

**Dated: 9 February 2022**

**Registration Decision: New Zealand Entrepreneurs Rescue (NZER)**

**Board Decision**

1. The role of Te Rātā Atawhai, the independent 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 the New Zealand Entrepreneurs Rescue (NZER) (“the Society”) because it does not advance exclusively charitable purposes.
3. The Board considers that the Society’s primary purpose to promote the Society’s views about the New Zealand employment regime is not analogous to a recognised charitable purpose. The Board also considers that the Society does not advance education in a charitable manner.
4. The Board has carefully considered all of the Society’s submissions and has based its assessment on the application of the law to the facts before it.
5. This decision is separated into the following sections:
  - Background
  - Framework for registration
  - The law on advocacy purposes
  - The law on advancement of education
  - What are the purposes of the Society?
  - Are any non-charitable purposes ancillary?
  - Determination.

**Background**

6. The Society applied for registration as a charity in February 2020. Charities Services<sup>1</sup> sent the Society a notice that may lead to decline that advised the Society that Charities Services considered the Society has a non-charitable purpose to promote a view that does not

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<sup>1</sup> Charities Services, Ngā Ratonga Kaupapa Atawhai, administers the Charities Act 2005 (“the Act”).

advance a charitable public benefit, and it does not advance education in a charitable manner.<sup>2</sup> The Society responded, stating that its main purpose is to “alert” entrepreneurs.<sup>3</sup>

7. Charities Services sent the Society a further notice advising the Society that Charities Services considered the Society has a non-ancillary, non-charitable purpose to advocate for the reform of the New Zealand employment regime.<sup>4</sup> Charities Services invited further submissions from the Society on how its purpose or end goal is analogous to a recognised charitable purpose.
8. The Society responded on 10 April 2021 with submissions about how its purposes provide a public benefit, and indicated that it was “open to” altering its focus to its “Alert” and “Support” purposes.<sup>5</sup> The Society did not provide Charities Services revised draft stated purposes or indicate specifically how it intended to change its focus activities.
9. Charities Services sent a further notice to the Society acknowledging that the Society proposed to alter its focus to the “Alert” and “Support” purposes.<sup>6</sup> Charities Services advised the Society, however, that it considered that the Society has a non-ancillary, non-charitable purpose to assist all entrepreneurs to succeed in business. Charities Services also sought further activities information and submissions demonstrating how the Society’s end goal or purpose to assist entrepreneurs to succeed in business is charitable.
10. The Society responded to Charities Services’ further notice dated 11 June 2021, but did not address the specific issues and requests for further information in Charities Services’ notices of 29 March 2021 and 11 June 2021. Charities Services then sent a final notice to the Society, advising that the Society’s application would be referred to the Board for consideration, and asking for final submissions.<sup>7</sup> The Society did not provide any further submissions.

### **Framework for registration**

11. A society qualifies for registration under the Act if it is established and maintained for exclusively charitable purposes and is not carried on for the private pecuniary profit of any individual.<sup>8</sup>
12. Section 5(1) of the Act lists charitable purposes as any charitable purpose that relieves poverty, advances education or religion, or is otherwise beneficial to the community. To qualify as a registered charity, a society must advance a purpose that provides a public benefit previously recognised as charitable by the courts. The purpose must also provide a benefit to the public or a sufficient section of the public. Any non-charitable purposes must be ancillary, secondary, subordinate, or incidental to a charitable purpose.

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<sup>2</sup> Charities Services’ notice to the Society dated 17 July 2020.

<sup>3</sup> The Society’s email to Charities Services dated 6 August 2020.

<sup>4</sup> Charities Services’ notice to the Society dated 29 March 2021.

<sup>5</sup> The Society’s email to Charities Services dated 10 April 2021.

<sup>6</sup> Charities Services’ notice to the Society dated 11 June 2021.

<sup>7</sup> Charities Services’ notice to the Society dated 21 July 2021.

<sup>8</sup> Section 13(1)(b) of the Act.

13. Section 18(3) of the Act also requires the Board to have regard to the activities of an entity. The Supreme Court clarified in its decision in *Re Greenpeace of New Zealand Incorporated* that the purposes of an entity may be expressed in its statement of objects or may be inferred from the activities it undertakes.<sup>9</sup> This was qualified in the decision of the High Court in *Greenpeace of New Zealand Incorporated*; for example, the activities may help to determine the relative weight of an entity's stated objects.<sup>10</sup>
14. The Board's general approach to assessing charitable purpose follows the guidance of the courts; specifically, the guidance of the High Court in *Re the Society for Anti-Aging Research and the Society for Reversal of Solid State Hypothermia ("FAAR and FRSSH")*.<sup>11</sup> Following the three-step process of Ellis J in *FAAR and FRSSH*, the Board considers:
- 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.

### **The law on advocacy purposes**

15. The Board's approach to the assessment of advocacy purposes requires consideration of the ends, means and manner of an entity, as follows:<sup>12</sup>
- *Ends*: the end goal must be charitable by analogy to a previously accepted charitable purpose of public benefit. In some cases, the end goal will clearly be charitable; for example, if it is well defined and is an established charitable purpose such as protection of the environment or relief of poverty.
  - *Means*: The views promoted to achieve the end goal must either be a clear means to achieve a charitable end goal or be capable of demonstration through evidence as a means to achieve the end goal. The existence of competing views or interests does not prevent a finding of public benefit.
  - *Manner*: For most advocacy organisations, the manner (the methods or practical steps they take) can include activities such as petitions, publishing reports and submissions to Government. The Board has accepted that these methods meet registration requirements. The method of promotion may be an issue if the organisation is carrying out potentially illegal activities.

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<sup>9</sup> [2014] NZSC 105 at [14].

<sup>10</sup> [2020] NZHC 1999 at [22].

<sup>11</sup> *Re the Society for Anti-Aging Research and the Society for the Reversal of Solid State Hypothermia* [2016] NZHC 2328 ("*FAAR and FRSSH*").

<sup>12</sup> See *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105, [2015] 1 NZLR 169; *Greenpeace of New Zealand Incorporated* [2020] NZHC 1999; *Family First New Zealand v Charities Registration Board and Attorney General* [2020] NZCA 366.

## The law on advancement of education

16. To be charitable as advancement of education, an organisation's purpose must provide some form of education and ensure learning is passed on to others. Further, in order to be of charitable public benefit, the information provided must not be limited to one side of complex issues. For example, running a website that consists of the "combination of informational material ... and a series of opinion pieces, many of which hold a particular point of view", would not fall within the threshold of advancement of education.<sup>13</sup>
17. The High Court in *Re Draco* found that a website publishing pieces submitted by the public on different city and district councils and some editorial pieces did not meet the threshold test for the advancement of education in a charitable manner. Young J concluded that "the expressions of opinions were essentially 'propaganda' as understood in charities law. They presented one side of a debate, the opinion writer's view, on issues in the public arena which are essentially political."<sup>14</sup>

## What are the purposes of the Society?

### *The Society's stated purposes*

18. The Society's stated purposes are set out clause 2 of its rules:

"ALERT – Anyone considering forming a business and hiring employees in New Zealand needs to better understand the costs from time, money, and emotional well being. NZER seeks to alert the entrepreneur to the numerous, business destroying traps.

REFORM- NZER seeks to reform the Employment Regime to make it fair, transparent, and less burdensome for the entrepreneur. The small business is unable to afford the HR administration and the legal advice required to effectively deal with the confusing and highly biased Regime. There is no effective path to challenge the Regime's decisions or their violation of the legislation.

SUPPORT – NZER seeks to provide counseling and legal aid to New Zealand entrepreneurs that become entangled with the Employment Regime. The reality is that only a minority of companies are able to afford or survive one Personal Grievance (For a small fee, any employee can lodge action against an employer). Most are forced to settle out of court or face even greater, crippling consequences.

EXPOSE – A goal at NZER is to fund an international legal review of the New Zealand Employment Regime. Prejudicial bias and the structure and operation of the Employment Regime are two areas of significant concern. The legislation and the body of determinations themselves warrant international review. The lack of genuine right to appeal is disturbing. In some cases there may a human rights issue where individuals not party to an employment

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<sup>13</sup> *Re Draco Foundation (NZ) Charitable Trust* (2011) 3 NZTR 21-009 at [77] ("*Re Draco*"). Note that in *Family First CA* the Court of Appeal found in that case that commissioned research or reports that promoted one side of a political debate could advance education in a charitable manner. As the Society has not commissioned or undertaken research, however, the Board considers that the Court of Appeal's conclusion on this issue is not relevant to the assessment of the Society's activities.

<sup>14</sup> (2011) 3 NZTR 21-009 at [67].

agreement are forced before a partial tribunal. The embedded cultural bias against entrepreneurs in New Zealand is also a factor likely enabling biased decisions.”

19. The Board considers that the Society's stated purposes, read as a whole, are not capable of being charitable under the first step in the *FAAR and FRSSH* test set out above, at [14].
20. Specifically, applying the charitable public benefit test for advocacy purposes set out at [15] above, the Board considers that, read as a whole, the Society's stated purposes to promote its views about the New Zealand employment regime are not capable of being charitable because they do not have a charitable end goal.
21. The Board acknowledges that the provision of counselling, and provision of legal aid to people in charitable need, under the “Support” purpose, may be capable of being charitable. The Board notes, however, that the current wording of the “Support” clause is not limited to providing legal aid to those in poverty or other charitable need and could be provided to any entrepreneur that becomes “entangled with” the New Zealand employment regime. Similarly, the Board also acknowledges that the first sentence of the “Alert” purpose may refer to providing information to people intending to start a business, which is capable of advancing education. As indicated in [19] and [20], above, the Board considers, however, that the “Alert”, “Reform”, “Support” and “Expose” purposes, read together, are not capable of being charitable.

#### *The Society's activities*

22. The Society's main activity is to operate a website at [www.nzrescue.org](http://www.nzrescue.org). The Society also provided activities information with its application that reflects its stated purposes. The Board has considered whether these activities are consistent with charitable purposes under the second step of the test in *FAAR and FRSSH* at [12], above.
23. The Board considers the focus of the Society's activities is its website, which includes pages on each of the headings “Alert”, “Reform”, “Support” headings, each with more explicit information indicating the Society's views on each of these issues. For example:
  - The “Alert” page focuses on the Society's view that the New Zealand employment regime is biased against employers.<sup>15</sup>
  - The “Reform” page focuses on the premise that the existing employment regime could be improved by “end to end” legislative reform, allowing employees to contract out of the Employment Relations Act (ERA), addressing prejudicial bias against employers, and giving the existing ERA a plain, not technical, interpretation. This page also focuses on the costs to small businesses of dealing with “onerous regulation”, and an “elaborate, confusing, litigious system”.<sup>16</sup>

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<sup>15</sup> [www.nzrescue.org/Alert](http://www.nzrescue.org/Alert) (last accessed 6 October 2021).

<sup>16</sup> [www.nzrescue.org/Reform](http://www.nzrescue.org/Reform) (last accessed 6 October 2021).

- The “Support” page is focused on offering free counselling and legal aid to New Zealand entrepreneurs that “become entangled with the Employment Regime” and offers of free counselling to entrepreneurs “suffering under the New Zealand Employment Regime.”<sup>17</sup>
24. Other relevant pages on the website include additional information highlighting the Society's opinions about the New Zealand employment regime and seeking to assist New Zealand entrepreneurs.<sup>18</sup>
  25. The Board considers that the Society's activities are focused on promoting the Society's views about the New Zealand employment regime (for example, that the regime is biased against, and onerous for, employers and requires reform). The Board considers that the Society's advocacy activities do not support charitable purposes because they are not carried out in furtherance of a charitable end goal or aim.<sup>19</sup>
  26. Given the Board's conclusion that the Society's promotion of its views through its website does not have a charitable end goal, the Board considers it is not necessary to consider whether the Society's means and manner of promotion are charitable.
  27. Further, the Board does not consider that the Society's website material meets the threshold of advancement of education in a charitable manner because the content of the website is not passed on to others in a sufficiently structured manner, and is mainly focused on communicating the Society's opinions on the current New Zealand employment regime. As stated above, the courts have held that running a website that consists of the combination of informational material and a series of opinion pieces does not meet the threshold of advancement of education.<sup>20</sup>

#### *The Society's submissions*

28. The Society submitted in response to Charities Services' first notice, in summary:<sup>21</sup>

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<sup>17</sup> [www.nzrescue.org](http://www.nzrescue.org) “Home” page (last accessed 6 October 2021).

<sup>18</sup> [www.nzrescue.org](http://www.nzrescue.org) “Audience”, “Volunteer” and “Donate” pages (last accessed 6 October 2021).

<sup>19</sup> The Board does not consider that the end goal of the Society's advocacy activities is to promote economic development in a charitable manner, as the Society's activities do not seek to assist unemployed people or those in other charitable need, and nor is the Society focused on economically disadvantaged regions.

Similarly, the Board considers that the Society's advocacy activities do not have an end goal to promote industry in a charitable manner by analogy with applicable case law on promotion of industry generally; for example, *Crystal Palace Trustees v Minister of Town and Country Planning* [1951] 1 Ch 132 (promotion of industry, arts and commerce in a public place); *Barclay v DeLacy* (1995) 95 ATC 4496 at 4500 (promotion of skills training in the construction industry); and *Commissioner of Inland Revenue v White* (1980) 55 TC 651 at 659 (preserving and improving fine craftsmanship). The Society's focus on promoting its views about the New Zealand employment regime is inconsistent with the case law set out above.

<sup>20</sup> *Re Draco* (2011) 3 NZTR 21-009 at [36]-[52] and [73]-[77].

<sup>21</sup> The Society's email to Charities Services dated 6 August 2020 in response to Charities Services' first notice dated 17 July 2020.

- The Society’s main purpose is to “Alert” entrepreneurs and investors, as stated in its rules. Specifically, anyone considering forming a business and hiring employees in New Zealand needs to better understand the costs from time, money, and emotional well-being. The Society seeks to alert the entrepreneur to the numerous business-destroying traps.
  - Although the Society’s main purpose is the “Alert” purpose, an additional benefit of the Society’s purposes is better adherence to regulations and the avoidance of litigation.
  - The Society submitted that its objective to reform the New Zealand employment regime to make it fair, transparent, and less burdensome for the entrepreneur is “well beyond promoting a view”, and is also less of a focus in the context of a charitable organisation.
29. Following Charities Services’ second notice to the Society, the Society provided a further response.<sup>22</sup> The Society submitted, in summary:
- It is open to narrowing its focus to the “Alert” and “Support” efforts.
  - The Society considers that New Zealand employment law complexities are a causal factor in many business failures. There are often negative psychological and physical health consequences for those who experience business failure, and little or no community support for them. Many people whose businesses have failed have risked their life savings to start a business.
  - Many New Zealand entrepreneurs are disadvantaged in comparison with larger businesses, which have more resources and access to professional advice. Litigation costs in employment disputes are high for employers, whereas employees in a dispute are often able to secure legal assistance on a contingency basis.
  - The Society’s goal is to provide education at the “front end” of business formation to illuminate the elevated costs of employment in New Zealand. An effective, organised education effort through the “Alert” purpose, and support, will lead to reduced business failure and better outcomes for struggling entrepreneurs, which the Society submits is a positive societal benefit.
30. The Board acknowledges that there may be charitable public benefit from the Society’s activities to promote maintenance of the law through better adherence to regulations and to educate businesses about how to avoid litigation. The Board considers, however, that these activities are not the focus of the Society, as demonstrated by its website. The Board considers that the focus of the Society, as shown by its website, is to promote its views about the New Zealand employment regime.
31. The Board acknowledges the Society’s openness to narrowing its focus to the “Alert” and “Support” purposes; however, even if the Society were to narrow its purposes and focus in this way, the Board considers that the Society’s primary focus would continue to be to promote its views about under the current employment regime. The Board further notes

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<sup>22</sup> The Society’s email to Charities Services dated 10 April 2021.

that the Society has not provided amended draft stated purposes or indicated that it would alter its website to reflect its proposed change of focus.

32. Further, for the reasons given above, the Society's "Alert" purpose does not meet the requirements for advancing education in a charitable manner. The Society has not provided any further information or submissions about how activities under its "Alert" purpose advance education in a charitable manner or support any other recognised charitable purpose.
33. The Board acknowledges the Society's statement that business loss can result in negative psychological and physical health consequences, and financial loss. The Board notes, however, that the Society has provided no further activities information describing what its counselling activities will be to alleviate such health consequences, or to provide legal aid to people in charitable need.<sup>23</sup> For this reason, the Board is unable to conclude that these activities support charitable purposes, or that they are a current focus activity of the Society.

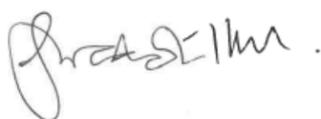
#### **Are any non-charitable purposes ancillary?**

34. The Board considers that the Society's focus, as indicated by the Society's website, is to promote its views about the New Zealand employment regime. For this reason, the Board considers that the Society's non-charitable purpose is more than ancillary.

#### **Determination**

35. 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.
36. The Board considers that the Society's purposes are not exclusively charitable because it has a non-ancillary, non-charitable purpose to promote its views about the New Zealand employment regime. Further, the Society's activities do not advance education in a charitable manner. Therefore, the Board considers that the Society does not meet registration requirements.
37. 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



Gwen Keel

Date 9 February 2022

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<sup>23</sup> Charities Services' notice to the Society dated 11 June 2021.