

## Registration Decision: Shooters Lottery Incorporated

### 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 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.<sup>1</sup>
2. The Board’s decision is to decline to register Shooters Lottery Incorporated (“the Society”) because it does not advance exclusively charitable purposes.
3. The Board considers that the Society has an independent purpose to promote specific viewpoints on firearms issues in a way that cannot be found to be in the public benefit in the charitable sense.
4. The Board considers the Society may have a charitable purpose to advance education, but this does not qualify the Society for registration as it is not the Society’s primary focus.
5. Following the three-step process of Ellis J in *Re the Foundation for Anti-Aging Research and the Foundation for Reversal of Solid State Hypothermia* (“FARR AND FRSSH”)<sup>2</sup> 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.
6. The Board has carefully considered all of the Society’s submissions received. The Board has also considered the information about the Society’s activities collected by Charities Services<sup>3</sup> from the Society’s website and external websites up until 4 December 2018. The Society was notified of all the website information that Charities Services collected and was given the opportunity to respond.

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<sup>1</sup> Section 19(4) of the Charities Act 2005 (“the Act”).

<sup>2</sup> *Re the Foundation for Anti-Aging Research and the Foundation for the Reversal of Solid State Hypothermia* [2016] NZHC 2328 (“FAAR and FRSSH”).

<sup>3</sup> Charities Services, Ngā Ratonga Kaupapa Atawhai, is part of the Department of Internal Affairs, and administers the Act.

7. This decision is separated into the following sections:
- Background.
  - What are the purposes of the Society?
  - The law on advocacy purposes.
  - Does the Society have a charitable purpose to protect human life?
  - Is the Society's advocacy merely ancillary to a charitable purpose?
  - Does the Society have a charitable purpose to advance education?
  - Determination.

### **Background**

8. The Society applied for registration as a charity under the Charities Act 2005 ("the Act") on 18 December 2017.
9. On 2 August 2018, Charities Services notified the Society that it did not meet registration requirements because its purposes were not exclusively charitable.<sup>4</sup> This notice advised the Society that its purposes to promote its own particular points of view were not charitable and that the winding up clause did not meet registration requirements. The Society responded on the same date, providing its "Firearms Policy Briefing (July 2018)" and a "Proposed Firearm Policy".<sup>5</sup>
10. On 30 August 2018, Charities Services sent the Society a second notice informing that it still considered the Society did not meet registration requirements.<sup>6</sup> The Society provided further submissions on the same date, contesting Charities Services' position and requesting information on how decisions are reached.<sup>7</sup>
11. On 4 December 2018, Charities Services sent a third notice to the Society and responded to the Society's request for information about how decisions are reached.<sup>8</sup> The Society was invited to make final submissions to be taken into consideration before the application was referred to the Board.
12. On 28 January 2019, Charities Services sent the Society a reminder email and sought clarification on whether the Society wished to make final submissions or withdraw the application.<sup>9</sup> The Society responded on 29 January 2019 reasserting earlier submissions it had made.<sup>10</sup> Charities Services sent a further email seeking clarification from the Society.<sup>11</sup> The Society provided no further response.

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<sup>4</sup> Charities Services' first notice to the Society dated 2 August 2018.

<sup>5</sup> The Society's submissions to Charities Services dated 2 August 2018.

<sup>6</sup> Charities Services' notice to the Society dated 30 August 2018.

<sup>7</sup> The Society's submissions to Charities Services dated 30 August 2018.

<sup>8</sup> Charities Services' notice to the Society dated 4 December 2018.

<sup>9</sup> Charities Services reminder email dated 28 January 2019.

<sup>10</sup> The Society's response to Charities Services email of 29 January 2019, dated 29 January 2019.

<sup>11</sup> Charities Services clarification email dated 29 January 2019.

### What are the purposes of the Society?

13. The Society's stated purposes at clause 3.1 of its Rules are to:<sup>12</sup>
  - A. Promote safety education among New Zealand's lawful firearm owners.
  - B. Advocate for best practice controls of firearms in New Zealand.
  - C. Advocate for stricter policy in the sentencing of those who offend with firearms.
  - D. Build and maintain a mailing list of New Zealand firearm owners – in support of the above listed goals.
14. Applying the first step of Ellis J's three step process in *FAAR and FRSSH*, the Board considers that the Society's stated education purpose at clause 3.1A is capable of being charitable.
15. The Board considers it is unclear whether the Society's stated advocacy purposes are capable of being charitable.
16. 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, or whether any non-charitable purpose is ancillary to a charitable purpose being advanced by the Society.

### The law on advocacy purposes

17. The Supreme Court's decision of *Re Greenpeace of New Zealand Incorporated*<sup>13</sup> is the leading decision in New Zealand on the law relating to 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). Rather, it also includes organisations established to persuade people to their specific views on issues or causes.<sup>14</sup>
18. 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,<sup>15</sup> the Court also cautioned that "[a]dvancement of causes will often, perhaps most often, be non-charitable",<sup>16</sup> because it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.<sup>17</sup> The Supreme Court approved the reasoning of Keifel J in *Aid/Watch Incorporated v Commissioner of Taxation* ("*Aid/Watch*")<sup>18</sup> that "reaching a conclusion of public benefit may be difficult where activities of an organisation largely involve the assertion of its views".<sup>19</sup>

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<sup>12</sup> "Rules of Shooters Lottery Incorporated" dated 25 November 2017.

<sup>13</sup> *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 ("Re Greenpeace"), see also *Family First of New Zealand* [2018] NZHC 2273 ("Family First") at [12].

<sup>14</sup> *Re Greenpeace* at [65].

<sup>15</sup> *Re Greenpeace* at [72].

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

<sup>17</sup> *Re Greenpeace* at [73].

<sup>18</sup> *Aid/Watch Incorporated v Commissioner of Taxation* [2010] 241 CLR 539 at [68]-[69] ("*Aid/Watch*").

<sup>19</sup> *Re Greenpeace* at [73].

19. 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).<sup>20</sup>
20. The Supreme Court's approach was confirmed in the recent decision of the High Court of *Family First of New Zealand*.<sup>21</sup> The High Court considered that:<sup>22</sup>

*Greenpeace* opens the door to charitable status to the extent that the purposes of any organisation seeking charitable status must be examined, whether or not those purposes are to advocate for something. Whether, however, *Greenpeace* will lead to a different outcome is doubtful.

21. The High Court noted "the reality that establishing a public benefit has always been a hurdle for those whose primary purpose is solely to promote a cause, and still is"<sup>23</sup> and that, "the advocacy cases where charitable status has been acknowledged are scarce, and seemingly increasingly limited to purposes of almost universal acceptance."<sup>24</sup>
22. By way of example, high level goals such as the protection of the environment and the promotion of human rights are accepted as being charitable. Within those high level goals however, there would still be much that is disputed. For example, what threatens the environment and how it is best protected. The High Court considered that "the particular advocacy focus of an organisation could nevertheless be for a point of view that is subject to debate and concerning which the specific achievement may not be able to be shown in the public benefit".<sup>25</sup>

#### **Does the Society have a charitable purpose to protect human life?**

23. The Society has submitted that its advocacy purposes are analogous to that of organisations which campaign for children's car seats.<sup>26</sup>
24. The protection of human life and property has been accepted as a charitable purpose. Previous case law has acknowledged that this includes purposes which directly contribute to saving the lives of people who are in danger, or on protecting life, such as the provision of public fire brigades or lifeboats and the promotion of road safety.<sup>27</sup>
25. The Board acknowledges that the Society's end goals may include protecting human life. The Board also acknowledges that the particular methods/manner used by the Society is consistent with promoting public participation in decision making.<sup>28</sup>

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<sup>20</sup> *Re Greenpeace* at [76].

<sup>21</sup> *Family First*.

<sup>22</sup> *Family First* at [49], citing *Re Greenpeace* at [126].

<sup>23</sup> *Family First* at [51].

<sup>24</sup> *Family First* at [65].

<sup>25</sup> *Family First* at [52]. See also *Re Greenpeace* at [71] and [116].

<sup>26</sup> The Society's submissions to Charities Services dated 2 August 2018.

<sup>27</sup> See for example *Johnston v Swann* (1818) 3 Madd 457, *Re Workingham Fire Brigade Trusts* [1951] Ch 373, *The League of Highway Safety and Safe Drivers Ltd* [1965] Ch Com Rep 27.

<sup>28</sup> *Re Greenpeace* at [71] and [103].

26. The Board considers however, that the means promoted by the Society largely involve promoting its own specific viewpoint on firearms laws and regulation in New Zealand. The Society seeks to protect the interests of what it considers to be responsible gun owners, while advocating for stricter sentencing policies for firearms offenders. For example:
- The Society advocates for changes in sentencing policy which are aimed at making the theft, criminal use, and possession of firearms for crime an aggravating factor in sentencing.<sup>29</sup>
  - The Society opposes home detention sentences for possession of sawn-off shotguns and AK47s.<sup>30</sup>
  - The Society opposes the registration of all firearms,<sup>31</sup> and supports a lifetime firearm license system.<sup>32</sup>
  - The Society supports the establishment of an independent oversight panel to monitor policy management of the Arms Act 1983, on the basis that the Police are currently acting outside of this legislation.<sup>33</sup>
  - The Society supports the views asserted in the blog “Kiwi Gun Blog”.<sup>34</sup> This blog was created by the Society’s President, Mike Loder, with “the goal...to keep the shooters of New Zealand up to date on the threats to their rights of responsible firearm ownership. Then to provide them with the information and guidance to counter such attacks.”<sup>35</sup> The blog supports “harsh, mandatory, no parole sentences for the misuse of firearms... as the only practical solution to ending our moderate gun problems.”<sup>36</sup> The blog also encourages readers to “Please contact your MP and demand that the focus be taken away from punishing lawful shooters and put where it belongs; on the joke sentences from our joke of a justice system.”<sup>37</sup>

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<sup>29</sup> <http://shooterslottery.org.nz/html/policy.html> [last accessed 3 December 2018]. See also for example <https://kiwigunblog.wordpress.com/2018/11/05/shooters-demand-serious-penalties-for-armed-offending/> and <http://shooterslottery.org.nz/html/news.html> [last accessed 3 December 2018].

<sup>30</sup> <http://shooterslottery.org.nz/html/policy.html> [last accessed 3 December 2018].

<sup>31</sup> The Society’s July 2018 Firearm Policy Briefing (“Policy Briefing”), available at [http://shooterslottery.org.nz/Firearm\\_Policy\\_Briefing\\_2018.pdf](http://shooterslottery.org.nz/Firearm_Policy_Briefing_2018.pdf) [last accessed 3 December 2018].

<sup>32</sup> <http://shooterslottery.org.nz/html/policy.html> [last accessed 3 December 2018].

<sup>33</sup> Policy Briefing. See also for example <https://kiwigunblog.wordpress.com/2018/11/07/police-refuse-to-tell-us-the-law-again/> and <https://kiwigunblog.wordpress.com/2018/11/07/registration-by-stealth/> [both last accessed 3 December 2018].

<sup>34</sup> <https://kiwigunblog.wordpress.com/> [last accessed 3 December 2018]. See also the Society’s Facebook page [https://www.facebook.com/pg/ShootersLottery/posts/?ref=page\\_internal](https://www.facebook.com/pg/ShootersLottery/posts/?ref=page_internal) [last accessed 3 December 2018].

<sup>35</sup> <https://kiwigunblog.wordpress.com/about/> [last accessed 3 December 2018].

<sup>36</sup> <https://kiwigunblog.wordpress.com/2017/02/25/the-real-problem-example-1/> [last accessed 3 December 2018].

<sup>37</sup> <https://kiwigunblog.wordpress.com/2017/02/25/the-real-problem-example-2/>. See also <https://kiwigunblog.wordpress.com/2018/06/18/cut-down-guns/> [both last accessed 3 December 2018].

27. The Society's activities include:
- Establishing a mailing list so that "in times of threat to our collective rights as responsible gun owners – we will inform our list of exactly what is happening. So they can take action to nip it in the bud."<sup>38</sup>
  - Producing information packs for Members of Parliament, infographic style viral videos, and guide materials for the media which it refers to collectively as "pro shooting initiatives."<sup>39</sup>
  - Producing policy statements which advocate for changes to specific firearm policies and laws.<sup>40</sup>
  - Meeting with decision makers, such as the Independent Police Conduct Authority to set out the Society's concerns with current firearm laws, and what it considers to be the position of New Zealand's firearm users.<sup>41</sup>
28. After considering information about the Society's activities from its website,<sup>42</sup> Facebook page,<sup>43</sup> and relevant information from the public domain,<sup>44</sup> the Board considers that the Society has an independent purpose to advocate its own specific viewpoint on firearms law and regulation, and sentencing law.
29. Previous cases have accepted that the promotion of human life and property can be charitable, when it directly contributes to saving the lives of people who are in danger, and on protecting life. The Board does not consider that the Society's advocacy is analogous to previous cases on the protection of human life and property – it is simply expressing its own opinion on how firearms policies and laws should be changed in New Zealand.
30. The Society's advocacy is for a point of view that is subject to debate, and which raises broader considerations such as balancing the interests of licensed firearms owners, the purposes and goals of sentencing and the wider justice system, the efficiency and effectiveness of New Zealand Police, and the safety of the general public. Although the Society's advocacy is no doubt supported by a section of the community, the Board considers that on balance, it is not possible to say whether the views promoted by the Society provide a public benefit in a way the law recognises as charitable.

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<sup>38</sup> <http://shooterslottery.org.nz/html/about.html> [last accessed 3 December 2018].

<sup>39</sup> <http://shooterslottery.org.nz/html/donations.html> [last accessed 3 December 2018].

<sup>40</sup> Firearm Policy.

<sup>41</sup> <https://kiwigunblog.wordpress.com/2018/11/27/ipca-to-suggest-gun-law-changes/> [last accessed 3 December 2018].

<sup>42</sup> <http://shooterslottery.org.nz/> [last accessed 3 December 2018].

<sup>43</sup> <https://www.facebook.com/ShootersLottery/> [last accessed 3 December 2018].

<sup>44</sup> <https://kiwigunblog.wordpress.com/> and <https://www.facebook.com/kiwigunblog/> [both last accessed 3 December 2018].

### **Is the Society's advocacy merely ancillary to a charitable purpose?**

31. Applying the third step of Ellis J's three-step process,<sup>45</sup> the Board has considered whether the Society's advocacy can be said to be merely ancillary to an identified charitable purpose.
32. The Society has submitted that its advocacy is ancillary to its primary focus of advancing education by communicating the results of its research to the public. The Society submits that it does not have an agenda and that it is pro-fact rather than being pro firearms ownership, and is not aligned to any political party. The Society further submits that its advocacy involves advocating for best practice solutions to firearm challenges in New Zealand, and is based on data from Police, New Zealand Customs Service, the Ministry of Justice and other official sources.<sup>46</sup>
33. The Board considers that the Society's submissions are based on an incorrect understanding of what activities fall within the scope of political advocacy. As discussed above, the Supreme Court does not confine advocacy to activity that is "political" in the narrow sense, it also "includes advocacy of views more generally".<sup>47</sup> In light of the information provided by the Society in support of its application, and the information the Board has considered from the Society's websites and other public sources, we consider that most of the Society's activities can be characterised as advocacy for its own point of view.
34. Given the Society's focus on promoting its own specific point of view on firearms issues, the Board does not consider this purpose can be said to be merely ancillary to an identified charitable purpose.

### **Does the Society have a charitable purpose to advance education?**

35. The Board has also considered whether the Society has a charitable purpose to advance education.
36. The Society has submitted that it educates New Zealanders on firearm issues, using facts obtained from the results of its research.<sup>48</sup> The Board has considered the Society's publications, websites and submissions in determining whether the Society has a purpose to advance education.
37. The advancement of education is a charitable purpose.<sup>49</sup> In order for a purpose to advance education, the education must be sufficiently structured and meet a minimum standard.<sup>50</sup> An organisation that undertakes research in order to persuade people to its point of view, as opposed to advancing education objectively, does not advance education in a charitable sense. An organisation which undertakes research to promote a point of view must demonstrate how the point of view itself advances a public benefit in a charitable sense.<sup>51</sup>

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<sup>45</sup> *FAAR and FRSSH* at [88].

<sup>46</sup> The Society's email dated 2 August 2018.

<sup>47</sup> *Re Greenpeace* at [65].

<sup>48</sup> The Society's email dated 2 August 2018.

<sup>49</sup> Section 5(1) of the Act.

<sup>50</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 (4<sup>th</sup>) 34 at [171], adopted by Ronald Young J in *Re Draco Foundation (NZ) Charitable Trust* (2011) 25 NZTC 20-023 (HC) at [75].

<sup>51</sup> *Aid/Watch Incorporated v Commissioner of Taxation* [2010] 241 CLR 539 at [68] and [84], *Family First* at [70] and [71].

38. The Board considers that any education undertaken by the Society is done to persuade people to the Society's point of view and thereby garner support for its efforts to effect law and government policy changes. The Board further considers that the series of publications produced by the Society do not constitute research; rather they advance a coherent viewpoint, buttressed by citation of data and information from governmental and other sources. All of the publications on the Society's websites are written from the same viewpoint. We consider that the publication work of the Society is merely a method of presenting its advocacy to the public. It is not educational in a charitable sense.
39. The Board acknowledges the Society's submission that its activities include sending safety material about hunting and firearms storage to the subscribers on its mailing list. As the Society has not provided copies of this safety material, the Board has not reached a view on whether it is capable of advancing education. However, even if there is an educational aspect to the Society's activities that qualified as being charitable, as already discussed in this paper, it is only a minor part of the Society's overall activities.

#### Determination

40. 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.
41. The Board considers that the Society's independent purpose to advocate its own specific point of view on firearms issues is not a charitable purpose. Further, the Board considers that this non-charitable purpose is the primary purpose of the Society and cannot be considered ancillary to another charitable purpose being undertaken by the Society.
42. 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

14<sup>th</sup> June 2019

