

Registration Decision: Nelson Grey Power Association Incorporated

Board Decision

1. The role of Te Rātā Atawhai, the Charities Registration Board (“the Board”), is to maintain the integrity of the Charities Register through ensuring that entities on the Charities Register qualify for registration. The Board makes its decisions by applying the law to the facts before it. The Board must decline to register an organisation when it does not advance a charitable purpose for the public benefit.
2. The Board’s decision is to decline to register Nelson Grey Power Association Incorporated (“the Society”) because it does not advance exclusively charitable purposes.
3. The Board considers that the Society has an independent purpose to support the Grey Power New Zealand Federation (“the Federation”), which does not have exclusively charitable purposes. The Board also considers that the Society’s focus is too broad to be charitable as the Society has an independent purpose to advocate particular views on any issue affecting older people that does not advance a public benefit in a way previously accepted as charitable. The Society’s broad advocacy is not restricted to supporting older people in charitable need or advancing any other charitable purpose.
4. In reaching its decision the Board acknowledges that the Society undertakes a number of activities that are consistent with a charitable public benefit to relieve the needs of the aged, such as providing direct support to those with age-related conditions or who are experiencing social isolation or exclusion because of their age. The Board has found, however, that the Society’s broad advocacy for points of view on issues of concern and its support for the Federation mean that its activities do not qualify as being for the public benefit in a charitable sense. The Board also notes that the Society has the freedom to continue to advocate and communicate its views on any issue of concern on behalf of older people.
5. The Board has followed the Courts’ guidance on assessing charitable purpose; specifically, the guidance of the Supreme Court in *Re Greenpeace of New Zealand Incorporated (“Greenpeace”)*,¹ and the High Court in *Re Family First New Zealand (“Family First”)*² and *Re the Society for Anti-Aging Research and the Society for Reversal of Solid State Hypothermia (“FAAR and FRSSH”)*.³

¹ *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“Greenpeace”).

² *Re Family First New Zealand* [2018] NZHC 2273 (“Family First”).

³ *Re the Society for Anti-Aging Research and the Society for the Reversal of Solid State Hypothermia* [2016] NZHC 2328 (“FAAR and FRSSH”).

6. Following the three-step process of Ellis J in *FAAR and FRSSH*, the Board has considered:
 - whether the Society’s stated purposes are capable of being charitable;
 - whether the Society’s activities are consistent with or supportive of a charitable purpose;
 - if the Society’s activities are found not to be charitable, whether they can be said to be merely ancillary to an identified charitable purpose.
7. The Board has carefully considered all of the Society’s submissions. The Board has also considered the information about the Society’s activities collected from the Society’s website and other public websites up until 1 July 2019. The Society was notified of all the website information that was collected, and was given the opportunity to respond. The Board has based its assessment on the application of the law to the facts before it.
8. This decision is separated into the following sections:
 - Background
 - The law on purposes to relieve the needs of the aged
 - What are the purposes of the Society?
 - Are the Society’s non-charitable purposes merely ancillary to a charitable purpose?
 - Determination.

Background

9. The Society applied for registration as a charity under the Charities Act 2005 (“the Act”) on 16 March 2018.
10. After receiving further information on 30 October 2018, Charities Services⁴ notified the Society on 27 February 2019 that it did not meet registration requirements because its purposes were not exclusively charitable.⁵ Specifically, the notice advised the Society that its purposes to promote particular points of view on issues affecting older people were independent, non-charitable purposes. The Society responded on 22 March 2019, submitting that its advocacy is similar to that of other registered entities, and that it advocates on the basis of the needs of people who raise their concerns with the Society.
11. On 12 July 2019, Charities Services sent the Society a second notice informing it that Charities Services continued to consider that the Society did not meet registration requirements, and inviting the Society to make final submissions before the application was referred to the Board.⁶ The Society provided further submissions on 28 August 2019 contesting Charities Services’ position and providing specific details about their recent advocacy activities.⁷

⁴ Charities Services, Ngā Ratonga Kaupapa Atawhai, is part of the Department of Internal Affairs, and administers the Charities Act 2005.

⁵ Charities Services’ first notice to the Society dated 27 February 2019.

⁶ Charities Services’ notice to the Society dated 12 July 2019.

⁷ The Society’s submissions to Charities Services dated 28 August 2019.

The law on purposes to relieve the needs of the aged

12. The Board considers that the purposes of the Society are largely to advocate on a broad range of issues in relation to the needs of older people. Relief of the aged is mentioned specifically in the Preamble to the Statute of Uses 1601,⁸ and is widely accepted as a charitable purpose. People over the age of 70 have been held to fall into the category of persons who are considered to need relief because of their age;⁹ however, a purpose to benefit people aged at least 50 is unlikely of itself to indicate an intention to relieve the “aged”.¹⁰ People who do not fall into the “aged” category may nevertheless have other needs such as disability and poverty that would qualify as a charitable purpose.
13. The people to whom an organisation provides relief should have an identified need associated with old age that requires support. For example, an organisation might organise opportunities for elderly to engage with others in order to reduce isolation,¹¹ or educate older people in the use of technology to reduce social exclusion.¹²
14. Organisations that provide benefits to any persons over a certain age, but which are not intended to provide relief for the needs attributable to that age group may not qualify for registration. For example, a wealthy older person would not be in need of financial assistance, and a purpose to provide for old people to learn to skydive, or to drive racing cars does not relate to the needs of those people that stem from their age.¹³

What are the purposes of the Society?

The Society’s stated purposes

15. The Board considers that the Society’s stated purposes at the time that it applied for registration could not be considered exclusively charitable; specifically its purposes to:
 - advance, support and protect the welfare and wellbeing of older persons in New Zealand, either directly or in conjunction with other Organisations or Bodies with similar aims or purposes (clause 4(a));
 - better the lives of all older persons through service, advocacy and education, and to investigate problems affecting their well-being (clause 4(b)); and
 - promote and achieve the widest possible identification of the Federation¹⁴ and this Association in New Zealand as the most appropriate and effective representation of older persons and their special concerns (clause 4(c)).¹⁵
16. The Board considers that the purposes mentioned above are not capable of being exclusively charitable; specifically, it considers that the Society’s promotion of the Federation does not advance charitable purposes (this is discussed further in paragraphs [23] to [30]); that the

⁸ 43 Eliz I c 4.

⁹ *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342 (HC).

¹⁰ Gino Dal Pont *Law of Charity* (LexisNexis/Butterworths, Australia, 2010) at 180.

¹¹ See, for example, Elder Care Volunteers (CC53705); Positive Ageing Trust Hawke’s Bay (CC32280).

¹² See, for example, The Federation of New Zealand Seniors Societies Inc. (CC20914).

¹³ Gino Dal Pont *Law of Charity* (LexisNexis/Butterworths, Australia, 2010) at 181.

¹⁴ Grey Power Federation New Zealand Incorporated (“the Federation”).

¹⁵ The Society’s rules document dated November 2015.

phrase “welfare and wellbeing” is too broad to be exclusively charitable;¹⁶ and that the advocacy mentioned includes advocacy for a point of view where charitable public benefit cannot be determined.

17. Following correspondence with Charities Services, the Society proposed new stated purposes, which are to:¹⁷
 - advance, support and protect the welfare and wellbeing of older persons;
 - educate older persons to help them maintain their independence;
 - encourage and support older persons to retain their involvement within the greater community as useful citizens with the ability to contribute to the common good;
 - make the wider community aware of the value of older people and their importance in society as a whole;
 - educate and inform organisations, institutions, other bodies and the public of the needs of older persons and their ability to contribute to the community;
 - cooperate with any other organisation carrying out charitable work similar to that of Nelson Grey Power.
18. The criteria to apply for membership to the Society is outlined in clause 7 of the rules document as “any person applying... must have attained the age of 50 years ...”¹⁸
19. Applying the first step of Ellis J’s three-step process in *FAAR and FRSSH*, the Board considers that, if formalised, the Society’s proposed stated purposes are capable of being charitable as relief of the aged (a charitable purpose under the fourth head).

The Society’s activities

20. Applying the second part of the *FAAR and FRSSH* process, the Board has considered whether the Society’s activities are consistent with, or supportive of, an identified charitable purpose. Applying the third part of the *FAAR and FRSSH* process, the Board has also considered whether any non-charitable purpose is ancillary to a charitable purpose being advanced by the Society.
21. Section 18(3)(a)(i) and (ii) of the Act provide that the current and proposed activities of an entity must be taken into consideration when determining whether the entity qualifies for registration under the Act. The High Court in *Family First* confirms that activities are not to be elevated to purposes; however, assessing an entity’s activities may assist in assessing the meaning of a stated purpose where the stated purpose is capable of bearing more than one meaning, or whether an entity is undertaking an unstated non-charitable purpose.¹⁹

¹⁶ *Inland Revenue Commissioners v Baddeley* [1955] AC 572.

¹⁷ The Society originally provided proposed new draft stated purposes in its submissions dated 28 August 2019. The Society subsequently provided further proposed stated purposes on 15 May 2020, which are not substantively different from those in its submissions of 28 August 2019.

¹⁸ The Society’s rules document dated November 2015, at clause 7.

¹⁹ *Family First* at [24].

22. The Board considers that the Society's activities indicate, first, that it has an independent non-charitable purpose to support the Federation; and secondly, an independent, non-stated purpose to broadly advocate on any issue that the Society considers affects older people, which includes promoting its own or its members' point of view on specific policies and legislation. This broad advocacy is not restricted to supporting older people in charitable need or advancing any other charitable purpose.

The Society's support for the Federation

23. The Federation is the national umbrella organisation to which the Society is affiliated. Its main purpose is to advocate on any legislation and policy issues that affect older people, including by regularly making submissions to Parliament and meeting with MPs and Government agencies. The Federation applied for registration with the Charities Commission on 4 July 2007 and was notified that it did not meet requirements due to "political advocacy purposes" on 29 January 2008.²⁰ The Federation did not respond to this correspondence, and the application was subsequently withdrawn.
24. The Board considers that the Federation has an independent purpose to advocate for points of view on any matters affecting older people, including those where charitable public benefit cannot be determined.²¹ The Board considers that because the Federation is not a registered charity, and does not have exclusively charitable purposes, a purpose to support the Federation is likewise not charitable.
25. Federation policies are developed with input from all Grey Power Associations in New Zealand at the Federation's AGM.²² The Society puts forward remits relevant to the Nelson community at the Federation AGM, and agrees to or declines to support remits of other Grey Power associations (based on the views of the Society's members).²³ The Society has submitted that it "does not necessarily support all remits to an AGM";²⁴ however, the Society's website summarises the Federation's policies, with no indication of which specific policies it does or does not support.²⁵
26. Further, the Society's website provides direct links to the Federation's website, and connects the history of "Grey Power" as a whole in a way that is difficult to separate. For example, the website lists the history, aims and objectives, and achievements of "Grey Power" alongside information specifically about the Society.²⁶

²⁰ At the time of the Federation's application, "political purposes", or advocacy for a cause, was considered to be non-charitable. This approach has since been modified by the Supreme Court's decision in *Greenpeace*: see paragraphs [34]-[36].

²¹ See further discussion of a purpose to advocate for a point of view at paragraphs [34]-[36].

²² The Society's submissions dated 22 March 2019.

²³ The Society's submissions dated 28 August 2019.

²⁴ The Society's submissions dated 22 March 2019.

²⁵ <https://greypowernelson.org.nz/policies/> [accessed 5 February 2019].

²⁶ <https://greypowernelson.org.nz/about> [accessed 5 February 2019].

27. The Society's members each pay a \$5 capitation fee as a levy to the Federation, which represents 30% of the Society's spending.²⁷ The Board considers that this is significant amount, and notes that the Society has not indicated that the funds it provides to the Federation via the levy are ring-fenced for any particular purpose. These matters further indicate that the Society has an independent, non-charitable purpose to support the Federation.
28. The Society has also submitted that its affiliation with the Federation is "organisational" rather than political, and that it functions "largely independently" of the Federation.²⁸ Further, as indicated above, the Society has proposed changing its stated purposes to remove express support for the Federation, and, as a consequence, undertaking a review of its website to better reflect the activities that it currently undertakes and its independence from the Federation.²⁹
29. The Board does not consider that the Society has provided sufficient information to demonstrate that it does not have an independent purpose to support the Federation, regardless of whether the Society's stated purposes and website are amended.
30. The Board considers that the proportion of the Society's funds spent on the capitation levy, the current promotion of the Federation on the Society's website, and the Society's engagement with the Federation via remits to AGMs show that it continues to have an independent purpose to support the non-charitable Federation.

The Society's broad advocacy purpose

31. The Board considers that the Society's activities indicate a focus on advocacy for particular viewpoints on a broad range of issues that the Society considers affect older people. The Society describes itself on its website as a lobby organisation "promoting the welfare and well-being of all citizens over the age of 50", whose mission is to be the "appropriate voice for all New Zealanders".³⁰ As noted previously, the Society's membership is open to any person who has reached the age of 50.
32. As discussed above at paragraphs [11] to [13], the Society's purpose to advocate on a broad range of issues affecting older people is not a charitable purpose because not all people over the age of 50 are in charitable need, and the Society's advocacy is not limited to relieving a need associated with age.

²⁷ The Society's submissions dated 22 March 2019.

²⁸ The Society's submissions dated 28 August 2019.

²⁹ The Society's submissions dated 28 August 2019.

³⁰ <http://greypowernelson.org.nz/> [accessed 9 October 2018].

33. The Society has submitted that its advocacy purposes are analogous to that of other organisations that support the needs of the elderly or provide advice to the public.³¹ The Society also submits that its advocacy activity is based on its members' needs, rather than its own points of view; however, the Board considers that the Society's advocacy for points of view includes both member-driven issues and those determined by the Society itself (for example, by resolution at Society meetings). The key issue is identifying charitable public benefit in the matters that the Society advocates on, regardless of whether the matters are member-driven or whether the Society advocates for its own agenda.
34. The Society undertakes various activities to advocate its points of view; for example, it submits remits to the Federation at the Federation's AGM, which are used to guide Federation policy.³² The Society's submission to Charities Services included the eight remits that the Society presented at the April 2018 Federation AGM.³³ The Society also makes submissions to local council about issues affecting its members.³⁴
35. The Supreme Court's decision in *Greenpeace* is the leading decision in New Zealand on the law relating to advocacy for a point of view or "political advocacy". The Supreme Court held that a wide range of activities fall within the scope of political advocacy, not just activities that are "political" in a narrow sense (such as lobbying, making submissions, or undertaking party-political activities), but it also includes advocacy by organisations established to persuade people to their specific views on issues or causes.³⁵
36. Although the Supreme Court has made it clear that an organisation that advocates for the advancement of a charitable purpose is capable of being registered,³⁶ the Court also cautioned that "[a]dvancement of causes will often, perhaps most often, be non-charitable",³⁷ because it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.³⁸ The Supreme Court approved the reasoning of Keifel J in *Aid/Watch Incorporated v Commissioner of Taxation*³⁹ that "reaching a conclusion of public benefit may be difficult where activities of an organisation largely involve the assertion of its views".⁴⁰
37. The Supreme Court held that to assess whether an advocacy purpose advances a public benefit depends on consideration of the high-level goals an organisation seeks to achieve, the policy, views or means an organisation promotes, and the particular methods or manner an organisation uses to achieve its high-level goal(s).⁴¹

³¹ The Society's submissions dated 22 March 2019.

³² The Society's submissions dated 22 March 2019.

³³ The Society's submissions dated 25 October 2018.

³⁴ The Society's submissions dated 28 August 2019.

³⁵ *Greenpeace* at [65].

³⁶ *Greenpeace* at [72].

³⁷ *Greenpeace* at [73].

³⁸ *Greenpeace* at [73].

³⁹ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] 241 CLR 539 at [68]-[69].

⁴⁰ *Greenpeace* at [73].

⁴¹ *Greenpeace* at [76].

38. The Board considers that the Society has an end goal or aim to relieve the needs associated with being elderly. The Board also considers that the particular methods/manner used by the Society are consistent with promoting public participation in decision making.⁴²
39. The Board considers, however, that the *means* promoted by the Society largely involve promoting various specific viewpoints on any issue that the Society (via consulting with its members) considers affect older people. Some of the Society's advocacy for a point of view included within that mandate is capable of advancing charitable purposes, such as its remit to the Federation AGM seeking respite care to be available to those living at home alone.⁴³ However, the Society's lobbying activities are not limited to advocacy for points of view where charitable public benefit can be determined, because of its broad mandate to promote or advocate for viewpoints on any issue that affects older people.
40. The Society advocates for free or reduced-cost health services for national superannuitants and older beneficiaries, such as free dental hygiene services, subsidised pharmaceutical medication prescribed by a doctor, and free screening and treatment for macular degeneration.⁴⁴ Advocacy of this nature would provide a charitable public benefit if it were aimed at those in charitable need, rather than *all* people over 50 years of age or all people entitled to National Superannuation.⁴⁵
41. Further, even if the Society's current advocacy activity is limited in practice to people over 60 or 65, it could, in the future, based on its rules and membership base, advocate on broad issues where people are not in charitable need.
42. Similarly, due to the broad mandate of the Society, some of its advocacy is for a point of view that is not analogous to a previously recognised charitable public benefit. By way of example, the Society is seeking government appointment of an Ombudsman for older people.⁴⁶ It is difficult to determine charitable public benefit in the appointment of particular governmental positions as a specific means to relieve the needs of older people, and the Board is not in a position to do so.
43. The broadness of the Society's purpose to advocate for various points of view on behalf of its members also means that the advocacy activities undertaken by the Society include, or could include, issues that are not related to relieving a need associated with age, or other charitable need. For example, the Society presented a submission to the Nelson City Council advocating for withdrawal of a neighbourhood reserve as a designated freedom camping site.⁴⁷ Although the Society acted on concerns brought to it by elderly residents of the surrounding area, the issue does not relate specifically to relieving a need related to age, such as health, social isolation, or poverty.

⁴² *Greenpeace* at [71] and [103].

⁴³ The Society's submissions dated 25 October 2018.

⁴⁴ The Society's submissions dated 25 October 2018.

⁴⁵ To be charitable as relief of the aged, financial assistance would only be charitable in so far as it is given to persons who are both elderly and poor: see Hubert Picarda *The Law and Practice Relating to Charities* (Third Edition, Butterworths, London, 1999) at 118.

⁴⁶ The Society's submissions dated 28 August 2019.

⁴⁷ The Society's submissions dated 25 October 2018.

44. The Society's advocacy activities are not limited to issues related to age or charitable need; it undertakes broad advocacy on any issue it considers has an impact on its members. The Board considers that the Society promotes its viewpoint on *any* matters that it considers to be in the interest of its members, not all of whom are necessarily in poverty or other charitable need, and including matters where charitable public benefit cannot be determined.
45. The Society does undertake other activities that are supportive of charitable purposes to relieve the needs of the aged, promote social cohesion and advance education, which do not involve advocacy for a point of view. For example, the Society produces a quarterly magazine, organises coffee mornings, co-hosts focus groups on issues that affect older persons and runs seminars on relevant topics.⁴⁸ The Society also undertakes individual advocacy, such as presenting submissions to council on behalf of elderly members,⁴⁹ which the Board considers is capable of advancing charitable purposes. The Board, however, does not consider that these activities (and other activities which advance a charitable purpose or purposes) are the main focus of the Society.

Conclusion

46. The Board considers that the Society has independent, non-charitable purposes to support the Federation, and to advocate for its own, or its members', points of view on issues that the Society considers affects older people. This includes advocacy for a point of view on issues not necessarily limited to those in charitable need, or where charitable public benefit is not able to be determined. The Board acknowledges that there may be charitable public benefit in some of the points of view that the Society promotes; however, the Society's advocacy is not limited to such topics.

Are the Society's non-charitable purposes merely ancillary to a charitable purpose?

47. Applying the third step of Ellis J's three-step process,⁵⁰ the Board has considered whether the Society's non-charitable purposes can be said to be merely ancillary to an identified charitable purpose.
48. As noted at paragraphs [24] to [26] above, the Society not only spends 30% of its funds on its levy to the Federation, it also submits remits to AGMs to be considered by the Federation. The Board considers that this engagement with the Federation demonstrates that the relationship between the two entities constitutes more than just a financial contribution by the Society, and is more than ancillary to any charitable purpose or purposes. The Federation is not a registered charity due to its focus on advocacy for specific views where charitable public benefit cannot be determined.
49. The Board also considers that the Society's broad advocacy for points of view on issues not related to charitable need, or where no charitable public benefit can be determined, is not an ancillary purpose. The Society has submitted that its advocacy is ancillary to its primary focus of supporting older persons, stating that committee members would spend "approximately 20 hours per month on advocacy visits, with a further 10-12 hours required

⁴⁸ The Society's submissions dated 25 October 2018.

⁴⁹ The Society's submissions dated 28 August 2019.

⁵⁰ *FAAR and FRSSH* at [88].

for substantive submissions”.⁵¹ The Society also provided its Profit and Loss document, emphasising that it contained no expenses for advocacy as this activity is “voluntary only”.⁵²

50. The Board considers that the Society’s assessment of its time and funds spent on advocacy appears to be based on an incorrect understanding of the activities that can be considered advocacy, and, specifically, advocacy for a point of view.
51. The Board considers that the Society’s primary focus is to advocate for points for view and notes that:
- The Society’s own submissions and activities information indicate a focus on advocacy and representing the needs of its members.
 - The Society advocates for a point of view on *any* issue of interest to its members. For example, the Society has stated that its activities attempt to influence local and central government,⁵³ and it has taken a specific point of view on issues affecting older people.⁵⁴
52. Further, the Society describes itself as a lobby organisation “promoting the welfare and well-being of all citizens over the age of 50”, whose mission is to be the “appropriate voice for all New Zealanders”.⁵⁵ The Society’s website also expressly defines “advocacy” as “a political process by an individual or group which aims to influence decisions within political, economic, and social systems and institutions”.⁵⁶ Although the Society has submitted that its website is out of date and no longer reflects the focus of the Society,⁵⁷ the Board considers that the Society’s own description of itself as a lobby organisation demonstrates that advocacy, particularly advocacy for a point of view, is a focus of the Society, and a core part of how it identifies itself.
53. In light of the information provided by the Society in support of its application and information on the Society’s website and from other public sources, the Board considers that the Society’s primary focus is to advocate for points of view on issues not related to charitable need, or where charitable public benefit cannot be determined. For the above reasons, the Board does not consider the Society’s purpose to promote its points of view can be said to be merely ancillary to an identified charitable purpose.

Determination

54. The Board determines that the Society is not qualified for registration as a charitable entity because it is not established for exclusively charitable purposes as required by section 13(1) of the Act.

⁵¹ The Society’s submissions dated 25 October 2018.

⁵² The Society’s submissions dated 25 October 2018.

⁵³ The Society’s submissions dated 22 March 2019.

⁵⁴ The Society’s submissions dated 25 October 2018 and 28 August 2019.

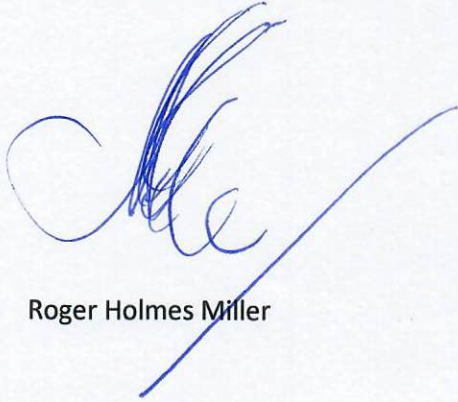
⁵⁵ <http://greypowernelson.org.nz/> [accessed 9 October 2018].

⁵⁶ <http://greypowernelson.org.nz/> [accessed 9 October 2018].

⁵⁷ The Society’s submissions dated 22 March 2019.

55. The Board considers that the Society has independent, non-charitable purposes to support a non-charitable organisation and advocate specific points of view on issues affecting older people. These purposes cannot be considered ancillary to the Society's charitable purposes.
56. The decision of the Board is therefore to decline to register the Society as a charity, pursuant to section 19 of the Act.

Signed for and on behalf of the Board



Roger Holmes Miller

Date

21st MAY 2020

