

Decision No: 2018-2

Dated: 19 April 2018

**Review Decision: Save Animals From Exploitation Incorporated (CC40428)**

**Board Decision**

1. The role of 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 can direct charities to be removed from the Charities Register when they do not advance a charitable purpose for the public benefit<sup>1</sup> and it is in the public benefit to remove them.<sup>2</sup>
2. A purpose is charitable if it advances a public benefit in a way that is analogous to cases that have previously been held to be charitable.<sup>3</sup> The Board makes its decisions based on the facts before it, applying the law including relevant case law,<sup>4</sup> and maintaining consistency of approach with previous Board decisions.
3. The Board carried out a full review of the eligibility of Save Animals From Exploitation Incorporated (“SAFE”) for registration. The review of SAFE arose after Charities Services<sup>5</sup> received a complaint in June 2015, followed by a petition in December 2015, that SAFE was not advancing charitable purposes and should have its charitable status revoked. Charities Services wrote to SAFE to ask for information on SAFE’s activities on 8 March 2016, met SAFE on 7 March 2017, and wrote to SAFE on 8 March 2017 to ask for more information. SAFE provided the requested information on 18 April 2016 and 30 May 2017.
4. The Board’s decision is to direct that SAFE remain on the Charities Register because it advances charitable purposes and any non-charitable purpose is merely ancillary to its charitable purposes.
5. The Board considers that SAFE has charitable purposes to advance education and to advocate on animal welfare issues. The Board considers SAFE’s main advocacy purposes provide a public benefit in a way previously accepted as charitable by the courts. The Board has not made a determination on some of SAFE’s other advocacy for points of view on animal welfare laws and regulation, but considers that this advocacy is merely ancillary to SAFE’s identified charitable purposes.

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<sup>1</sup> Sections 13(1)(a) and 32(1)(a) of the Charities Act 2005 (“the Act”).

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

<sup>3</sup> *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“*Re Greenpeace*”) at [18], [30], and [31].

<sup>4</sup> In particular, the Board has applied the guidance of the courts in *Re Greenpeace*, *Re Family First New Zealand* [2015] NZHC 1493 (“*Re Family First*”), and *Re the Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia* (“*FAAR and FRSSH*”).

<sup>5</sup> Charities Services, Ngā Rātonga Kaupapa Atawhai, is part of the Department of Internal Affairs, and administers the Act.

6. The Board disagrees with some of SAFE’s submissions on assessing charitable purpose.<sup>6</sup> In particular, the Board notes that the Supreme Court rejected presumption of charitable status, and held that a purpose is charitable if it advances a public benefit in a way that is analogous to previous cases.<sup>7</sup> Although activities are not conflated with purposes, the Charities Act 2005 (“the Act”) and subsequent court decisions confirm that the chief executive and/or the Board must have regard to activities.<sup>8</sup> The purposes of an entity may be expressed in its statement of objects or inferred from the activities it undertakes.<sup>9</sup>

#### **What are the purposes of SAFE?**

7. The Board considers that SAFE’s stated purposes to advance education on human animal relations and advance animal welfare are capable of being charitable.<sup>10</sup> The Board has considered whether SAFE’s activities are consistent with or supportive of an identified charitable purpose.

#### **Does SAFE have a charitable purpose to advance education?**

8. The advancement of education is a charitable purpose.<sup>11</sup> In order for a purpose to advance education, the education must be sufficiently structured and meet a minimum standard.<sup>12</sup> The information must be presented in a balanced, objective and neutral manner, rather than expressing a one-sided perspective intended to persuade the public to a particular point of view.<sup>13</sup>
9. The Board considers that SAFE advances education through its “Animals & Us” secondary school educational programme. The “Animals & Us” textbook series covers a recognised academic subject and is sufficiently structured to ensure learning is advanced. The textbooks were created by educators, provide clear links to the New Zealand curriculum and have been peer-reviewed by teachers and academics working in the field of human-animal studies. The textbooks proceed from an independent objective starting point and attempt to offer different perspectives on the issues covered.

#### **Does SAFE have a charitable purpose to advance animal welfare?**

10. The advancement of animal welfare has been accepted as a charitable purpose, based on its moral improvement of humankind, rather than the benefits to the animals themselves.<sup>14</sup> Purposes to advance animal welfare are not, however, always

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<sup>6</sup> Submissions from SAFE received 30 May 2017.

<sup>7</sup> *Re Greenpeace* at [27]–[31].

<sup>8</sup> Section 18(3)(b) of the Act. *Re Greenpeace* at [14], *Re Family First* at [24], *FAAR and FRSSH* at [88].

<sup>9</sup> *Re Greenpeace* at [14].

<sup>10</sup> Clause 2 of SAFE’s rules.

<sup>11</sup> Section 5(1) of the Act.

<sup>12</sup> *FAAR and FRSSH* at [56]; *Re Collier* [1998] 1 NZLR 81 (HC) at 91–92; *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10, (1999) 169 DLR (4th) 34 at [171], adopted by Ronald Young J in *Re Draco Foundation (NZ) Charitable Trust* (2011) 25 NZTC 20-023 (HC) at [75].

<sup>13</sup> *Aid/Watch Incorporated v Commissioner of Taxation* [2010] 241 CLR 539 at [68] and [84].

<sup>14</sup> *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 696; *Caldwell v Fleming* [1927] NZLR 145.

charitable, particularly where the public benefit in the promotion of moral improvement is outweighed by evidence of another public benefit.<sup>15</sup>

11. The Board considers that SAFE has an independent purpose to advocate points of views on animal welfare issues. Although the Supreme Court in *Re Greenpeace* held that advocacy can be charitable, it indicated that promoting a cause or advocating a particular viewpoint will not often be charitable. This is because it is not possible to say whether the views promoted are for the public benefit in the way the law recognises as charitable.<sup>16</sup>
12. The Board considers that the focus of SAFE's advocacy is on providing information to the public on animal welfare issues to raise public awareness of cruelty to animals, help the public make decisions that reduce animal cruelty, and promote the upholding and enforcement of animal welfare regulations. SAFE's public awareness campaigns inform the public about how animal suffering is caused by human behaviour, encourage the public to adopt diets and other lifestyle choices that do not involve animal cruelty, and draw the Government's attention to breaches of animal welfare legislation. The Board considers that this advocacy provides, on balance, a public benefit similar to previous cases on the advancement of animal welfare.
13. The Board has not formed a view on whether SAFE's advocacy on animal welfare laws and regulation, and industry practices advances a charitable purpose, but considers that SAFE's advocacy in this area is a small part of SAFE's overall activities and is connected to SAFE's charitable purposes. For this reason the Board considers that it is merely ancillary to SAFE's identified charitable purposes.

#### Determination

14. The Board determines that SAFE continues to qualify for registration as a charitable entity because it is established for exclusively charitable purposes as required by section 13(1) of the Act.

Signed for and on behalf of the Board

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Roger Holmes Miller

19th Aug 2018  
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Date

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<sup>15</sup> *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 at 47-48.

<sup>16</sup> *Re Greenpeace* at [73] and [116].