility.
20. The Trust may also make a submission that it would not be in the public interest to remove the Trust. Please note, the courts have previously stated where it is established a Trust is not qualified for registration; there will not be a public interest in permitting the Trust to remain on the Register.¹⁵
21. However, any objection to the removal will be fully considered by the Board before it makes a final decision.
22. The Trust also has the option to request removal from the Charities Register.

¹³ See Charities Services letter to Family First of 5 April 2017


¹⁴ Section 34 of the Act.

¹⁵ *Re New Zealand Computer Society Inc.* HC WN CIV-2010285-924 [28 February 2011] at [76].

Responding to this notice

23. Please respond to this notice before **30 June 2017**. If the Trust does not respond by **30 June 2017**, Charities Services will remove the Trust from the Register on the Board's direction.
24. Please provide your response by email to CCRegistrationinfo@dia.govt.nz by **30 June 2017**. Alternatively, you may mail your response to Charities Services, PO Box 30112, Lower Hutt 5040 quoting your charities registration number: CC43297.
25. If you have questions about any detail raised in this letter, or require an extension of time, please contact Sarah Shallcrass at CCRegistrationinfo@dia.govt.nz.

Yours sincerely,


Sarah Shallcrass
Analyst


Penelope Edgerley
Team Leader Registration

Appendix: Family First of New Zealand – Review of Submissions

Executive Summary

1. Family First (**the Trust**) is a registered charity. On 15 April 2013, the Charities Registration Board (**the Board**) resolved to deregister the Trust from the register of charitable entities (**the Register**). That decision was appealed to the High Court by the Trust.
2. On 22 June 2015 the High Court in *Re Family First New Zealand (Re Family First HC)*¹ sent back the decision to deregister the Trust to the Board for consideration. That was particularly because, in the intervening period, the decision of *Greenpeace of New Zealand Incorporated*² (**Greenpeace SC**) had been released by the Supreme Court. The High Court directed the Board to reconsider its decision to deregister the Trust and, in doing so, give effect to the judgment of the Supreme Court in *Greenpeace SC* and the *Re Family First HC* judgment itself. In particular, the court asked the Board to reconsider its position on two key issues:
 - a. Firstly, whether the Trust’s objectives are objectively aimed at promoting the moral improvement of society, analogous to other entities which have been recognised as charities; and
 - b. Secondly, whether on reconsideration, the NZIER report referred to by the court would be sufficient to qualify the Trust’s activities as including the advancement of education for the public benefit.
3. The Board has reconsidered the Trust’s charitable status afresh. On 5 April 2016, Charities Services wrote to the Trust notifying it that the Board did not consider that the Trust met registration requirements and may be removed from the Register. The Trust responded to that letter with submissions dated 27 July 2016. The Trust submitted that:
 - a. it did qualify by analogy with the ‘mental and moral improvement cases’;
 - b. its educational purposes are genuine; and
 - c. that Charities Services had not applied either the decision of *Greenpeace SC* or *Re Family First HC* accurately.

¹ *Re Family First New Zealand* [2015] NZHC 1493 (**Re Family First HC**).

² *Greenpeace of NZ Incorporated* [2014] NZSC 105 (**Greenpeace SC**).

4. The purpose of this document is to assess those submissions, and explain the Board's position. The Board considers that the Trust no longer qualifies for registration as a charitable entity because:
 - a. it does not advance exclusively charitable purposes; and
 - b. its non-charitable purposes are more than ancillary to its charitable purpose.
5. The Board considers the Trust has an independent purpose to promote positions it considers will promote and protect the 'traditional' family. The Board considers that although the end of promoting family may be capable of being charitable, in this case, the Trust is advocating for positions which cannot be found to be for the public benefit in a charitable sense. Further, the Board does not consider the Trust has a charitable educational purpose, and in any case, it would be ancillary to its main purposes.

Approach to re-assessing the Trust's charitable status

6. Before setting out the Board's analysis of the Trust's submissions, the Board sets out their approach to re-assessing the Trust's charitable status.
7. First, the Board has systematically assessed the information provided by the Trust, the information available on its website, and its partner websites that it operates. The Board has also considered other websites in the public domain, where it considers they are relevant to the consideration of the Trust's charitable status. Specifically, they have considered:
 - a. Law Commission, *Section 59 Crimes Act 1961 Amendment: Options for Consideration* (8 November 2006).³
 - b. R Pritchard, *Children are Unbeatable: Seven Very Good Reasons Not To Hit Children*, 2006: The Office of the Children's Commissioner, UNICEF New Zealand and the Families Commission.⁴
 - c. The World Health Organisation, "Gender, equity and human rights".⁵
 - d. Human Rights Commission position on marriage and equality.⁶
 - e. Human Rights Commission. (2008). *To be who I am. Kia noho au ki tōku anō ao. Report of the inquiry into discrimination experienced by transgender people.*⁷

³ <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20OP3.pdf> [accessed 1 November 2016].

⁴ <http://www.occ.org.nz/assets/Uploads/Reports/Parenting/Children-are-unbeatable.pdf> [accessed 31 October 2016].

⁵ <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/> [accessed 1 November 2016].

⁶ <https://www.hrc.co.nz/your-rights/social-equality/our-work/marriage-and-adoption-equality-endorsement/> [accessed 1 November 2016].

⁷ Auckland: NZ Human Rights Commission; https://www.hrc.co.nz/files/5714/2378/7661/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf [accessed 1 November 2016].

- f. H Broad, P Hughes and N Latta, *Review of the New Zealand Police and Child, Youth and Family Policies and Procedures relating to the Crimes (Substituted Section 59) Amendment Act* (1 December 2009).⁸
- g. Ministry of Education, *Sexuality Education: A guide for principals, boards of trustees, and teachers* (2015).⁹
8. Each document above is research published by either a government or intergovernmental organisation, or is peer reviewed research published by a reputable journal. The Board notes that the Trust has the opportunity to comment on the use of these publications in its final submissions.
9. Second, in re-assessing the registration of the Trust, the Board has given careful consideration to *Re Family First HC*. Although recognising the strength in some of the submissions of the Trust, Collins J did not conclusively find the Trust's purposes were charitable. Rather, the Court directed the Board to examine whether the Trust's activities are objectively directed at promoting the moral improvement of society by analogy with those organisations that have been recognised as charities.¹⁰ The Board has also adopted an objective approach throughout its analysis, in accordance with Collins J's direction in *Re Family First HC*.¹¹
10. Third, the Board is conscious of the Court's direction in *Re Family First HC* that the Board is not to "carefully match Family First's purposes with organisations that have achieved recognition as charitable entities"¹² given the developments in the *Greenpeace SC* decision (which are discussed in more detail below). However, it is also conscious of the direction of both the High Court in *Re Family First HC* and the Supreme Court in *Greenpeace SC* to adopt an 'analogical approach'.¹³ The Board has accordingly considered the reasons courts have accepted the public benefit in a charitable purpose in the previous cases, and applied that reasoning to the facts of the current case to decide whether it is within the analogy of the previous cases.
11. Fourth, there have been two recent cases that have particular relevance to the re-assessment of the Trust's charitable status. Those cases are *Greenpeace SC* and *Re the Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia ("FAAR and FRSSH")*.¹⁴ Both of those cases, along with other relevant case law, have been central to the Board's approach to re-assessing the Trust's charitable status.

⁸ https://www.beehive.govt.nz/sites/all/files/Sec59_review.pdf [accessed 1 November 2016].

⁹ <http://health.tki.org.nz/Teaching-in-HPE/Policy-guidelines/Sexuality-education-a-guide-for-principals-boards-of-trustees-and-teachers> [accessed 8 December 2016].

¹⁰ *Re Family First HC* at [89].

¹¹ *Re Family First HC* at [89].

¹² *Re Family First HC* at [86].

¹³ *Re Family First HC* at [33]; *Re Greenpeace of New Zealand Inc* at [30].

¹⁴ [2016] NZHC 2328 ("*FAAR and FRSSH*").

12. *Greenpeace SC* overturned the previously held principle that political objects could not be charitable. Instead, the court found that an object which involves advocacy is “simply one facet of whether a purpose advances the public benefit in a way that is within the spirit and intendment of the Statute of Elizabeth I.”¹⁵ However, the court held:

Where an entity seeking charitable status has objects or conducts activities that involve promoting its own views or advocacy for a cause, it may be especially difficult to conclude where the public benefit lies and whether the object or activities come within the spirit and intendment of the preamble to the Statute of Charitable Uses (at [32]).

Advancement of changes will often, perhaps most often, be non-charitable. That is for the reasons given in the authorities – it is not possible to say whether views promoted are of benefit in the way the law recognises as charitable. Matters of opinion may be impossible to characterise as of public benefit either in the achievement or in the promotion itself (at [73]).

It may be accepted that the circumstances in which advocacy of particular views is shown to be charitable will not be common, but that does not justify a rule that all non-ancillary advocacy is properly characterised as non-charitable (at [74]).

Instead, assessment of whether advocacy or promotion of law reform is a charitable purpose depends on consideration of the end that is advocated, the means promoted to achieve that end and the manner in which the cause is promoted in order to assess whether the purpose can be said to be of public benefit within the spirit and intendment of the 1601 Statute (at [76]).

It is the case that it will usually be more difficult for those who promote ideas they consider to be of public benefit to show charitable purpose as readily as those who can show tangible utility in the good that they do. There is truth in the point that where a charity promotes an abstraction, such as “peace” or “nuclear disarmament” the focus in assessing charitable purpose must be on how such abstraction is to be furthered (at [102]).

... Although for the reasons given, political purpose exclusion is inappropriately conclusive when considering charitable purpose, we consider that the promotion itself, if a standalone object not merely ancillary, must itself be an object of public benefit or utility within the sense used in the authorities to qualify as a charitable purpose. As indicated above at paragraphs [59] to [71], such public benefit or utility may sometimes be found in advocacy or other expressive conduct. But such finding depends on the wider context (including the context of public participation in processes and human rights values (at [103])).

13. The Board has adopted this approach in its reassessment of the Trust’s charitable status.

¹⁵ *Greenpeace SC* at [72].

14. *FAAR and FRSSH* was an appeal against a de-registration decision by two related entities involved in researching cryonics. Although the Board found research into a speculative field such as cryonics did not meet the test for genuine research, the High Court found the public benefits from genuinely scientific research would yield useful knowledge along the way, regardless of whether the endpoint is achieved.¹⁶ The Court also questioned how the Board identified the Foundation's activities, specifically taking into account that the Board had assessed the activities of the two Foundations as indicating an independent purpose to fund cryonics.¹⁷

15. Ellis J stated:¹⁸

...the proper analysis would have been to begin by asking whether FAAR's stated purposes are charitable or not. If they are clearly not, then that is the end of the inquiry. If they are (or if the stated purposes are unclear), then the chief executive or the Board needed to consider what information it has about FAAR's present and proposed activities (and to consider requesting such information). Then the question is whether those activities are consistent with or supportive of the identified charitable purpose. If they are, then there is no difficulty. If they are not, then it would need to be determined whether the activities can be said to be merely ancillary to the identified charitable purpose.

16. The Board has adopted this approach in its assessment of the Trust. However, we note Ellis J's approach does not address how to deal with situations where stated purposes "may" be charitable. In the case of purposes to advocate a point of view, the Supreme Court requires a consideration of how an organisation seeks to achieve its end goal.¹⁹ This mandates in identifying whether a purpose to advocate is for the public benefit, the Board must look at both its stated purposes, and how the entity seeks to achieve its stated purposes.²⁰

17. The Trust's stated purposes are contained at clause 4 of its Trust Deed and are as follows:

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 likeminded groups and academics.

¹⁶ *FAAR and FRSSH*, at [61].

¹⁷ *FAAR and FRSSH*, at [89].

¹⁸ *FAAR and FRSSH*, at [88].

¹⁹ *Greenpeace SC*, at [76], [100-101], [116-117].

²⁰ *Greenpeace SC*, at [102].

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.

18. Although the clauses are not expressed in a manner consistent with previous charitable purposes, the Board have interpreted these purposes as “promoting the traditional family”. The Board notes that clause 4(B) the Trust intends to educate the public “in their understanding of the institutional, legal and moral framework that makes a just and democratic society possible.” In combination with clause 4(A), and 4(C-E), it indicates the Trust establishes views on what is good for the traditional family, and advocates those views.
19. The Board also consider that clause 4(A) could indicate an educational purpose, which it discusses later in this document.
20. In the submissions to the High Court, the Trust accepted its purposes can be characterised as “seeking to promote the family as understood in a traditional way,”²¹ however submitted its activities seek to benefit all forms of family.²²
21. This is not a case where the Trust’s stated purposes are “clearly not” charitable. Consequently, being guided by both *Greenpeace SC* and *FAAR and FRSSH* the Board has considered what information it has about the Trust’s present and proposed activities. It has considered whether those activities are consistent with or supportive of the identified charitable purpose.

²¹ The Trust’s submissions to the High Court at [55].

²² The Trust’s submissions to the High Court at [55.7].

22. Finally, throughout this document reference is made to pre-*Greenpeace SC* cases, for example: *National Anti-Vivisection Trust v Inland Revenue Commissioners* (“*Anti-Vivisection*”),²³ *McGovern v Attorney General* (“*McGovern*”)²⁴; *Re Wilkinson (Deceased), Perpetual Trustees Estate and Agency Co of New Zealand Ltd v League of Nations Union of New Zealand*,²⁵ *Knowles v Commissioner of Stamp Duties* (“*Knowles*”)²⁶, *Molloy v Commissioner of Inland Revenue* (“*Molloy*”), *Re Draco Foundation (NZ) Charitable Trust (Re Draco)*.²⁷ Most of these cases applied the political purposes exception most explicitly stated by the House of Lords in *Bowman v Secular Society*.²⁸
23. In considering those cases, the Board has taken into account the findings in *Greenpeace SC* in relation to the political purposes exclusion (in other words that this exception no longer applies).²⁹ However, as reflected in the reasoning of the Supreme Court in *Greenpeace SC*, this does not mean that all of those cases were wrongly decided.³⁰ Rather, the reasoning on why public benefit can or cannot be found in the particular case remains relevant in determining whether a public benefit can be found in the particular means adopted.³¹ Although reference is made to cases that applied a political purpose exception, the Board has been very conscious of Collins J’s direction to refer to those cases bearing in mind the *Greenpeace SC* decision.³²

Summary of the Trust’s submissions

24. First, the Trust submits that Charities Services was wrong in finding its advocacy for the traditional family is not charitable. The Trust has accepted it has a purpose to advocate for what it considers is for the benefit of the traditional family, and acknowledges much of its website serves this purpose.³³ Second, the Trust submits that Charities Services was wrong to find that it does not have a purpose to advance education.
25. These issues are dealt with in turn. At the end of the paper, the Board addresses whether the Trust’s non-charitable purposes are ancillary to a charitable purpose, by applying section 5(3) of the Act.

²³ *National Anti-Vivisection v CIR* [1948] AC 30 (“*Anti-Vivisection*”).

²⁴ *McGovern v Attorney-General* [1982] Ch 321 (Ch) at 340-341 (“*McGovern*”).

²⁵ [1951] NZLR 10065 (SC) at 1076-1077.

²⁶ *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522 (SC) at 528-529.

²⁷ *Re Draco (NZ) Charitable Trust* (2011) 25 NZTC 20-023 (HC) at [69] (“*Re Draco*”).

²⁸ *Bowman v Secular Society Ltd* [1917] AC 406 (HL) (“*Bowman*”).

²⁹ *Greenpeace SC* at [71].

³⁰ *Greenpeace SC* at [73].

³¹ See for example: *Greenpeace SC* at [73] and [101] referring to the reasoning of the court in *v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (“*Molloy*”) and *McGovern* respectively; *Aid/Watch Inc v Commissioner of Taxation* [2010] HCA 42, (2010) 241 CLR 539 at [69].

³² *Re Family First HC* at [84]; [86].

³³ The Trust’s submissions to the High Court at [87].

Advocacy to promote the traditional family

26. In arguing its advocacy to promote the traditional family is charitable the Trust submits:
- a. The test Charities Services has employed is an incorrect interpretation of the *Greenpeace SC* and *Re Family First HC* decisions in relation to the advocacy test, and it was wrong to consider the controversy of the Trust's views in its assessment.
 - b. *Anti-Vivisection*, in light of *Greenpeace SC*, obliges Charities Services to assess the Trust's public benefit, and not rely on the Board and Court being unable to find public benefit.
 - c. There is evidence the Trust's promotion of the family is for the public benefit (international treaties that New Zealand is a party to, and domestic legislation), and that it is analogous with previous decisions relating to moral improvement, specifically:
 - i. *Barby v Perpetual Trustee Limited ("Barby")*³⁴ established a general position that purposes reasonably directed towards moral improvement are charitable.
 - ii. *Re Scowcroft*,³⁵ where there was a devise of a village club and reading room to be maintained for the religious and mental improvement of people in the neighbourhood, noting the provision of facilities such as reading rooms is similar to the Trust's website.
 - iii. The "mental and moral improvement" cases (e.g. *Re Price*³⁶ and *Barralet v Attorney General*³⁷) are more similar than Charities Services acknowledge. In *Re Price*, the court acknowledged the public benefit in advancing a very specific individual's ideas (Rudolf Steiner); not widely shared by society. In the case of the Trust, although conservative, their views are widely shared by society.
 - iv. The temperance cases (e.g. *Re Hood*³⁸); that is the opposition of temperance to liquor were driven by the same strong ethical and religious principles as the Trust.

³⁴ *Barby v Perpetual Trustee* [1937] 58 CLR 316 ("*Barby*").

³⁵ *Re Scowcroft* [1898] 2 Ch 638 All ER Rep 274.

³⁶ *Re Price* [1943] 1 Ch. 422 ("*Re Price*").

³⁷ *Barralet v Attorney General* [1980] 3 All ER 918 ("*Barralet*").

³⁸ *Re Hood* [1931] 1 Ch 240.

- d. The interpretation of *Greenpeace SC*'s treatment of the Court of Appeal decision of *Molloy*³⁹ is incorrect. The Society for the Protection of the Unborn Child sought to maintain the status quo in relation to abortion, which is different to the Trust, which seeks to promote debate.
27. Below, the Board has laid out its analysis of each of these points. First, the Board explains why it considers its assessment of the test of advocacy purposes is accurate. Second, the Board explains why it considers the public benefit found in the *Anti-Vivisection* case can be distinguished. Third, the Board assess the analogies the Trust has sought to rely on. Fourth, the Board assesses the Trust's submissions in relation to *Molloy* and finally, the Board assesses the Trust's submissions on whether it can be seen to be for the benefit of the public.

The test for advocacy purposes

28. The Trust submits Charities Services is wrong in treating the Trust's position as not charitable "because it found the particular viewpoints being promoted... could not be shown to be in the public benefit in the sense treated as charitable because of the inability of the court to judge whether a change in law will be for the public benefit."⁴⁰ It further submits that Charities Services should not import a position that implies any controversy of the Trust's views is determinative.⁴¹ The Board agrees that this is not a fair reflection of either the *Greenpeace SC* decision or the High Court *Re Family First HC* decision. The Supreme Court in *Greenpeace SC* clearly contemplates situations where advocacy for changes in the law and policy of government, and controversial views, will be charitable.⁴²
29. Prior to the Supreme Court's decision of *Greenpeace SC*, the Court of Appeal had confirmed "a society [or trust] established for contentious political purposes could not be said to be established principally for charitable purposes."⁴³
30. The Board considers that the test set out by the Supreme Court in *Greenpeace SC*, involves considering the end that is advocated, the means promoted to achieve that end, and the manner in which the cause is promoted in order to assess whether the purpose can be said to be of public benefit.⁴⁴ Importantly, the Supreme Court noted even if an end may be seen as of general public benefit (such as the promotion of peace), the means of promotion may entail a particular point of view which cannot be

³⁹ *Molloy*.

⁴⁰ Trust's submissions at [11].

⁴¹ Trust's submissions at [28].

⁴² See for example: [71], although note the wording "advocacy for such ends as human rights or protection of the environment and promotion of amenities that make communities pleasant may have come to be regarded as charitable purposes in themselves, *depending on the nature of the advocacy*, even if not ancillary to more tangible charity." [Emphasis added].

⁴³ *Greenpeace CA*, at [60]

⁴⁴ *Greenpeace SC* at [76].

said to be of public benefit (e.g. opposition to New Zealand's international treaty obligations).⁴⁵ In this case, the Board considers that even if the ends promoted can be said to be of public benefit (the promotion of family in society)⁴⁶ the means of promotion (for example: amending the law to protect the unborn children from conception, prohibiting embryonic stem cell research and opposing euthanasia) cannot be determined to be in the public benefit one way or another.

31. The Trust's submissions focus on whether the *end* of the Trust's advocacy is capable of being charitable. To summarise the below, the Board accepts it may be possible that purposes directed towards promoting and protecting families generally are capable of being charitable by analogy with the promotion of moral improvement cases (specifically: *Re Price* and *Re Barralet*).⁴⁷ However, as noted above, *how* a group intends to improve the morals of society is the key question in this case.⁴⁸ Here, the Board considers that the means to achieve that end (the promotion of the 'traditional' family by way of advocacy on a variety of related topics) cannot be said to be charitable.

Assessing public benefit in the views of the Trust

32. The Trust submits that Charities Services must "embark on a consideration of whether [the Trust's] views are for the public benefit."⁴⁹ The Trust also submits that courts are in a position to determine matters of public policy.⁵⁰ In this case, however, the Board considers that the types of policies advocated for by the Trust are not capable of being determined to be in the public interest one way or another. While courts may be able to decide some matters of public policy, courts may often not have adequate means to judge as a matter of evidence whether a proposed change will, or will not, be for the benefit of the public.⁵¹

⁴⁵ *Greenpeace SC* at [116].

⁴⁶ Noting that the Trust accepts that in fact it promotes the *traditional* family in society.

⁴⁷ *Re Family First HC* at [88].

⁴⁸ *Greenpeace SC* at [102].

⁴⁹ The Trust's submissions at [11]; Citing Lord Wright's judgment in the *National Anti-Vivisection Trust v Inland Revenue Commissioners* ("*Anti-Vivisection*") House of Lords decision.

⁵⁰ The Trust's submissions at [11]; citing Sir Robin Cooke's lecture on "The Courts and Public Controversy", which cited a number of cases where the court assessed the policies of each case, and reached a decision

⁵¹ *Greenpeace SC* at [101]; *McGovern* at 336-337.

33. By way of analogy, in *Anti-Vivisection*, Lord Wright referred to the “evidence now produced of the enormous advances in science and research which has been accepted by the commissioners in their findings of fact on the utility of vivisection, is indeed, such as no fair-minded man could refuse full credence.”⁵² Lord Wright found no difficulty in “weighing the relative value of what it called the detriment inseparable from suppressing vivisection on the one hand and on the other hand the benefit to the community of higher moral standards said to be due to enhanced regard for the well-being of animals.”⁵³ Lord Wright notes that prohibiting vivisection “destroy[s] a source of enormous blessings to mankind” and the counterweight is “a vague and problematic moral elevation.”⁵⁴
34. *Anti-Vivisection* concerns a case where the questions of public benefit are quantifiable. As stated in the majority judgments in the House of Lords, the medical and scientific benefits from vivisection are well established and demonstrated in objective research. Moreover, the “moral elevation” of protecting animals is also well established in case law.⁵⁵ In a split decision, the majority opinion held that the verifiable benefits accrued from vivisection outweighed the moral elevation from protecting animals.⁵⁶
35. By way of further analogy, one of the issues the Trust advocates for is the position that the law should be amended to prevent abortion to protect unborn children from the time of conception.⁵⁷ Whether advocacy to protect unborn children is charitable is a matter that was assessed in *Molloy. Greenpeace SC* expressly endorsed the conclusion in *Molloy* that these issues involve value judgments that the Court is not in a position to weigh up.⁵⁸ In *Anti-Vivisection* the High Court said that although there were two sides to the argument, the enormous benefits from vivisection clearly outweighed the intangible benefit of animal welfare (from moral edification). In contrast in *Molloy*, there were two sides to the argument but the High Court, and Court of Appeal, did not find itself in a position to determine which should take precedence over the other.
36. In this case the Board does not consider it is possible to establish a quantifiable public benefit by analogy to the moral elevation being proposed by the Trust consistent with previous cases. Rather, there is a closer analogy with the *Molloy* case where the court found the purposes were not for the benefit of the public, even if directed at what the proponents considered were morally edifying ends.

⁵² *Anti-Vivisection* at [46].

⁵³ *Anti-Vivisection* at [47].

⁵⁴ *Anti-Vivisection* at [49].

⁵⁵ *London University v Yarwood* (1857) 2 De G & J 72; *Marsh v Means* (1857) 3 Jur. (H.S. 790); and *In Re Wedgwood* [1915] 1 Ch. 113, 122; cited in *Anti-Vivisection* by Lord Simonds at [67].

⁵⁶ See the dissenting decision of Lord Porter at *Anti-Vivisection* at [52-60].

⁵⁷ <https://www.familyfirst.org.nz/about-us/family-policy-priorities/> [accessed 9 November 2016].

⁵⁸ *Greenpeace SC*, at [73].

37. Here, the Board considers the Trust has not demonstrated that its point of view can be evidentially determined to be in the public benefit, in contrast with the opposing view.⁵⁹
38. In cases where the courts have established a public benefit in a specific means of achieving a charitable end, the Board considers it would be capable of establishing public benefit on the evidence. For example, the restoration of established heritage buildings is a charitable object, if the restoration of that heritage building can be demonstrated to be for the benefit of the public (i.e. there has been an objective determination as to its heritage value, it will not result in undue private benefit, and the public can access the building). Where an organisation seeks to advocate to restore an established heritage building, which would otherwise meet those tests, the Board considers it is capable of qualifying.⁶⁰
39. In contrast, in assessing whether Greenpeace’s advocacy on nuclear disarmament could be charitable, the Supreme Court’s took into account all of the potential consequences and concluded: “whether promotion of these ideas is beneficial is a matter of opinion in which public benefit is not self-evident and which seems unlikely to be capable of demonstration by evidence.”⁶¹ The Board considers assessing the Trust’s advocacy on social issues presents the same issues for the Board.

Assessment of analogies

40. The Trust also submits that its purposes are analogous with previous decisions relating to moral improvement.⁶² Specifically:
- a. Trusts for advancing temperance.⁶³
 - b. A facility (reading room) to be maintained for mental and moral improvement (to be kept free from intoxicants and dancing).⁶⁴
 - c. Trusts to promote the promotion of specific ethical systems.⁶⁵

⁵⁹ This is discussed in more detail below.

⁶⁰ See for example: the Board’s decision to register the Restore Christchurch Cathedral Group Incorporated: <https://www.charities.govt.nz/charities-in-new-zealand/legal-decisions/view-the-decisions/view/restore-christchurch-cathedral-group-incorporated> [12 October 2015].

⁶¹ *Greenpeace* at [101].

⁶² The Trust’s High Court submissions at [93].

⁶³ *IRC v Falkirk Temperance Café Trust* (1927) SC 261; *Re Hood: Public Trustee v Hood* [1931] 1 Ch 240 at 250.

⁶⁴ *Re Scowcroft* [1898] 2 Ch 638.

⁶⁵ *Re Price* [1943] 1 Ch 422; *Re South Place Ethical Society: Barralet v Attorney-General* [1980] 3 All ER 918.

41. The Trust also seeks to rely on the comments of Dixon J in the High Court of Australia decision of *Barby* in establishing this analogy – noting its activities broadly serve to strengthen family life, and encourage stability and positive values in society.⁶⁶ Specifically:⁶⁷

The purposes [must]...tend to the improvement of society from some point of view that may reasonably be adopted by the donor. The manner by which this tendency may be manifested is not defined by any closed category. It is capable of great, if not infinite variation. It may be by relief of misfortune; by raising moral standards or outlook; by arousing intellectual or aesthetic interests; by general or special education; by promoting religion; or by aiming at some other betterment of the community.

42. Dixon J’s comments are in the context of a 1937 case that dealt with the relief of poverty.⁶⁸ The Board does not consider a more general principle can be taken from the case that all purposes directed towards what a group considers is for the improvement of society is capable of being charitable. Such reasoning would render any group who wished to advocate for any subject charitable by citing the group’s opinion that their point of view would improve society.⁶⁹
43. Further, *Greenpeace SC* expressly rejected the Court of Appeal’s approach to assessing charitable purpose that accepted any purpose of public benefit without restriction to the kinds of objects held to be charitable.⁷⁰ The Supreme Court doubted whether *Greenpeace’s* policies directed towards nuclear disarmament could be found to be charitable,⁷¹ and arguably, policies directed towards nuclear disarmament could also be seen to “tend to the improvement of society from some point of view that may reasonably be adopted by the donor”.
44. After *Barby*, a number of cases have confirmed that not all purposes that are directed towards the “improvement of society” are capable of being charitable.⁷²

⁶⁶ The Trust’s submissions at [12]; referring in particular to activities directed towards strengthening marriage, parenting, CYFS, child abuse, family economics, aged care, and sex education; promoting life (including advocacy against abortion, euthanasia and embryonic cell research); promoting community values (advocacy in the areas of prostitution, pornography and censorship).

⁶⁷ *Barby* at 324.

⁶⁸ Specifically: “the relief of necessitous returned soldiers and their widows, children or grandchildren who may be in necessitous circumstances, that is, those only earning the basic wage for the time being or under and not possessed of more than 200 [pounds].” See the judgment of Evatt J in *Barby*, at 326-327.

⁶⁹ C.f. *Anti-Vivisection* at [71-72].

⁷⁰ *Greenpeace SC* at [31]; c.f. *Greenpeace COA* at [43].

⁷¹ *Greenpeace SC* at [101].

⁷² *Greenpeace SC* at [31]; for example: “the promotion of social wellbeing a community” was not charitable in *Inland Revenue Commissioners v Baddeley* [1955] AC 572 at 589 per Viscount Simonds, at 613 per Lord Tucker; “the greatest benefit to humanity”: *Re Bell* [1943] VLR 103 at 105 per Gavan Duffy J.

45. In *Barralet*, Dixon J commented:⁷³

It is also clear, as stated in *Tudor on Charities* (6th Edn, 1967, pp 85, 120) that the fourth category can include trusts for certain purposes tending to promote the mental or moral improvement of the community. It is on the basis of mental or moral improvement of the community that animal welfare trusts have been supported. But it is plain that not all objects which tend to promote the moral improvement of the community are charitable.

46. The Board has previously analysed the cases associated with good citizenship and animal welfare that can either be distinguished from the purposes of the Trust, or reflect why the Trust's advocacy cannot be seen to be for the public benefit.⁷⁴

47. As addressed in the previous notice, determining whether there is an analogy in the area of advocacy requires a consideration of *how* each body that has been accepted as charitable advocated for its ends, and assessing whether these "means" are similar to that employed by the Trust. The Board notes, however that post-*Greenpeace SC* the political purpose exception no longer applies, and the range of analogies for organisations that seek to advocate is narrow. The Board has accordingly been mindful of Collins J direction in *Re Family First HC* to not too carefully seek to carefully match purposes with organisations that have achieved recognition as charitable entities.⁷⁵ The Board has instead looked to the reasons courts have accepted public benefit in the purposes of the organisations accepted by the Courts as charitable, and accordingly determined whether the Trust's purposes can come within that assessment.

48. In this document, the Board has focused its analysis on the Trust's submissions that analogies can be found with:

- a. facilities such as reading rooms;
- b. ethical/philosophic systems; and
- c. the temperance cases.

49. The Board has dealt with each of these submissions in turn below.

50. Based on further analysis, and having not previously addressed the issue, the Board have also dealt with the extent to which some of the Trust's advocacy can be seen to promote public health.

⁷³ *Barralet v Attorney General; Re South Place Ethical Society* [1980] 3 ER 918 at 926.

⁷⁴ See Letter to Family First of 7 December 2016, 5-7 (including the promotion of good citizenship and the protection of animals).

⁷⁵ *Re Family First NZ* at [86].

Public facilities

51. The Trust noted Charities Services had distinguished some of the mental and moral improvement cases on the basis that they provided facilities (e.g. *Re Scowcroft* and *Re Price*). The Trust cited the internet and opportunity for electronic mail and exchange as replacing the provision of facilities, such as reading rooms, which had previously been accepted as charitable.⁷⁶
52. In its initial notice, Charities Services noted that in the cases of *Re Scowcroft* and *Re Price*, the Court had recognised public benefit in the context of groups that provided facilities to the public, for example: reading rooms, and educational institutions.⁷⁷ Although each group promoted moral values, they did so through means that were themselves charitable. However, for the reasons explained below, the Board do not consider Family First providing a website is analogous to these cases.
53. The provision of amenities has been accepted by the courts as charitable, and this has extended to the provision of internet facilities in the Canadian Federal Court of Appeal.⁷⁸ However, the Federal Court of Appeal distinguished between the provision of a “medium” from the delivery of a “message”, noting that any organisation providing a message to the public must control the message to ensure it is consistent with a charitable purpose.⁷⁹ The Court expressly distinguished where an organisation provides a “message” from a library.⁸⁰ This is consistent with the courts’ approach to media.⁸¹
54. In *Re Draco* the High Court found a website that brought together information and partisan pieces relating to local government did not advance charitable purposes.⁸² Similarly, the Federal Court of Appeal in Canada found a body distributing an information kit against pornography was found to not advance education nor advance another charitable purpose, and rather sway public opinion in support of minimising and eliminating pornography.⁸³

⁷⁶ The Trust’s submissions at [34].

⁷⁷ Charities Services’ notice to the Trust, at 6-7.

⁷⁸ *Vancouver Regional FreeNet Association v MNR* [1996] 3 FC 880, 137 DLR (4th) 206, [1996] 3 CTC 1, (1996) 50 DTC 6440 (“Freenet”).

⁷⁹ *Freenet* at 214.

⁸⁰ *Freenet* at 214.

⁸¹ See for example: *News to You Canada v Minister of National Revenue* (2011) FCA 192.

⁸² *Re Draco*, at [79]; we note that although *Re Draco* did cite the political purpose exception, the Supreme Court in *Greenpeace SC* appears to agree that although it did have a general purpose to promote awareness about democracy and natural justice in New Zealand, it was a “vehicle for promoting particular views.” at [47(n100)]

⁸³ *Positive Action against Pornography v Minister of National Revenue* [1998] 1 CTC 232, 88 DTC 6186 (FCA).

55. These cases distinguish between amenities designed to assist people towards learning, and groups that seek to promote a point of view. In *Greenpeace SC* in distinguishing Greenpeace’s educational purposes, “...the emphasis on direct action and advocacy on the Greenpeace website may indicate the principal means of promotion.”⁸⁴ The Board considers that, based on the information on the Trust’s website, the Trust promotes a number of points of view through its website, rather than providing an amenity for the public benefit. For example: the Trust’s “Issues” section on its website lists the issues that the Trust advocates on, such as repealing the changes to section 59, and provides information about the Trust’s views on those topics in separate pages.⁸⁵ Accordingly, the Board do not consider the Trust advances public benefit of the type established in the amenity line of cases.

Temperance cases

56. The Trust also cited the temperance cases as being analogous, noting “the opposition of temperance societies to liquor was driven by strong ethical and religious principles...”⁸⁶ The Trust appears to draw an analogy with those cases and its own activities.
57. In the temperance cases, the purposes of the various groups were either to advance religion,⁸⁷ advance education through the provision of reading rooms and libraries,⁸⁸ or promote health through assisting people to abstain from drinking alcohol.⁸⁹
58. The Board does not consider the cases establish a more general principle that the promotion of *any* viewpoint grounded on “strong ethical and religious principles” is capable of being charitable.⁹⁰
59. On that basis, the Board considers there is no direct analogy with the facts of the temperance cases and Family First’s purposes and activities. Family First is not providing practical support to the public (e.g. in the form of reading rooms and libraries) to assist a group in charitable need. On the whole, Family First’s advocacy is not specifically directed at legislative or policy change to assist a particular group in charitable need, such as those affected by alcohol abuse.⁹¹ “Public health” is addressed below, but the Trust’s activities do not appear to promote health in a manner

⁸⁴ *Greenpeace SC* at [103].

⁸⁵ Family First website: <https://www.familyfirst.org.nz/issues/ban-on-street-prostitution/> [accessed 7/12/2016].

⁸⁶ The Trust’s submissions at [34].

⁸⁷ *Re Hood* [1931] 1 Ch 240 at 253; *Re Scowcroft* [1898] 2 Ch. 638; it is noted *Re Scowcroft* has been criticised as “almost certainly wrongly decided”: H Picarda, *The Law and Practice of Charities* (4th ed, 2010) at 221.

⁸⁸ *Re Scowcroft*.

⁸⁹ *Inland Revenue Commissioner v Temperance Council of Christian Churches of England and Wales* (1926) 136 LT 27; *Inland Revenue Commissioner v Falkirk Temperance Café Trust* [1927] SC 261.

⁹⁰ See for example: commentary in Picarda 4th edition at 221; *Molloy v Commissioner of Inland Revenue* [1977] 3 NZTC 218 at 223.

⁹¹ We note that some of Family First’s advocacy can be characterised as supporting those in charitable need, specifically outlined in the Charities Services Initial Review of Submissions at [152].

analogous with the temperance cases either. Accordingly, the Board does not consider the Trust's promotion of the traditional family can be seen as analogous to the temperance cases.

Advancing philosophical or ethical systems

60. The Trust has submitted it advances a similar type of public benefit to that recognised in the cases of *Re Price* and *Re Barralet* (namely the advancement of a philosophical or ethical system of thought). Further, the Trust submits that *Re Price* is authority that the advancement of a great variety of views can be charitable, given *Re Price* involved "views that were very individual (eg Rudolph Steiner) and not held widely".⁹² The Trust acknowledges that although its views are generally conservative, "they are not the esoteric mental and moral outlook of an individual, but widely held in the community, and at one time, in relation to some matters, were the dominant view within New Zealand society."⁹³
61. Some commentators consider the cases of *Re Price*, *Re Barralet* and *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand ("Re Masons")*⁹⁴ confirm organisations that disseminate ideas which are broadly philosophical and can be generally adopted by members of society are capable of being charitable on the basis these systems are directed towards the mental or moral improvement of society.⁹⁵
62. *Re Price* involved a gift to the Anthroposophical Society. The Anthroposophical Society was set up to teach the moral philosophy of Rudolph Steiner. *Re Price* cited evidence of one of the teachers in the schools conducted on Rudolph Steiner's educational principles, and the presence of many societies throughout the world conducted on these principles.⁹⁶ The court found "the teachings of Steiner were directed to the extension of knowledge of the spiritual in man and in the universe generally and of the interaction of the spiritual and the physical."⁹⁷ The Board notes that the Anthroposophical Society runs 10 schools in New Zealand, 24 kindergartens and numerous playgroups.⁹⁸
63. *Re Barralet* also addressed whether the study or dissemination of ethical principles and the cultivation of a rational religious sentiment could be capable of being charitable.⁹⁹ In the case, both objects were able to be interpreted consistently with the

⁹² The Trust's submissions at [34].

⁹³ The Trust's submissions at [34].

⁹⁴ *Re Grand Lodge of Antient Free and Accepted Masons* HC WN CIV 2009-485-2633 [23 September 2010] (*Re Free Masons*).

⁹⁵ Tudor 9th ed, at 126; Poirier at 282.

⁹⁶ *Re Price* at 431-433; we note although this is obiter, it is later referred to in *Re Barralet* as a helpful expression of the principles at 927.

⁹⁷ *Re Price* at 432.

⁹⁸ <http://www.anthroposophy.org.nz/initiatives/education/>

⁹⁹ *Re Barralet* at 927.

advancement of education, however Dixon J also considered the second object, “to cultivate a rational religious sentiment” could be charitable by analogy with the “mental, moral, or religious improvement” purposes recognised in *Re Price*, *Re Hood* (temperance) and *Re Scowcroft* (reading room to be kept free of intoxicants and dancing) decisions.¹⁰⁰

64. The principles themselves concerned a belief in the excellence of truth, love and beauty, but not anything supernatural. The Trust held lectures by visiting lecturers, published a monthly magazine propagating ethical views, and held concerts by performers of high repute. It also held social activities, however these were deemed to serve, “as with the parish church, to further the spirit de corps of the congregation, and this in turn helps to further the cultivation of the rational religious sentiment.”¹⁰¹
65. In deciding whether the purpose could promote moral improvement, Dixon J was careful to assess whether the object was capable of being administered by the court. Dixon J had previously commented on the high quality of the musical offerings by the Trust.¹⁰² In deciding that an object to “cultivate a rational religious sentiment” is charitable, Dixon J noted that the means the Society was using were capable of being administered by the court:¹⁰³

the sentiment or state of mind is to be rational, that is to say founded in reason. As I see it, a sentiment or attitude of mind founded in reason can only be cultivated or encouraged to grow by educational methods, including music, and the development of the appreciation of music by performance of high quality.

66. Accordingly, the means utilised by the Trust to improve morality include: advancing education through lectures and publications, and cultivating rational sentiment through the development of the appreciation of music through high quality performances.
67. Finally, in *the Grand Lodge of Antient Free Masons* the court accepted the general purposes and principles of freemasonry are capable of qualifying as similar to the *Re Barralet*, *Re Price*, and temperance societies. The court specifically cited the broad purposes as: “promote and advance those virtues which every Freemason is charged to cultivate: good citizen, honest work, morality and wisdom, brotherly love, compassion, charity to the poor and belief in a supreme architect of heaven and earth.”¹⁰⁴ However, the way in which the purposes were given effect meant charitable status was unavailable. The Free Mason’s Society primarily sought to improve the character of its members, and the membership was a closed class.¹⁰⁵

¹⁰⁰ As well as advancing education; at 922; 928.

¹⁰¹ *Re Barralet* at 922.

¹⁰² *Re Barralet* at 922.

¹⁰³ *Re Barralet* at 928.

¹⁰⁴ *Re Free Masons* at [57].

¹⁰⁵ *Re Free Masons* at [59-60].

68. The Board accepts the “mental or moral improvement” cases referred to by the Trust have acknowledged a charitable purpose in promoting a general ethical philosophy, similar to how religious purposes are accepted as charitable.¹⁰⁶ The Board considers, however, that these cases have not established a broader principle that anything an organisation does that it considers will improve the morals of society is capable of being charitable.¹⁰⁷ That would be inconsistent with *Greenpeace SC*. *Greenpeace SC* notes that once a potentially charitable end is identified, the decision maker must consider *how* a group’s abstract aims are to be furthered, and whether those policies can be for the benefit of the public.¹⁰⁸ The Board considers the *Re Price*, *Re Barralet* and *Grand Lodge of Antient Free Masons*, establish where an entity promotes a systemised doctrine, and promotes that doctrine through sufficiently structured means (e.g. schools, services, lectures) it is capable of being charitable.
69. Although the Board acknowledges the Trust is underpinned by various philosophic principles, it primarily promotes its views in relation to specific social issues. Adopting the language of *Greenpeace SC*, the Board consider that the promotion of these specific social issues is “how” it is seeking to achieve its ends.¹⁰⁹
70. In the first two cases (*Re Price* and *Re Barralet*), the groups provided a number of mechanisms for teaching the wider public about a philosophic position that it had adopted. This included through schools, lectures, facilities and analogues to religious services. The Board considers that the Trust’s purposes do not reflect the teaching of an ethical philosophy. Rather the Trust takes a number of positions on social issues relevant to the promotion of the traditional family it considers are important for the improvement of society. It posts its views on these issues, holds conferences and public events promoting its views, conducts research supporting its views on these issues, and seeks to influence the public and decision makers towards its point of view. The Board does not consider this is analogous to a systemised teaching of a philosophical point of view.
71. Finally, the Trust has submitted that its views are (or were) widely held. The relevant question is whether the Trust’s purposes and activities are charitable, not whether the Trust’s views are popular or controversial. The Supreme Court in *Greenpeace SC* found: “Just as unpopularity of causes otherwise charitable should not affect their charitable status, we do not think that lack of controversy could be determinative”.¹¹⁰

¹⁰⁶ *Re Price* at 433, quoting *Thornton v Howe* [1901] 2 Ch 110; c.f.

¹⁰⁷ *Barralet* at 926; C.f. *Molloy*; *Greenpeace SC* at [102].

¹⁰⁸ *Greenpeace SC* at [102].

¹⁰⁹ *Greenpeace SC* at [76].

¹¹⁰ *Greenpeace SC* at [75].

Public health

72. In its letter of 5 April, the Trust suggested sex education was one of its main activities. Although it has not made submissions on the subject, the Board has considered whether its purposes could advance public benefit analogous to how public health has been accepted as charitable.
73. One of the Trust's issues is "sex ed in schools", where it criticises the current Government's approach to educating sexuality in schools. This focuses on the extent to which sexual politics and gender politics play a role in sexual education, rather than proposing any particular health measure.¹¹¹
74. Miriam Grossman's 2013 report on *Sexual Education in New Zealand: A Critical Review*, commissioned by the Trust, reviewed existing sexuality education programmes against the principle that "the healthiest ideal is to postpone sexual activity until adulthood, and ideally, until marriage."¹¹²
75. Although promoting health is capable of being charitable, the *Re Centrepont Community Growth Trust* decision confirms an applicant must establish the particular health measure will be for the benefit of the public.¹¹³ In that case, the Trust needed to demonstrate any counselling must conform with protocols and monitoring approved by appropriate professional bodies. However, other cases have held the yardstick for proving the benefit of the health measure is low.¹¹⁴
76. Two cases from the Charities Commission of England and Wales have given clarity to this requirement, assessing controversial or alternative therapies.¹¹⁵ In both cases, the Charities Commission adopted the House of Lords report on Complementary and Alternative Medicine. Key questions asked in that report were whether there was in fact a risk to the public, whether there was some proof of efficacy of the treatment being promoted, and whether it would detract from the pursuit of conventional medicine.
77. Accordingly, the Board considers where an organisation seeks to advance a novel or controversial health treatment; it requires evidence of the efficacy of the treatment or approach, and indication that it does not detract from conventional methods.

¹¹¹ Family First website: <https://www.familyfirst.org.nz/issues/sex-ed-in-schools/> [accessed 8/12/2016].

¹¹² Miriam Grossman, *Sexual Education in New Zealand: A Critical Review* <http://bobmccoskrie.com/wp-content/uploads/2013/06/Miriam-Grossman-R18-Report.pdf> [accessed 7/12/2016] at 23.

¹¹³ *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325 at [20].

¹¹⁴ See for example: *Re Le Cren Clarke* [1996] 1 All ER Ch D 715.

¹¹⁵ Decision of the Charity Commission of England and Wales on NFSH Charitable Trust [15 August 2002] <https://www.gov.uk/government/publications/nfsh-charitable-trust-limited>; and Living in Radiance [24 August 2005] <https://www.gov.uk/government/publications/living-in-radiance> [accessed 7 December 2016]; we note these are persuasive, rather than binding on the Charities Registration Board.

78. The Board notes that the Ministry of Education released a guide on *Sexuality Education: A guide for principals, board of trustees and teachers*. In that guide, the Ministry outlines the research in the area of sexuality education, noting in particular:¹¹⁶

Programmes should engage, empower, and inform young people rather than focus on risk (Fine & McClelland, 2006, Fitzpatrick, 2014). Research suggests that abstinence programmes make no difference in affecting sexual decision-making (Kirby, 2008; Poobalan et al, 2009) while programmes with a more holistic and comprehensive approach significantly reduce risk factors and risky behaviours (Kirby, 2008; Bearinger et al, 2007).

79. In the light of the Ministry of Education guide, and applying the approach of the High Court in *Re Centrepoint Community Growth Trust* and Charities Commission of England and Wales, the Board do not consider it has sufficient information from the Trust on whether its position regarding sexual education in schools is for the public benefit.

Summary of the Board's position on the analogies

80. The Board notes that although the Trust has pointed to charitable organisations that do promote moral improvement that have been accepted as charities, the key question from *Greenpeace SC* is how those organisations promote moral improvement. In each of the cases identified by the Trust, there are key distinguishing features. Rather the most relevant case where an organisation that promotes a moral principle is the decision in *Molloy*. The Board discuss that case in more detail below.

Application of Molloy

81. The Trust submitted that the Supreme Court considered *Molloy* was rightly decided because it could not be considered to be in the public interest to maintain the legal status quo on an issue which had engendered such public debate as abortion. Instead, the public interest was served by continuing to promote the debate not stifle it.¹¹⁷

¹¹⁶ Ministry of Education, *Sexuality Education: A guide for principals, boards of trustees, and teachers* (2015) <http://health.tki.org.nz/Teaching-in-HPE/Policy-guidelines/Sexuality-education-a-guide-for-principals-boards-of-trustees-and-teachers> [accessed 8 December 2016] at 5.

¹¹⁷ The Trust's submissions at 24-25.

82. The Board disagrees with the Trust's assessment of the Supreme Court's position. *Molloy* was a High Court decision that held the purposes of the Society for the Protection of the Unborn Child, which sought to, at the time, retain the status quo regarding laws on abortion, could not be held to be for the public benefit. The Court of Appeal confirmed the lower court's decision, although did note the purposes were relevantly political in character. In the High Court, Mahon J noted:¹¹⁸

the issues which arise are social, medical, legal and philosophical. Religious principles are also in question, and each argument propounded on one side or the other is met by the rancour of intractable opposition...

83. The Supreme Court in *Greenpeace SC* noted that even without a political purpose exclusion, the conclusion in *Molloy* seems correct: "the particular viewpoint there being promoted could not be shown to be in the public benefit in the sense treated as charitable."¹¹⁹ The social issues are not analogous to the *Anti-Vivisection* decision, as the specific points of view have not been determined to be for the moral improvement of society (as the protection of animals have), rather different groups in Society have different views on whether their point of view is for the public benefit of society or not.
84. In *Greenpeace SC*, the Board consider that the Court found that the Society for the Protection of the Unborn Child was advocating a point of view which is unlikely to be able to be demonstrated as a public benefit because of the nature of the points of view adopted.
85. The Board notes the Supreme Court applies the same test to the question of nuclear disarmament, where it considered international and domestic consequences of decision makers adopting the position Greenpeace proposed would probably not be found for the public benefit.¹²⁰ The Board considers the Trust's advocacy for its points of view on what is best for the traditional family is aligned with *Molloy*.
86. Unlike in *Anti-Vivisection*, the Trust is not proposing points of view that are for the benefit of the public in a way the Court has previously accepted (i.e. protecting animals). In *Molloy*, the Court of Appeal discussed whether the purpose could be for the moral improvement of humans similar to the animal cases, and did not consider it was analogous.¹²¹ Rather, the points of view are such that the "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 [which] means that the Court cannot determine where the public good lies...".¹²² Family First's issues include, for example, advocating on restricting access to alcohol; introducing stricter sentencing and other justice measures (e.g. a paedophile register); preventing Easter trading; and preventing

¹¹⁸ *Molloy v Commissioner of Inland Revenue* [1977] 3 NTC 61, 224.

¹¹⁹ *Greenpeace SC* at [73].

¹²⁰ *Greenpeace SC* at [101-104].

¹²¹ *Molloy* at 696.

¹²² *Molloy* at 697.

the funding of what it considers is offensive television.¹²³ The Board considers these issues are ultimately similar to the abortion debate: issues arise that are social, legal, philosophical, religious, and economic. Both sides may consider their position is morally edifying, however following *Molloy* and *Greenpeace SC*, it is not for the Board to decide that one or the other is for the benefit of the public in a charitable sense.

Further submissions of the Trust – public benefit

87. The Trust has submitted additional evidence that its promotion of the traditional family is for the public benefit. It refers to its advocacy to relevant authorities on promoting the traditional family, promoting life and promoting community values, as well as research papers, being consistent with the dicta in *Barby*.
88. The Trust has submitted it is well established that statutory requirements must be read in light of international obligations, notes the similarity of the Trust's functions with that of the Family Commission as evidence of its public benefit, and submits Collins J silence on the traditional family implies advocacy to support the traditional family is capable of being charitable.
89. As identified above, the Board does not consider the Trust's purpose to promote the traditional family through promoting its points of view on the subjects of the traditional family, the promotion of life and the promotion of community values, is analogous to a previously accepted charitable purpose. Adopting the approach of the Supreme Court in *Greenpeace SC*, it is still necessary to reason by analogy to previously accepted charitable purposes (albeit with accommodation of the changed law following the *Greenpeace SC* decision). Accordingly, even if the Trust's activities are for the public benefit, this is, in the Board's view, insufficient to achieve charitable status without an analogy to previously accepted charitable purposes. The Board have considered the Trusts specific submissions below.

International instruments

90. The Trust submits that New Zealand's international law commitments are consistent with the Trust's positions.
91. The Board acknowledges that New Zealand has a number of international commitments, and this can be taken into account in assessing whether a particular policy can be said to be for the public benefit. In *Greenpeace SC*, this was deemed important when considering whether advocacy for nuclear disarmament could be for the benefit of the public.¹²⁴ Specifically, the Court looked to the detail of the Nuclear Non-Proliferation Treaty, and Greenpeace's position regarding the details of the Treaty, specifically that the acceptance of nuclear power states is "the contradiction at the heart of the Treaty." The court noted it would be unlikely to demonstrate by

¹²³ <https://www.familyfirst.org.nz/issues/> [accessed 8/12/2016].

¹²⁴ *Greenpeace SC* at [101].

reference to evidence that advocating against the Treaty's position, even if that represented what Greenpeace considered would be a more peaceful world, would be for the benefit of the public.¹²⁵

92. The Board considers that the Trust's advocacy on issues to promote its ends may be consistent with some of New Zealand's international obligations but inconsistent with others. Although New Zealand has committed to promote the family and children's rights, it has also committed to protect people's freedoms and rights in a more general sense.
93. For example: the Trust advocates for repealing changes to section 59 of the Crimes Act, arguing parents should be able to use corporal punishment on their children for discipline purposes. The Law Commission in discussing other options to the amendments to section 59 of the Crimes Act 1961 noted Susan H Bitensky *Corporal Punishment of Children: A Human Rights Violation*¹²⁶ that, according to the Law Commission, described the reasons why corporal punishment of children is now considered to breach international human rights instruments.¹²⁷
94. One of the Trust's "policy priorities" is "protecting marriage in law as one man-one woman."¹²⁸ Article 16 of the *Universal Declaration of Human Rights* declares that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. This does not permit discrimination on the basis of sexuality; see Human Rights Commission position on marriage and equality.¹²⁹
95. Accordingly, the Board has some reservations about the Trust's submission that its positions are consistent with promoting New Zealand's international obligations. The Board is concerned that the Trust rather advocates for its view of certain international obligations to take precedence over others.

¹²⁵ *Greenpeace SC* at [101].

¹²⁶ (Transnational Publishers, Ardsley, New York, 2006).

¹²⁷ Law Commission, Section 59 Crimes Act 1961 Amendment: Options for Consideration (8 November 2006) <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20OP3.pdf>

¹²⁸ <https://www.familyfirst.org.nz/about-us/family-policy-priorities/> [accessed 9 December 2016].

¹²⁹ Human Rights Commission website, <https://www.hrc.co.nz/your-rights/social-equality/our-work/marriage-and-adoption-equality-endorsement/> [accessed 1 November 2016].

Domestic legislation

96. The Trust submitted its purposes are broadly consistent with some of the functions of the Families Commission, which is further evidence of its public benefit.
97. The courts have consistently recognised that even if an entity has purposes that support a government policy, or are in fact funded and directed by government, that is not conclusive evidence of charity.¹³⁰ Accordingly, the Board considers that even if the Trust's purposes were consistent with the Families Commission, it is neither a barrier nor a gateway to charitable status. Always the question is whether the Trust's purposes are charitable in a broadly analogous sense to previously accepted charitable purposes.
98. In addition, the Board notes some differences between the Families Commission and the Trust's purposes, views and activities. The Commission's functions are to advocate for the interests of families generally, to monitor and evaluate programmes and interventions in the social sector, and provide social science research into key issues, programmes and interventions across that sector.¹³¹ The *Family Commission Act 2003* recognises the diversity of New Zealand families. In contrast, the Trust accepts that it promotes the "traditional family" (although states that it also seeks to promote families generally), and seeks to strengthen and protect marriage in law as one man-one woman as the "national community ideal".¹³²
99. The Trust appears to disagree with some aspects of New Zealand's domestic legislation (for example s 59 and same-sex marriage). The Board therefore does not accept the Trust's submission that its positions are supported by or consistent with NZ's domestic legislation framework.¹³³

¹³⁰ *Latimer v Commissioner of Inland Revenue* [2004] UKPC 13 at [37]; See also *Canterbury Development Corporation* [2010] 2 NZLR 707; *Re Education NZ Trust* (2010) 24 NZTC 24; *Queenstown Lakes Community Housing Trust* HC WN CIV-2010-485-1818 [24 June 2011]; *Auckland Harbour Board v Commissioner of Inland Revenue* [1959] NZLR 204.

¹³¹ *Family Commission Act 2003*, section 7.

¹³² Family First website: <https://www.familyfirst.org.nz/about-us/family-policy-priorities/> [accessed 1 November 2016].

¹³³ See McCoskrie B, "An Analysis of New Zealand's 2007 Anti-Smacking Law" [1 November 2016] <http://bobmccoskrie.com/wp-content/uploads/2016/01/Defying-Human-Nature-FULL-REPORT.pdf>

Traditional family

100. The Trust also submitted that Collins J's silence in relation to the traditional family implies its advocacy to support the traditional family is capable of being charitable.¹³⁴ The Board do not consider Collins J expressed any definite judgment on whether or not advocacy for the traditional family could be charitable, other than by, as identified by the applicant noting that the Board should be careful not to import a subjective assessment of the merit of the views proposed by the Trust. The Board is conscious of the Court's directions in this regard, and has striven to avoid any subjective assessment, basing its conclusions purely on the facts and the law.

Conclusion on advocacy

101. In its initial notice, the Board outlined the reasons it did not consider the Board would be in a position to determine where the public good lay in the advocacy promoted by the Trust.¹³⁵ As outlined above, taking into account the end, means and manner of the Trust's advocacy, the Board do not consider the Trust can make out a public benefit analogous with a previously accepted charitable purpose. Accordingly, the Board considers that the Trust's purpose to promote and protect the traditional family through promoting its point of view on social issues is non-charitable.

102. In making the determination above, the Board were particularly cognisant of the comments of Greenpeace SC (above [12]). The Board particularly notes:¹³⁶

The advancement of causes will often, perhaps most often, be non-charitable. That is for the reasons given in the authorities – it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable. Matters of opinion may be impossible to characterise as of public benefit either achievement or promotion itself...Further, the ends promoted may be outside the scope of cases which have been built on the spirit of the preamble, so that there is no sound analogy on which the law might be developed within the sense of what has been recognised to be charitable. 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 in the public benefit in the sense treated as charitable. (at [73]).

... Although for the reasons given, a political purpose exclusion is inappropriately conclusive when considering charitable purpose, we consider that the promotion itself, if a standalone object nto merely ancillary, must itself be an object of public benefit or utility within the sense used in the authorities to qualify as a charitable purpose. As indicated above at paragraphs [59] to [71], such public benefit or utility may sometimes be found in advocacy or other expressive conduct. But such finding depends on the wider context (including the context of public participation in processes and human rights values.

¹³⁴ The Trust's submissions, [21:22].

¹³⁵ The notice at page 10.

¹³⁶ *Greenpeace SC*,.

103. The Board has also considered the impact of section 5(3) of the Act, namely whether the Trust's non-charitable purposes are saved by being ancillary to a charitable purpose, at the end of the document. However, the Board considers the Trust's purpose to promote its view on the traditional family is its primary purpose. In assessing whether Greenpeace's advocacy could be ancillary, the Supreme Court looked to the Greenpeace website and noted "the emphasis on direct action and advocacy on the Greenpeace website may indicate a principal means of promotion."¹³⁷ The Board considers Family First's website is also designed to promote its point of view on the family, and the Trust has acknowledged "a good deal of the website material comes within the description of "cause advocacy".¹³⁸

The advancement of education

104. The Trust also submits that it has an educative purpose. It submits that education has long been accepted as charitable so, by analogy, it should retain charitable status on that basis. The Trust submits much of its research produced since *Re Family First HC* "are professionally prepared items of research that serve a proper educational purpose."¹³⁹ Moreover, the Trust submits that papers supporting a pre-determined position of the Trust should not detract from their educational purpose.¹⁴⁰

105. The Trust has accepted that "a good deal" of the website material comes within the description of "cause advocacy", although noting it should be considered under the *Greenpeace SC* framework.¹⁴¹ However it submitted the fact that it used the reports to promote its causes should not detract from the educational nature of the research.

¹³⁷ *Greenpeace SC* at [103].

¹³⁸ The Trust's submissions to the High Court at [87].

¹³⁹ The Trust's submissions at [40].

¹⁴⁰ The Trust's submissions at [45].

¹⁴¹ The Trust's submissions to the High Court at [87].

106. The Board has considered the Trust's research papers in detail in the initial analysis of the Trust, and accordingly notified the Trust that it considered they did not advance an educational purpose. The research papers consist of the 10 papers published on the Trust's website under the header "Research". They include the following (the Board includes a brief comment from the media release issued by the Trust to indicate the subject matter):¹⁴²

- a. Lindsay Mitchell, *Child Poverty & Family Structure: What is the evidence telling us* (May 2016):

[The report] examines household incomes and family structure from the early 1960s through to current day, and says that while unemployment, low wages, high housing costs and insufficient social security benefits are consistently blamed for child poverty, a major culprit – if not the major culprit – is family malformation, that is, a lack of two married committed parents.

- b. Bob McCroskrie, *Defying Human Nature: An Analysis of New Zealand's 2007 Anti-Smacking Law* (February 2016):

A report analysing the 2007 anti-smacking law has concluded that there is not a single social indicator relating to the abuse of children that has shown significant or sustained improvement since the passing of the law and that they've continued to get worse – in some cases a lot worse, that CYF has reached the point of 'saturation' and can no longer handle the level of notifications it is receiving, and that the law has negatively impacted law-abiding parents.

- c. Glenn T Stanton, *Boy Girls Other: Making Sense of the Confusing New World of Gender Identity* (June 2015):

It warns parents and school leaders to be very wary of these guidelines and policies, and that gender identity ideology is founded more on political ideology than it is in careful science and experience.

- d. Dr Aric Sigman, *Screentime in New Zealand – Media Use: An Emerging Factor in Child and Adolescent Health* (February 2015):

He argues that although screen technology may be a great aspect of modern life, there is growing concern from health and development experts about the excessive use in many families' lives, particularly with children, and that many parents and teachers remain unaware of the medical and developmental risks.

- e. Professor Rex Adhar, *Killing Me Softly Should Euthanasia be Legalised* (May 2014):

The potential for abuse and flouting of procedural safeguards is a strong argument against legalisation...The majority of the medical profession and national medical associations around the world have been resolutely against the introduction of VE or PAS. The role of the doctor would be, at times, irrevocably changed from healer to killer, from caring professional who saves lives to one who takes them. "Therapeutic killing" would have arrived. Inevitably, patient trust would be eroded."

¹⁴² All available at: <https://www.familyfirst.org.nz/research/> [accessed 8 December 2016].

- f. *Who Cares: Mothers, Daycare and Child Wellbeing in New Zealand* (February 2012):

The potential for abuse and flouting of procedural safeguards is a strong argument against legalisation...The majority of the medical profession and national medical associations around the world have been resolutely against the introduction of VE or PAS. The role of the doctor would be, at times, irrevocably changed from healer to killer, from caring professional who saves lives to one who takes them. "Therapeutic killing" would have arrived. Inevitably, patient trust would be eroded."

- g. Dr Aric Sigman, *Young People and Alcohol What does the Medical Evidence tell us about the Legal Drinking Age in New Zealand?*(February 2011):

Dr Sigman argues that attending daycare for an extended time, and the consequent separation from parents, is a significant source of stress for many young children which could have potential long-term consequences for their mental and physical health as adults. He argues that what has previously proved elusive is an understanding of how the young child is affected emotionally and physiologically, and how they experience day care while they are actually there."

- h. Miriam Grossman, *R18: Sexuality Education in New Zealand: A Critical Review* (June 2013):

New medical evidence on accident probability, disease and brain development makes it absolutely clear that delaying the age at which teenagers and young people have easy access to alcohol will reduce the level of damage they and society suffer at the moment as well as contributing to their future health and well-being," says Dr Sigman. Dr Sigman concludes that New Zealand would benefit from adopting a single legal drinking age of 21, even if this is difficult to enforce.

- i. N & A Bray, et al, *Why Marriage Matters* (2009), published by Dads4Kids Fatherhood Foundation:

The fundamental conclusion of "21 Reasons Why Marriage Matters" is that marriage is an important social good, associated with an impressively broad array of positive outcomes for children and adults alike. "The issue of family breakdown and decreasing marriage rates is barely registering a mention or a policy. Yet this report makes it quite clear that strengthening marriage and reducing family breakdown is a significant public concern, both in human costs and economically," says Mr McCoskrie."

- j. New Zealand Institute of Economic Research, *The Value of Family: Fiscal Benefits of Marriage and Reducing Family Breakdown in New Zealand* (October 2008):

Family breakdown and decreasing marriage rates are seldom considered in debate on social policy issues, such as poverty among families with children, in New Zealand...Yet while most families experience generally positive outcomes, there are several features of the New Zealand environment that suggest it is unwise to overlook family breakdown and decreasing marriage rates...Based on the assumptions employed, the fiscal cost to the taxpayer of family breakdown and decreasing marriage rates has been estimated at around \$1 billion (around \$300 per taxpayer) in 2008-09, even before we consider the potential for family breakdown and decreasing marriage rates to lead to foregone tax revenue...The discussion in this report has implications for a range of policy areas.

107. Since this assessment the High Court released the decision of *FAAR and FRSSH* which is relevant to research purposes. Accordingly, the Board have laid out the test for research purposes in detail below, and applied it to the papers the Trust submitted advanced education to determine whether the Trust does have a genuinely educational purpose.

Approach to research purposes

108. In *FAAR and FRSSH*, the High Court applied the summary of the advancement of education head in *Re Collier*¹⁴³ to research purposes:¹⁴⁴

It seems to me that for a publication bequest of this kind to be upheld, it must first confer a public benefit, in that it somehow assists the training of 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.¹⁴⁵

109. The Board consider for a purpose to advance education, rather than persuasion or cause under the guise of education, information must be presented in a balanced, objective and neutral manner so that the public can choose for themselves, rather than expressing one sided or emotive appeals to a particular view.¹⁴⁶

110. Raising awareness of issues, or promoting debate and discussion of those issues, is not itself an educational purpose. In *Re Draco Foundation (NZ) Charitable Trust*, the High Court confirmed that the entity's purpose was to influence local or central government or other officials to a particular point of view, and that this did not fall within the charitable purpose to advance education.¹⁴⁷ *Draco* however relied on the *Bowman* line of cases, that political purposes could not be charitable.¹⁴⁸

¹⁴³[1998] 1 NZLR 81 (HC) ("*Re Collier*")

¹⁴⁴ *FAAR and FRSSH* at [56].

¹⁴⁵ *Re Collier* at 91-92.

¹⁴⁶ See for example: *Aid/Watch* at [68] and [84].

¹⁴⁷ *Draco* at [54].

¹⁴⁸ *Draco* at [54].

111. Since the decision of *Draco*, the Supreme Court has clarified that publicising one side of a debate may be charitable, where it can be shown to be in the public benefit in the sense treated as charitable.¹⁴⁹ However, the Board considers, based on the application of case law discussed below, that this confirms the distinction between an organisation that advances education in an objective fashion, and an organisation that promotes a cause.¹⁵⁰ Both sides of a debate may consider their point of view is supported by research, and may commission research to support their point of view. However, disseminating this research does not transform a purpose to promote a cause into an educational purpose, rather “the views of [the Trust] are published on its website, but this is part of its campaign to persuade others of [its] views, not to educate them”.¹⁵¹
112. *Greenpeace SC* referred to the assessment of charitable purpose in *Aid/Watch*, where a majority of the High Court of Australia found that “...the generation by lawful means of public debate, in the sense described earlier in these reasons, concerning the efficiency of foreign aid directed to the relief of poverty, itself is a purpose beneficial to the community within the fourth head in *Pemsel*.”¹⁵²
113. The Federal Court had previously held that although the research reports produced by the Trust might be described as educational, this was a long way from being the dominant activity.¹⁵³ Rather, although “monitoring” and “researching” are key activities described in *Aid/Watch*’s constitution, it is the “campaigning” that “materially enables *Aid/Watch* to exercise influence over public opinion and ultimately delivery of Australian aid.”¹⁵⁴ The majority in the High Court of Australia found no need to address questions of whether *Aid/Watch* advanced an educational purpose due to finding public benefit in the specific manner in which it generated public debate for the relief of poverty.¹⁵⁵
114. However, *Greenpeace SC* favoured the minority view of Kiefel J,¹⁵⁶ who although agreeing with the majority that political purposes are not automatically disqualified, followed the Federal Court’s finding that the assertion of one particular view did not advance an educational public benefit, even if involving research:¹⁵⁷

The submission by the appellant, that its purposes are for the public benefit because it generates public debate, cannot be accepted at number of levels. Its assertion of views cannot, without more, be assumed to have that effect. Its activities are not directed to that end. If they were directed to the generation of public debate about the provision of

¹⁴⁹ *Greenpeace SC* at [74], [98].

¹⁵⁰ See for example: *Greenpeace SC* at [103]; *Aid/Watch* at [62] and [84].

¹⁵¹ *Aid/Watch* at [84].

¹⁵² Through publicising research reports on the effectiveness of Australia’s overseas aid that put forward their point of view on where aid should best be spent: *Aid/Watch* at [5-7].

¹⁵³ *Federal Court of Taxation v Aid/Watch Inc* (2009) 178 FCR 423 at [46].

¹⁵⁴ *Federal Court of Taxation v Aid/Watch Inc* (2009) 178 FCR 423 at [36].

¹⁵⁵ *Federal Court of Taxation v Aid/Watch Inc* (2009) 178 FCR 423 at [48-49].

¹⁵⁶ *Greenpeace SC* at [73], [74].

¹⁵⁷ *Aid/Watch* at [86].

aid, rather than to the acceptance by the Government and its agencies of its views on the matter, the appellant might be said to be promoting education in that area. But it is not. Its pursuit of a freedom to communicate its views does not qualify as being for the public benefit.

115. Kiefel J noted that although Aid/Watch had provided reports on aid projects:¹⁵⁸

they were not disseminated to the public, such as would support the characterisation of research as for the purpose of education. Rather, the views of the appellant were published on its website, as part of its campaign to persuade others of its views, not to educate them.

116. Heydon J, the other minority judgment, in following this approach, cited *Re Collier* noting the conduct of the appellant represents “an attempt to persuade people into a particular frame of mind. There is no instruction directed; nor is there to be any systematic accumulation of knowledge.”¹⁵⁹ Underlying this assessment is a consideration of not just the quality of the research itself, but how the research is used.

117. In *Southwood v Attorney General (Southwood)*, the English Court of Appeal dismissed claims a research trust set up to promote a particular means of achieving the promotion of peace educated the public.¹⁶⁰ The Supreme Court in *Greenpeace SC* adopted the approach in *Southwood* in assessing whether a purpose of nuclear disarmament could be charitable.¹⁶¹

118. In *Southwood*, although the method of investigation was academic, the starting point was a position that disarmament should be the preferred method of achieving peace. The English Court of Appeal considered whether research carried out by academics could be capable of advancing education where it is commissioned to support a point of view. The key point was that the education of the public was not starting from a position that peace is preferable to war, which is capable of being charitable, but rather that an acceptance that peace is best secured by “demilitarisation.”¹⁶² This research was carried out by academics, involved substantive papers and the court found they were views that were “sincerely held and defensible”.¹⁶³ The case looked at the assumptions behind the research, the nature of the researchers themselves, and the text of some of the briefing documents in detail.¹⁶⁴ The case confirmed the research must not be designed to promote a point of view, unless this point of view itself is clearly charitable.

¹⁵⁸ *Aid/Watch* at [84].

¹⁵⁹ *Aid/Watch* at [62].

¹⁶⁰ [2000] ECWA Civ 204 (BILII) at <http://www.baillii.org/ew/cases/EWCA/civ/2000/204.html> (“*Southwood*”).

¹⁶¹ *Greenpeace SC* at [97] to [102].

¹⁶² *Southwood* at [30].

¹⁶³ *Southwood* at [16].

¹⁶⁴ *Southwood* at [7] to [16].

119. *Southwood* followed two similar earlier English decisions, *In re Hopkinson*¹⁶⁵ and *In re Bushnell*.¹⁶⁶
120. *In re Hopkinson* the relevant gift was to support education for “men and women of all classes (on the lines of the Labour Party’s memorandum headed ‘A Note on Education in the Labour Party...’) to a higher conception of social, political and economic ideas and values and of the personal obligations of duty and service which are necessary for the realisation of an improved and enlightened social consideration...”.¹⁶⁷ There the court found the object was not charitable, but “...plainly to secure, not necessarily a certain line of legislation, but a certain line – and a perfectly proper and permissible line from the point of view of those who advocate it – of political administration and policy.”¹⁶⁸
121. Similarly, in *In re Bushnell* [1975] 1 WLR 1596 the gift was for “the advancement and propagation of the teaching of socialised medicine”. In finding the trust failed, the court held:¹⁶⁹

The testator never for a moment, as I read his language, desired to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose what he called “socialised medicine”. I think he was trying to promote his own theory of education, if you will by propaganda, but I do not attach any importance to that word.

122. Another useful case that applied *Southwood* in relation to research is the decision of the Charities Commission of England and Wales (CCEW) on *Full Fact*.¹⁷⁰ Full Fact applied to CCEW for registration as a charity in 2009 with objects that included the advancement of citizenship and civic responsibility. Full Fact’s activities essentially provided a fact-checking service on media services. CCEW rejected that application for registration in 2010 on the grounds that the contribution of Full Fact to any public debate or public issue will merely be the addition of another opinion or viewpoint on the relevant issue.¹⁷¹ That decision was upheld on appeal.

¹⁶⁵ [1949] 1 All ER 346 (“Hopkinson”); *Southwood* at [21]

¹⁶⁶ [1975] 1 WLR 1596 (“Bushnell”); *Southwood* at [66].

¹⁶⁷ *Hopkinson* at 352.

¹⁶⁸ *Bushnell*.

¹⁶⁹ *Bushnell* at 1605 [E-F].

¹⁷⁰ *Full Fact*, Case No. CA/2011/0001 [26 July 2011]:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372962/Full_Fact_Decision.pdf [accessed 2 November 2016].

¹⁷¹ *Full Fact* at 8.4.

123. In rejecting the application for registration, the Commission referred to the following criteria not being satisfied:¹⁷²
- a. “verification by an independent and authoritative source.”
 - b. “objective standard through a non-partisan and non-political methodology”
 - c. “An activity base which had sufficing rigour, was objective and capable of being completely independent and authoritative”
 - d. “the processes adopted are educational or that the information made available is capable of leading to an increase in knowledge and skills to enable people to participate in democratic processes.”
 - e. “independent, neutral and balanced”
 - f. “The structure and processes must be sufficient so as to be educational and capable of advancing knowledge and skills”.
124. The Tribunal agreed with the Commission’s approach that although Full Fact considered it did meet the Commission’s test, it had not provided sufficient evidence of meeting the test:¹⁷³

There are clearly standards to be met in terms of the quality of the information, materials or research being made available and the objective nature of the conclusions drawn from it.

125. However, the Tribunal further noted:¹⁷⁴

An organisation that provides full, accurate and relevant facts to the public on matters of public concern and thereby promotes informed public discourse and debate is in the Tribunal’s view capable of providing education for the public benefit.

¹⁷² *Full Fact* at 8.6.

¹⁷³ *Full Fact* at 8.8.

¹⁷⁴ *Full Fact* at 8.10.

126. The Tribunal caveated the above with the English Court of Appeal case of *Re Koeppler's Will Trusts*¹⁷⁵, which held “genuine attempts in an *objective* manner to ascertain and disseminate the truth” was capable of being charitable, even where the participants in the conferences held conflicting views and political views were to be discussed.¹⁷⁶ Applying the decision to its practices, Full Fact reapplied, and agreed to an independent reviewer to periodically assess its work and adopted standards consistent with the Code of Practice for Official Statistics to meet requirements for registration.¹⁷⁷
127. The Board thus considers subjecting research to genuinely independent reviewers, and established research standards that can be comparable to the standards at a tertiary institution, is evidence a group is advancing education, and not promoting a cause. The Board notes this is not a requirement, rather evidence that the education is genuinely objective.
128. For completeness, it is noted the English Court of Appeal in *Southwood* does not explicitly address the conclusions of *Re Hopkins Will Trusts* which is referred to in *FAAR and FRSSH*.¹⁷⁸ In that case, Wilberforce J considered whether a gift for “finding the Bacon-Shakespeare manuscripts” could be capable of being charitable. Although this dealt with a Trust that sought to questionably query the authorship of Shakespeare, the judge found the main purpose was “searching, or researching, for the original manuscripts of England’s greatest dramatist (whoever he was)” and thus advanced education.¹⁷⁹ Wilberforce J did not consider the Trust was established for a propagandist purpose.¹⁸⁰
129. Summarising the approach applied by the cases above to determine whether the reports seek to promote the Trust’s point of view, or advance genuine, objective educational research, the Board considers the appropriate areas of analysis are:
- a. the nature of the research to determine if it is objective, neutral and balanced;
 - b. whether it has been reviewed by objective third parties; and
 - c. how the Trust disseminates its views to the public to determine whether it seeks to educate or persuade to a point of view.

¹⁷⁵ (1986) Ch 423

¹⁷⁶ *Full Fact* at 8.10.

¹⁷⁷ Charity Commission for England and Wales, *Full Fact – Application for Registration: Decision of the Commission* (17 September 2014), at 32:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372962/Full_Fact_Decision.pdf

¹⁷⁸ [1965] 1 Ch 679 (“Hopkins”).

¹⁷⁹ *Hopkins* at 679.

¹⁸⁰ *Hopkins* at 679.

130. It is this approach that the Board has applied to the papers submitted by the Trust. Those papers are discussed below in two categories: first, the NZIER paper, and second the other research papers.

The NZIER research paper

131. In *Re Family First HC*, Collins J directed Charities Services and the Board to particularly address the NZIER paper in deciding whether that report is sufficient to qualify the Trust's activities as advancing education.¹⁸¹ Counsel for the Board, and Collins J, acknowledged the report is a "legitimate piece of research."¹⁸² Collins J did not direct the Board to consider it indicative of an educational purpose, rather instructed Charities Services and the Board to take it into account. In its re-assessment prior to the notice, the Board did consider whether the NZIER paper could advance education, taking into account the dicta in *Re Family First HC*.
132. The NZIER paper was prepared by an independent body and presents a statistical analysis of the value of marriage and reducing family breakdown in New Zealand. It has been peer reviewed, although internally to NZIER, and it appears to have taken into account academic commentary.¹⁸³ It demonstrates the costs of certain policies relating to the family to the New Zealand taxpayer, and provides suggestions for improvements.
133. Unlike other research commissioned by the Trust, the NZIER paper does not appear to expressly promote a point of view. The issue the paper addresses is the extent to which family breakdown impacts on economic factors. It acknowledges gaps in the research, and is guarded in its conclusions. For example:¹⁸⁴

An important caveat to the approach taken below is that there is a lack of empirical evidence in New Zealand on the degree to which family breakdown and decreasing marriage rates has a causal effect on poverty (as opposed to simply being correlated). Selection effects may mean, for example, the poverty associated with family breakdown and decreasing marriage rates is caused by traits or circumstances that also lead to divorce and non-marital childrearing.

134. And:¹⁸⁵

As Bryant et al (2004) note, important caveats need to be considered when estimating the effect of female labour supply on GDP. In particular, approaches generally do not illustrate the value of the foregone time outside of the labour market. Nor do approaches generally illustrate any 'crowding out' effects in the labour market (e.g., they assume that the extra supply of labour fills currently unsatisfied demand) or effects on firms' investments.

¹⁸¹ *Re Family First HC* at [94].

¹⁸² *Re Family First HC* at [93].

¹⁸³ NZIER Paper, I: "Feedback received from Dr Paul Callister, Associate Professor Bob Stephens and other reviews on a draft of this report is gratefully acknowledged."

¹⁸⁴ NZIER Report, 9.

¹⁸⁵ NZIER Report, 21.

135. In discussing potential solutions, the NZIER Report notes:¹⁸⁶

A number of countries have introduced tax-transfer programmes to support marriage and single income families. These programmes include income splitting through the personal income tax scale and the use of family tax credits (Nolan and Fairbrother, 2005; Nolan, 2006). However, while not pre-judging any review, it is likely that tradeoffs involved in these programmes' design would mean that they are unlikely to be relatively effective at lowering the costs of family breakdown and decreasing marriage rates (Nolan, 2005).

136. The Board considers the NZIER paper advances education in a charitable manner. However:

- a. First, the media release accompanying the report appears to utilise the report in a manner that advances the Trust's views,¹⁸⁷ rather than present a neutral summary of the findings of the report;
- b. Second, the NZIER paper must be considered alongside other research papers commissioned by the Trust, which are addressed below.

The other research

137. In its submissions to the High Court, the Trust drew attention to other papers that it considered were research, in particular, two papers by Dr Aric Sigman *Young People and Alcohol* and *Who Cares – Mothers, Daycare and Child wellbeing in New Zealand*.¹⁸⁸ Specifically, the Trust submits "Dr Sigman is a leading and well informed academic who has contributed extensively to the areas on which he has presented these research papers in New Zealand."¹⁸⁹

138. Collins J did not specifically redirect Charities Services and the Board to consider the other research, and the Trust has not made further submissions that Dr Sigman's reports should also be considered for the advancement of education.

139. The Trust has made submissions that several other papers show the Trust's purpose is educative: *Killing me Softly: Should Euthanasia be Legalised* (2014); *Making sense of the confusing new world of Gender Identity* (2015); "Defying Human nature": *An Analysis of New Zealand's 2007 Anti-Smacking Law* (2016); and *Child Poverty and Family Structure: What is the evidence telling us?* (2016).

¹⁸⁶ NZIER Report, 22.

¹⁸⁷ Family First Media Release 30 May 2016, <https://www.familyfirst.org.nz/2016/05/new-report-child-poverty-dont-mention-family-structure/> [3 November 2016].

¹⁸⁸ Family First High Court submissions at [81].

¹⁸⁹ Family First High Court submissions at [82].

140. The Board has considered each of those papers afresh and against the questions set out above. To summarise, the Board considers that these papers do not advance education in a charitable manner, and instead may be better characterised as “propaganda under the guise of research”.¹⁹⁰ The Board lays out this analysis in detail in Appendix A.
141. The Board has carefully considered the research, and, overall, considers that the Trust cannot be said to have a purpose to advance education in a charitable sense.
142. Much of the research meets the “minimum standard” criterion, discussed by *Re Collier* and *FAAR and FRSSH*. However, some aspects of the research can be considered analogous to the *Re Draco* situation and thus not education in the charitable sense. *Re Draco* held compiling and publishing facts already in the public domain does not amount to research, particularly where such compilation is done to support a particular point of view.¹⁹¹
143. Other than the NZIER report, there does not appear to be an independent, objective starting point of the analysis, rather each progresses from a point of view that aligns with the Trust’s point of view.
144. Some aspects of the research commissioned by the Trust may be capable of advancing education in a charitable manner if different processes were adopted. For example: if the papers were published at a university, it would be subject to the rigour of peer review. The nature of the manner of presentation would not seek to persuade the reader to a point of view, but rather permit opposite views to be expressed.¹⁹² However, in this case, each piece of research is commissioned for a specific purpose by the Trust aligned with its policy outcomes.
145. Further, the Board is concerned about the use to which research is put. The research papers are published with covering memorandums focussing on the parts of the research that support the Trust’s policy outcomes.¹⁹³
146. Accordingly, the Board do not consider the reports advance an educational purpose such that the Trust would be considered charitable.

¹⁹⁰ *Re Collier* at 91-92.

¹⁹¹ 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 *Draco* at [75].

¹⁹² An example: Rex Adhar is publishing “The Case Against Euthanasia and Assisted Suicide” in the *New Zealand Law Review*: http://www.otago.ac.nz/law/staff/rex_ahdar.html [accessed 4 November 2016].

¹⁹³ We note this is similar to the research in *Aid/Watch* discussed by Kiefel J and Heath J at [62] and [84].

147. The Board note the Trust’s submissions that “commissioned and published research will be in areas of concern to [the Trust] and within its objects of promoting and protecting the family, and for the paper to be education it is sufficient that it advances informed understanding of the issues, from whatever perspective, and not just deal as Collins J stated, with the perspectives with which the members of the Board of the Commission may agree.”¹⁹⁴
148. The Board considers that on the facts the Trust is not educating but advocating for a point of view. The other reports are essentially dissemination of the Trust’s point of view, rather than constituting educational research, based on the application of the case law outlined above. The Board have discussed above relevant case law in respect of contribution to “one side of the debate”.
149. The Trust has also submitted through its research “it seeks to serve an important social purpose” that is not carried out by other bodies.¹⁹⁵
150. The Board considers the Trust’s purpose is to promote its views, and the courts have consistently acknowledged the merit of many views being freely exchanged in a democracy.¹⁹⁶ This does not render them charitable. Rather *Greenpeace SC* cautioned that most purposes to promote causes would not be charitable. The Trust has accepted much of its activity is directed towards to promote its point of view on what is for the best of the traditional family (although it also considers its views will benefit all families).¹⁹⁷ As has been discussed in detail in the section above, the Board consider how the Trust is advocating to benefit families by promoting its point of view on what is for the best of the traditional family is not for the benefit of the public in a charitable sense. Thus the use of research, and papers, commissioned to support the Trust’s point of view, cannot transform its persuasion into an educational purpose.

Section 5(3)

151. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not preclude registration if it is merely ancillary to a charitable purpose. Pursuant to section 5(4) of the Act, a non-charitable purpose is ancillary if the non-charitable purpose is:
- a. ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, Trust or institution; and
 - b. not an independent purpose of the trust, Trust or institution.

¹⁹⁴ The Trust’s submissions at [45].

¹⁹⁵ The Trust’s submissions at [45].

¹⁹⁶ For example: *Greenpeace SC* at [71]; *Draco* at [72].

¹⁹⁷ The Trust’s High Court Submissions at [64].

152. The legal definition of "ancillary" requires that: (i) the purpose is sufficiently connected to its dominant charitable purposes; and (ii) the activities directed to that purpose are incidental as a proportion of the organisation's overall endeavour. The question of whether a purpose is sufficiently connected is the extent to which it is necessary to engage in the activity to advance the group's charitable purposes. The question of whether a purpose is incidental is not whether there are a certain number of pages on the website, or the quantity of submissions.¹⁹⁸ Rather "it is the way in which the philosophy is championed that must be measured against the relevant charitable purpose to determine whether, as a matter of degree, it is merely ancillary."¹⁹⁹
153. The Board consider the primary purpose of the Trust is to promote its view of the traditional family and, as established above, the Board do not consider this is charitable because the policies the Trust promotes cannot be seen to be for the public benefit in a charitable sense. The Board note that it had accepted in the initial analysis some aspects of the Trust's advocacy is capable of being charitable: specifically associated with preventing gambling machines being made available to people with gambling addictions. However, as indicated in that analysis the Board considers this is a very small part of the Trust's overall endeavour.
154. The Board accepts that the NZIER report is capable of advancing education in a charitable manner. The Trust submits that "[t]he production of this report alone, it is submitted, demonstrates the utility and benefit created by this Trust and amply qualifies it to be regarded as advancing education in New Zealand."²⁰⁰
155. The Board respectfully disagrees. The NZIER Report is one of twelve reports published on the research section of the Trust's website, which is one small component of the Trust's overall endeavour, and while the NZIER report may be considered educational, it is also used to support the advocacy of the Trust.
156. As their outputs of the 2015/16 year, the Trust lists:
- a. 58 newsletters sent to its supporters;
 - b. 101 media releases on various family issues;
 - c. The annual conference on Forum on the Family covering the issues of marriage, euthanasia, surrogacy, marijuana, parental rights, abortion and others;
 - d. PROTECT campaign on euthanasia (including 50,000 pamphlets sent throughout NZ to families and children);
 - e. 7 columns written for Christian Life magazine; and

¹⁹⁸ *Greenpeace of New Zealand Incorporated* [2011] NZHC 77 at [74].

¹⁹⁹ *Greenpeace of New Zealand Incorporated* [2011] NZHC 77 at [73].

²⁰⁰ The Trust's submissions at [39].

- f. 6 op-eds printed in mainstream newspapers both nationally and internationally.
157. These demonstrate the Trust's focus on promoting its point of view on how to protect the traditional family.
158. Moreover, the Trust has confirmed it has a purpose to promote the traditional family in its submissions.²⁰¹ The Board considers this confirms that the Trust's purpose to promote the traditional family cannot be ancillary to a purpose to advance education through the NZIER report, nor ancillary to the relief of need or any other charitable purpose.
159. The Board note Charities Services' initial assessment of financials which support this assessment.
160. The Board also note although it considers only the NZIER report can be seen to advance education, the Board have considered whether, in the case the Board considers they do advance education, whether the Trust's advocacy could be ancillary to an educational purpose. The Board consider even with annual research reports, the Trust's activities demonstrate a predominant focus on its points of view, and thus the Board do not consider it would advance education consistently with the previous cases.
161. Given the proportion of time, resources and reported output put into promoting its point of view on what is good for the traditional family, in a manner that the Board does not consider is charitable, the Board does not consider the Trust's purpose to promote the traditional family can be considered secondary, or incidental, in either proportion of overall time spent by the Trust, or qualitatively to a charitable purpose.

Conclusion on eligibility for registration

162. The Board had previously notified the Trust that it does not qualify for registration as it does not advance exclusively charitable purposes. The notice of 5 April 2016 outlined Charities Services' position, that the Trust has an independent purpose to promote what it considers will promote and protect the 'traditional' family. The Board considers that although the end of promoting family may be capable of being charitable, in this case, the Trust is advocating for positions which cannot be found to be for the public benefit in a charitable sense. Further, it does not consider the Trust has a genuinely educational purpose, and in any case, it would be ancillary to its main purposes.
163. In response, the Trust accepted its purpose is to promote the traditional family (although noted much of its advocacy would benefit all families), however it submitted:

²⁰¹ See for example: the Trust's court submissions, [55.2], [87].

- a. The promotion of the traditional family qualifies by analogy with the 'mental and moral improvement cases';
 - b. its educational purposes are genuine, through its most recent research reports; and
 - c. that Charities Services had not applied either the decision of *Greenpeace SC* or *Re Family First HC* accurately.
164. The Board has considered these submissions and the decisions of *Greenpeace SC* and *Re Family First HC* carefully.
165. First, the Board considers the decision of *Greenpeace SC* mandates a consideration of not just the Trust's end goal in its advocacy, but also the means it is using to achieve its end, and the manner in which it is conducting its advocacy. In the *Anti-Vivisection* case, the Court could point to the verifiable public benefit from vivisection research that outweighed any moral elevation from the protection of animals, in the Trust's case the Board do not consider it can be established that its positions will result in the benefit of the public.
166. Second, applying this approach to the Trust, although the end of promoting the traditional family is capable of being recognised as charitable, the Trust's means to achieve that end is to take positions on social issues that it considers will benefit Trust.
167. Third, the Board do not consider there is an analogy with the means in any of the cases submitted by the Trust. Rather, the closest analogy is with the *Molloy* decision, whose reasoning was supported by *Greenpeace SC*. In *Molloy*, in the context of the abortion, the court held where there were issues of moral, religious and social division, it would be difficult for a group to establish public benefit in a position on what would be for the moral edification of society. The Board considers the same reasoning applies to much of the advocacy of the Trust.
168. Fourth, the Board considers that although the NZIER report can be regarded as a genuine piece of research, it was used by the Trust to convey its point of view, and the Board do not consider the fact of the Trust commissioning research supporting its point of view establishes an independent educational purpose in the activities of the Trust. In addition, the Board considers its other papers do not meet the Court's approach to charitable research, as they are generally (1) not peer-reviewed, (2) written to persuade the reader to a point of view, and (3) used by the Trust to persuade its members to its already established points of view. Accordingly, we do not consider the Trust has a genuine educational purpose.
169. Finally, the Board considers there is no evidence the Trust's non-charitable purposes are ancillary to genuinely charitable purposes. Although some of the Trust's advocacy can be seen to advance charitable purposes, insofar it supports those in need, and the NZIER report constitutes genuine educational research, the Board considers the Trust's predominant purpose is to advocate its position on what is best for the traditional family, and this is not charitable.

Appendix 1: Substantive review of reports

1. This appendix assesses Family First New Zealand’s (the Trust) “research” that it has submitted advance education for the benefit of the public, against the test prescribed in the case law (discussed in the substantive analysis at para 109 to 131):
 - a. the nature of the research to determine if it is objective, neutral and balanced;
 - b. whether it has been reviewed by objective third parties; and
 - c. the manner of dissemination to determine whether it seeks to educate or persuade to a point of view.
2. Neither of these factors will independently determine whether a report can be considered as advancing an educational purpose, or advancing a purpose to promote the Trust’s point of view, however each contribute to a holistic assessment of each piece of research.
3. The Board have only assessed in detail the papers that the Trust has submitted have a genuine educational purpose in their submissions of 27 July 2016. The Board have also read and considered the other research papers composed by the Trust and consider, other than the NZIER report the other reports pose similar issues with considering the entity as charitable.

Killing Me Softly: Should Euthanasia Be Legalised (2014)

4. *Killing Me Softly: Should Euthanasia Be Legalised (2014)* (“the Euthanasia report”) presents the moral, ethical, and economic arguments that voluntary euthanasia should not be legalised.²⁰² The Trust has submitted “it is not a polemic statement but balanced and thoughtful in its treatment of the issues and would be a valuable resource for persons who are seeking to understand the issues and are looking for illumination on the arguments being put forward by those who oppose voluntary euthanasia.”²⁰³ The Euthanasia Report was commissioned by the Trust “in response to another promised attempt to change the law by Labour MP Maryan Street after the [2014] general election.”²⁰⁴ The report is written by an academic, Professor Rex Ahdar, from Otago University.

²⁰² *Euthanasia paper*, pages 12-21.

²⁰³ The Trust’s submissions at [41].

²⁰⁴ Media Release 12 May 2014: <https://www.familyfirst.org.nz/2014/05/euthanasia-report-warns-of-elder-abuse-coercion/> [accessed 1 November 2016].

5. The main body of the Euthanasia report sets out in detail arguments against voluntary euthanasia.²⁰⁵ This involves briefly summarising the arguments for voluntary euthanasia and then provides detailed critique, including references to other sources, to show why each of these arguments is not valid.²⁰⁶
6. The Euthanasia report contains some clearly educational components, for example: definitions of terminology, descriptions of legislative attempts to decriminalise voluntary euthanasia, the historical background, a description of administration of pain relief hastening death and the withdrawal of life prolonging treatment.²⁰⁷ It also appears to have been reviewed by another academic.²⁰⁸
7. The Euthanasia report concludes that while “the arguments in favour of euthanasia initially seem convincing” it is open to risks and abuses and result in the elderly feeling like a burden to society and pressured to take part, and that “on closer analysis the arguments for VE are less persuasive”.²⁰⁹ This language reflects the tone throughout the report.
8. The conclusion uses emotive language to re-enforce this view point (page 32):

There will be an irreversible alteration to the way society and the medical professional view the demise of the elderly, the disabled, the incurably afflicted and the terminally ill. Death will be planned, coordinated and state-sanctioned in a manner hitherto unknown. The era of therapeutic killing will have arrived.²¹⁰

9. Whilst acknowledging that the report contains some educative aspects, the Board considers that the report is ultimately a treatise on a point of view: that the status quo on euthanasia should be maintained.²¹¹ It provides evidence, and arguments to support this point of view, but it is nevertheless an argument from a point of view. In that respect, it is analogous to the paper at issue in *Southwood*. As identified in *Molloy* and in the report itself,²¹² these arguments seem incapable of determination by evidence.

²⁰⁵ *Euthanasia paper*, pages 23-31.

²⁰⁶ *Euthanasia paper*, Pages 12-22.

²⁰⁷ *Euthanasia paper*, pages 6-11.

²⁰⁸ *Euthanasia paper*, at 1; Dr John Kleinsman, Director of the Catholic Institute; <http://www.tci.ac.nz/24-staffprofiles/117-johnk>.

²⁰⁹ *Euthanasia paper*, Page 32.

²¹⁰ *Euthanasia paper*, page 32.

²¹¹ Family First Media Release 12 May 2014, <https://www.familyfirst.org.nz/2014/05/euthanasia-report-warns-of-elder-abuse-coercion/> [accessed 1 November 2016]

²¹² *Molloy* at [697]; We note the author cites the complexity of the logic from the comments of Lord Steyn in *Pretty v DPP* [2001] UKHL 61 at [54], noting specifically “the countervailing contentions of moral philosophers, medical experts and ordinary people are endless.”

10. The Trust clearly expresses its position that it is opposed to euthanasia as one of its key priorities, and the paper has been used to support the Trust's position on euthanasia.²¹³

“Boys Girls Other”: Making sense of the confusing new world of Gender Identity (2015)

11. *“Boys Girls Other”: Making sense of the confusing new world of Gender Identity* (the Gender Report)²¹⁴ was commissioned by the Trust “in response to an increasing number of ‘born in the wrong body’ stories involving children in the media, and ‘gender identity’ guidelines and policies being pushed at schools by governmental groups and advocacy organisations.”²¹⁵ The Trust has submitted “[i]t brings together, in a balanced way, a great deal of published work on this subject. [They] know of no other serious treatment of this contemporary issue.”²¹⁶ The Gender Report is written by Glenn T Stanton, Director for Family Formation Studies at Focus on the Family. Focus on the Family is a “global Christian ministry dedicated to helping families thrive.”²¹⁷ This is not peer-reviewed research, does not contain original empirical studies, and is instead written to communicate “the warnings and research of leading scholars and clinicians.”²¹⁸
12. The Gender Report opens with a quote from Sylviane Agacinski “professor of philosophy and leader in the French feminist movement”: “One is born a girl or boy, one becomes a woman or a man. The human species is divided in two, and like most other species, in only two. This division, which includes human beings without exception, is thus a dichotomy. In other words, every individual who is not man is woman. There is no third possibility. ...”²¹⁹

²¹³ “Euthanasia Report Warns of Elder Abuse and Coercion”, Family First Media Release (12 May 2014), <https://www.familyfirst.org.nz/2014/05/euthanasia-report-warns-of-elder-abuse-coercion/> [accessed 8/12/2016].

²¹⁴ “Boys Girls Other”: Making sense of the confusing new world of Gender Identity

²¹⁵ Family First Media Release 30 June 2015, <https://www.familyfirst.org.nz/2015/06/parents-schools-warned-about-harms-of-gender-ideology/> [accessed 1 November 2015].

²¹⁶ The Trust's submissions, at [42].

²¹⁷ <http://www.focusonthefamily.com/about> [accessed 1 November 2016].

²¹⁸ Family First Media Release 30 June 2015, <https://www.familyfirst.org.nz/2015/06/parents-schools-warned-about-harms-of-gender-ideology/> [accessed 1 November 2015].

²¹⁹ Gender Report, page 3.

13. The point of view expressed throughout the report is that “gender is sex”, rather than gender being independent of sex. The Board note the position of the World Health Organisation and Human Rights Commission on gender differs with this position.²²⁰ It is written in a “myth” verses “reality” format, where by myths about gender identities are critiqued. The seven myths are that:
- a. “Binary is Bad...Very, Very Bad” – i.e. that a binary, male female view of gender is negative.
 - b. Boy & Girl / Man & Women are social constructs – this section summarises research demonstrating that there are differences in genders, acknowledging exceptions, although argues “don’t exceptions actually prove the rule?”²²¹
 - c. Sexuality and Gender are different – this section criticises the main figures in the development of gender theory in concluding that the difference between sex and gender is a belief.²²²
 - d. Gender is Spectrum - this section involves a conversation with a transgendered person, noting that transgendered people tend to manifest as either male or female, further supporting the binary nature of gender.²²³
 - e. My Little Boy is Actually a Girl – this section discusses the implications of a diagnosis with Gender Identity Disorder, and criticises treatment methods acknowledging a non-binary approach.
 - f. Gender-Neutral Bathrooms are an Issue of Human Justice – this section discusses many different manifestations of a gendered view on policy.
 - g. The Legitimacy of Gender Studies – this section concludes the report by identifying the perceived flaws in the gender perspective.
14. The Gender Report summarises the opinions of the author, and criticises certain assumptions of the alternative view. Some research is quoted, however most of the Gender Report’s references appear to be newspaper articles and references to books the Gender Report criticises.²²⁴

²²⁰ See for example: the World Health Organisation <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/> [accessed 1 November 2016]; **Human Rights Commission.** (2008). *To be who I am. Kia noho au ki tooku anoo ao. Report of the inquiry into discrimination experienced by transgender people.* Auckland: NZ Human Rights Commission; https://www.hrc.co.nz/files/5714/2378/7661/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf [accessed 1 November 2016].

²²¹ Gender Report, page 27.

²²² Gender Report, page 34.

²²³ Gender Report, page 37.

²²⁴ Gender Report, page 58, note 104.

15. The writing demonstrates a point of view on a complex topic, using language indicating a clear position, rather than exploring both sides of the debate. For example:²²⁵

There is a natural and universal human essence of maleness and femaleness and as such, confusion about this in children is observed by scholars to be both rare and typically temporary (at 61).

It does matter that every person is either male or female, and to allow that some people are not because they feel they are not, regardless of what their body says, is dangerous, anti-human and unhealthy (at 48).

These are just some of the ways that make it obvious that when you stray from the true and natural road - trying to sell your new trail-blazing path as the real one - you end up with troubling contradictions.

This is exactly why we see the kinds of inconsistencies in gender theory that we do. It radically strays from the natural and humanly universal road. And examples given here are not exhaustive. You can no doubt come up with others, for they can tend to mutate out of control. That is the nature of lies or self-deception (at 57).

16. The Board considers that the Gender Report has similarities to the papers at issue in the *Southwood*, *Re Collier* and *Aid/Watch* decisions, in that it appears to be written to persuade readers to a point of view. In addition, there is no peer review, and the paper has been used by the Trust to promote its point of view, rather than educate the public.²²⁶

“Defying Human nature”: An Analysis of New Zealand’s 2007 Anti-Smacking Law (2016)

17. *Defying Human nature”: An Analysis of New Zealand’s 2007 Anti-Smacking Law (2016)* (“the Anti-Smacking Report”) is written by Bob McCroskie, Director of the Trust. It poses arguments against the amendments to s 59 of the Crimes Act 1961, including research demonstrating its ineffectiveness, polls, and political arguments towards adopting an amendment. As noted above, opposing the 2007 amendments to section 59 of the *Crimes Act 1961* was (and remains) one of the Trust’s key issues.²²⁷

²²⁵ Gender Report.

²²⁶ See for example: Analysis shows failure of Anti-Smacking Law, Media Release 11 February 2016 <https://www.familyfirst.org.nz/2016/02/analysis-shows-failure-of-anti-smacking-law/> [accessed 7/12/2016].

²²⁷ <https://www.familyfirst.org.nz/issues/anti-smacking-amendment/> [1 November 2016].

18. In support of its central argument the report presents information from a wide variety of sources including:
- a. statistics and graphs based on information from CYFs and the Police.²²⁸
 - b. legal opinions, including a Chen and Palmer legal opinion on the anti-smacking law.²²⁹
 - c. research to show that smacking is acceptable.²³⁰
 - d. research to show that other corrective actions by parents can also have adverse consequences.²³¹
 - e. polls to show that New Zealanders do not support the law change.²³²
 - f. alternative wording for section 59 which was not adopted.²³³
 - g. a referendum in which 87% rejected the law in a referendum.²³⁴
 - h. discussion of the proposed amendment by National MP Chester Borrows.²³⁵
 - i. A case study on Sweden to show that .²³⁶
 - j. UNICEF, CYF and Children's Commission Report in 2009 to outline factors commonly associated with child abuse.²³⁷
19. In some respects, the information reflects the type of “research” that was not found to constitute research in *Re Draco*.²³⁸ Rather, the report simply publishes information from other sources, accompanied by the opinion of the author (for example: polls on New Zealanders; alternative wording for section 59 that was not adopted).

²²⁸ Anti-Smacking Report, 13-14.

²²⁹ Anti-Smacking Report, 27.

²³⁰ Anti-Smacking Report, 32.

²³¹ Anti-Smacking Report, 33.

²³² Anti-Smacking Report, 34.

²³³ Anti-Smacking Report, 35.

²³⁴ Anti-Smacking Report, 36.

²³⁵ Anti-Smacking Report, 34.

²³⁶ Anti-Smacking Report, 37-38.

²³⁷ Anti-Smacking Report, 40.

²³⁸ Most of the sources quoted in the document are newspaper articles; the entity also publishes the polls it has taken, that are available from its site, and see documentaries it has produced to promote its view; Anti-Smacking Report, 28-29.

20. The Anti-Smacking Report criticises the review of the law in 2009.²³⁹ That review found although the policies and guidelines used by the New Zealand Police and Child, Youth and Family were appropriate, it recommended three improvements in terms of greater transparency (through publishing guidance), better support for parents (through a helpline), and improved monitoring (to determine how the amendments are working in practice).²⁴⁰ The Anti-Smacking Review queried why the Trust was not consulted in the process of the review, noting its position that the report misrepresented facts, and ultimately “failed to objectively hear the evidence from both sides.”²⁴¹
21. Language used throughout the Anti-Smacking Report represents the position of the Trust, i.e. that the amendments to section 59 should not have happened.²⁴²

The anti-smacking law has gone against traditional parenting and human nature, undermined the role of parents, failed to understand the special relationship and functioning of families, and has communicated to some children that they are now in the ‘driving seat’ and parents should be ‘put in their place’ (at 11).

Substantiated cases of all forms of abuse found by CYF have increased from approximately 6,000 in 2001 to as high as 23,000 in 2013. The past two years has seen a decrease in abuse found by CYF.

Is this welcome decrease because of an improving trend, or has CYF reached ‘saturation point’ i.e. they simply can’t cope with the increased level of notifications and the amount of work these notifications entail? (at 17).

22. The report concludes with the Trust’s point of view:²⁴³

It is clear that supporters of smacking bans were driven by political ideology rather than common sense, good science and sound policy making.

²³⁹ H Broad, P Hughes and N Latta, *Review of the New Zealand Police and Child, Youth and Family Policies and Procedures relating to the Crimes (Substituted Section 59) Amendment Act* (1 December 2009): https://www.beehive.govt.nz/sites/all/files/Sec59_review.pdf [accessed 1 November 2016].

²⁴⁰ Review of section 59, at 3.

²⁴¹ Anti-Smacking Report, 31.

²⁴² Anti-Smacking Report.

²⁴³ Anti-Smacking Report, 42.

23. The Board considers the Anti-Smacking Report proceeds from a point of view: that the anti-smacking amendment to the Crimes Act has resulted in inappropriate interference in the lives of New Zealanders, and has resulted in negative impacts in relation to the crime data. As reflected in the language, and conclusions employed by the author, any evidence gathered is used to support the point of view of the author. There is no independence in the authorship, as the author (Bob McCroskrie) is a trustee and the head of the operations of the Trust. Much of the paper simply reiterates and summarises the Trust's opposition to the original amendments. Accordingly, the Board considers it is persuasion under the guise of research under the *Southwood, Re Collier* and *Aid/Watch* decisions, and does not advance an educational purpose.

Child Poverty and Family Structure: What is the evidence telling us? (2016).

24. *Child Poverty and Family Structure: What is the evidence telling us? (2016)* ("the Poverty Report") is written by Lindsay Mitchell, who is a researcher, commentator and blogger on welfare issues since 2001.²⁴⁴ The Poverty Report queries whether there is more "child poverty" and "if yes than why".²⁴⁵ The Trust submits "the paper is directed to an area largely neglected in New Zealand as the Trust's earlier paper commissioned from the NZIER shows. Like the NZIER paper this is a significant contribution to education in New Zealand which would not have appeared apart from the efforts of [the Trust]."²⁴⁶
25. The paper proceeds on a similar basis to the NZIER paper, exploring statistics associated with the family, to demonstrate the correlations between family structure changes to economic factors associated with poverty. However, unlike the NZIER report, there is no noted peer review process, nor clear consideration of the limitations in the research.
26. The report cites a number of quotes from organisations supporting its positions, without necessarily providing reasons, for example:²⁴⁷

One reason that economic growth has not produced as much 'feel good' as might be expected is that higher rates of separation have cut many households' incomes. Building the Future, Steep Analysis Compendium, BRANZ

27. The language of the report is focussed on persuading to the point of view of the author.²⁴⁸

²⁴⁴ <http://lindsaymitchell.blogspot.co.nz/> [accessed 2 November 2016].

²⁴⁵ Poverty Report, page 2.

²⁴⁶ Poverty Report, page 2.

²⁴⁷ Poverty Report, page 28.

²⁴⁸ The NZIER Report, page 35.

Nevertheless, the interactions between unemployment and family structure are real and multiple. Unemployment can sever a two-parent family or stop its very formation. Loss of work can put breaking-point strain on relationships; unemployed and/or unemployable men often don't make desirable de facto or marriage partners; the care-giving duties of single parents can make it more difficult to be employed, or from the employer's viewpoint, make single parents less employable.

28. The concluding remarks also support this assessment:²⁴⁹

There are at least three belief systems which have heavily influenced social science thinking, which in turn influences policy-making, which in turn influences public behaviours...

The three relevant ideologies at work since 1961 have been feminism; socialism and moral relativism...

The political left - though the left/right divide has become less distinct in New Zealand - tends to most strongly adhere to these belief systems and resists evidence that their application is failing.

29. Based on the above, the Board considers the Poverty Report proceeds from a point of view: that child poverty can be blamed on family breakdown. As reflected in the language, and conclusions employed by the author, the evidence gathered is used to support the point of view of the author. There is no peer review, and the paper is used by the Trust to persuade to its point of view, rather than educate.²⁵⁰ Accordingly, the Board considers it is persuasion under the guise of research under the *Southwood* and *Re Collier* decisions, and does not advance an educational purpose.

²⁴⁹ The Poverty Report, page 40.

²⁵⁰ Family First Media Release, "Child Poverty: Don't Mention Family Structure," (30 May 2016); <https://www.familyfirst.org.nz/2016/05/new-report-child-poverty-dont-mention-family-structure/> [accessed 7/12/2016].