

Reference number: CC10094

Bob McCoskrie  
Family First New Zealand  
P O Box 276133  
Manukau City 2241

11 September 2012

Dear Mr McCoskrie

CHARITIES

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**Notice of intention to remove Family First New Zealand,  
registration number CC 10094, from the Charities Register**

This letter is notice that the Department of Internal Affairs (Internal Affairs) intends to recommend to the independent Charities Registration Board that it remove Family First New Zealand, CC10094, ("the Trust"), from the Charities Register.

This is because, after reviewing the Trust's purposes and activities, we are satisfied that Family First New Zealand meets the grounds for removal under s. 32 (1) (a) of the *Charities Act 2005*, as it no longer qualifies for registration as a charitable entity<sup>1</sup>.

The reason that the Trust is no longer qualified for registration is because it has a main *non-charitable* purpose of advocating and promoting a point of view. Further, the Trust has pursued the non-charitable activity of providing a '\$25,000 reward' for 'information that leads to a conviction in the case of the Kahui twin's deaths.'<sup>2</sup>

Because the Trust's purposes and activities are not exclusively charitable, it does not meet the law's requirements for being registered as a charitable entity.<sup>3</sup>

However, the Trust still has the opportunity to provide any further information to us that it feels is relevant. We will take any further information into consideration before making our final decision.

We have explained our reasoning and the law for you below. If you have any questions, you are welcome to contact me. Our contact details are at the end of this letter, and an explanation of how you may respond to this notice.

### Our position

When Internal Affairs reviews an entity's charitable status to assess whether it still meets the legal definition of what is 'charitable' in New Zealand law, its focus is on whether the entity remains "wholly and exclusively charitable".

The entity's main purposes must be charitable, and all its activities must be aimed at fulfilling those purposes. However, if a purpose and its consequent activities are

<sup>1</sup> Section 32(1) (a) *Charities Act 2005*.

<sup>2</sup> <http://tvnz.co.nz/national-news/kahui-case-25k-reward-offered-4985743> [accessed 10 September 2012]

<sup>3</sup> Section 13(1)(a) *Charities Act 2005*.



*non-charitable*, and it *becomes* a main purpose, the entity can no longer remain registered.

We acknowledge that a not-for-profit entity may have worthwhile purposes and activities that provide benefits to sectors of the community—however, these purposes and activities may fall outside the parameters of what is recognised as ‘charitable’ by New Zealand law.

If this is the case, as it is for Family First New Zealand, Internal Affairs is required to remove the entity from the Charities Register.

#### *Promotion of a point of view and political purposes*

Internal Affairs is not satisfied that the Trust is pursuing exclusively charitable purposes, which is an essential requirement for maintaining registration. (See Appendix 1). On 21 February 2008 and again on 16 March 2010, the former Charities Commission raised concerns with you that the Trust was involved in political advocacy, and reminded you that in order to maintain registration, any political activity must be *ancillary* to a main charitable purpose, and not a main purpose in itself.

By “ancillary”, we mean that the purpose and any activities associated with it must be secondary, subordinate or incidental to a *main* charitable purpose and activities. Political activity cannot be an independent purpose.

After reviewing the Trust’s activities,<sup>4</sup> it is apparent that Family First New Zealand has a *main* purpose of advocating and promoting a point of view. (See Appendix 2).

The Courts have determined that advocating and promoting a point of view is a lawful, well respected means of achieving change. Advocating and promoting a point of view is not charitable though, as the Courts are unable to judge whether the law change being proposed will or will not benefit the public. (See Appendix 3). This is a role for the legislature and not for the Courts.

Internal Affairs is unable to determine whether or not promoting the Trust’s philosophy in regard to families or furthering political purposes provides a sufficient public benefit. Accordingly, we are unable to accept that the Trust is charitable.

In addition, we consider that the Trust’s non-charitable purposes are so predominant and pervasive that they cannot be considered ancillary to any charitable purpose. (See Appendix 4). The Trust’s activities make it clear that its *main* purpose is non-charitable. Therefore, it is not exclusively charitable and can no longer be registered as a charitable entity.

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<sup>4</sup> As required by section 50(2) of the *Charities Act 2005*

### *Reward for information*

On 16 March 2010 the former Charities Commission wrote to the Trust and required Family First New Zealand to refrain from posting rewards for information in regard to criminal matters, as this activity is not in support of any charitable purpose.

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This letter made it clear that such an activity (offering a reward) does not further any of the charitable purposes set out in the Trust's deed, and is not charitable at law. It is, therefore, an independent non-charitable purpose.

On 25 July 2012, the Trust advertised on its website<sup>5</sup> and on Television New Zealand's One News<sup>6</sup> a reward of \$25,000 for information or evidence which would lead to a 'conviction in the case of the Kahui twins' deaths.'

Because the Trust is continuing to pursue an independent non-charitable purpose, it is not exclusively charitable and can no longer be registered as a charitable entity.

### *Conclusion*

The Trust is continuing to pursue non-charitable purposes, namely:

- promoting a point of view in relation to Family First's philosophy on what is best for families
- engaging in extensive political advocacy
- providing reward money for information on criminal investigations.

These purposes are not ancillary to any charitable purpose. Therefore, as the Trust's main purposes and activities are not exclusively charitable, it is no longer eligible for registration as a charitable entity.<sup>7</sup>

### **Responding to this notice**

We remind you that the Trust has an opportunity to respond to this notice.

You have the right under section 34 of the Charities Act to object to the Trust's removal from the Register by sending or delivering to Internal Affairs an objection on one or both of the following grounds:

- (a) that the grounds on which it is intended to remove the entity from the Charities Register have not been satisfied;
- (b) that, for any other reason, it would not be in the public interest to remove the entity from the Register.

Internal Affairs will fully consider any submission from you before it makes a final decision and notifies you in writing.

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<sup>5</sup> <http://familyfirst.org.nz/issues/kahui-case-reward/> [accessed 10 September 2012]

<sup>6</sup> <http://tvnz.co.nz/national-news/kahui-case-25k-reward-offered-4985743> [accessed 10 September 2012]

<sup>7</sup> It no longer meets the registration requirements set out in section 13(1)(a) of the *Charities Act 2005*.

You also have the option of asking for Family First New Zealand to be removed from the Charities Register.

Please send your objection and any supporting information to us by **10 October 2012**.  
Our address is:

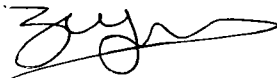
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Internal Affairs  
Charities  
PO Box 30112  
Lower Hutt

If we do not receive a response from you by **10 October 2012**, we will continue our review of your qualification for registration and will begin steps to formally remove Family First New Zealand from the Charities Register.

If you wish to speak to me in relation to any of the detail in this letter, please contact me, on 04 978 7564 or email me at [Zoe.Twose@dia.govt.nz](mailto:Zoe.Twose@dia.govt.nz).

Yours sincerely



Zoe Twose  
Senior Registration Analyst

## APPENDICES

### Appendix One

#### Section 32 (1) (a) of the *Charities Act 2005*

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Section 32 (1) (a) of the Act provides: "Internal Affairs may remove an entity from the register if – the entity is not, or is no longer, qualified for registration as a charitable entity."

Internal Affairs is of the view that the Trust no longer qualifies for registration as a charitable entity on the grounds that it is not of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes as required by section 13 (1) (a) of the Act.

In order for an entity to meet registration requirements it must be exclusively charitable. In *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand*<sup>8</sup>, France J states:

*In order to be a charity, a body must exist only for charitable purposes. There are two aspects to that statement – first, it must exist for charitable purposes, and second, those charitable purposes must be its only purposes. Third, the carrying out of those exclusively charitable purposes must confer a public benefit.*

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<sup>8</sup> HC WN CIV 2009-485-2633 [23 September 2010]

## Appendix Two

### Advocacy and promotion of a point of view – main purposes of the Trust

Internal Affairs has taken into consideration how the Trust meets its purposes in clause 4 of its Trust deed.

Clause 4 of Family First New Zealand's trust deed states:

*The purposes and aims of the Trust shall be as follows:*

*To promote and advance research and policy supporting marriage and family as foundational to a strong and enduring society*

*To educate the public in their understanding of the institutional, legal and moral framework that makes a just and democratic society possible*

*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 like-minded groups and academics*

*To produce and publish relevant and stimulating material in newspapers, magazines and other issues affecting families*

*To be a voice for the family in the media speaking up about issues relating to families that are in the public domain*

*To carry out such other charitable purposes within New Zealand as the Trust shall determine*

When considering whether the Trust is exclusively charitable, Internal Affairs has considered how the Trust is pursuing its purposes.<sup>9</sup> We have taken into account the Trust deed, information on the Trust's websites, the Trust's publications and other information published on the internet.

Internal Affairs is satisfied that the information below indicates that political advocacy and propagating a point of view are core activities of the Trust.

#### **Family First promotional video**

The promotional video published on the Family First website<sup>10</sup> and on Youtube<sup>11</sup> contains a series of news articles which highlight the extent of Family First's lobbying and promotion of a point of view. Quotes from the video include:

*Hells pizza is in trouble with the lobby group family first for using sex to advertise one of its pizzas*

*Family first is worried a new vaccine for cervical cancer will give young girls the idea they are protected from other risk*

<sup>9</sup> As required by section 50(2) of the Charities Act 2005

<sup>10</sup> <http://familyfirst.org.nz/2011/10/family-first-speaking-up/> [accessed 29 August 2012]

<sup>11</sup> <http://www.youtube.com/watch?v=yZbzylu8W5Q> [accessed 29 August 2012]

*Family first is up in arms about two recent court decisions regarding the possession of child porn images*

*Family first says an apology from Child youth and family highlights the need for an independent cyfs complaints authority*

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*Family First is blasting the advertising standard authorities after DB brewiers ran a controversial billboard campaign*

*Family first is calling on the immigration to show compassion to a heavily pregnant Lithuanian mother, she has been ordered to leave the country.*

*Family First spokesman Bob McCoskrie says we need to put the issue of child abuse to the experts who are working on the ground and who know first hand which families are at risk*

*Family First wants to raise the drinking age*

*Family First New Zealand which advocates for strong families and safe communities say there is no place for topless sunbathing on our public beaches*

*The Ministry of Education are disputing claims that it wilfully mislead parents about the number of primary schools pupils being suspended or stood down, it follows criticism from Family First that the figures were buried in a Ministry Student engagement report released last month*

*Family First has quickly become one of the leading voices for family issues in New Zealand and is regularly sought after by media for comment and analysis our message has been seen far and wide in mainstream print media we are also extending our impact on large format billboards and newspaper ads across the country*

*The lobby group family first is furious at this weeks planned launch at the violent video game Grand Theft Auto, the game among other things allows players to buy cocaine, run over civilians in cars and shoot police officers*

*Bob McCoskrie:*

*We have deemed in our legal system that the right of the pornography industry to advertise on the main street is more important than the right of families to be protected*

*Others were outraged, a lobby group gathered (picture portrays protest marching behind Family First banner) 300,000 signatures which forced the citizens referendum*

*Family breakdown and decreasing marriage rates are costing the New Zealand taxpayers at least \$1 billion dollars. A new report commissioned by Family First shows even a small reduction in the family breakdown and increase in marriage rates could mean a significant savings for taxpayers*

*It's the flick that's being build as a supernatural tale of mental illness, bondage, incest, revenge and explicit graphic violence, not exactly family viewing right, well definitely not says Family First they have already called for the film to be banned*



Family First have released a survey its called young people and alcohol and of course there, the alcohol reform bill is something that is going to be kicking over this year

Bob McCoskrie:

*Speaking up on family issues, but we are not about making noise for the sake of it, we are concerned about the welfare and protection of families, we can help give you a voice so that together we put family first.*

**Family First website- [www.familyfirst.org.nz](http://www.familyfirst.org.nz)**

The tagline for the website states:

*I believe it is time for us to speak up for what is best for families.*

Under "family policy priorities" the Trust has provided 'priorities' saying that it will promote to all political parties:

*Explanation: Family First is NOT a political party and has no intention to be one. Our role is to be a voice for families in the public domain, and to research and advocate for family and marriage issues. The following list is policies which we will be promoting for ALL political parties to adopt.*

### **Strengthen marriage**

- *Develop policies that encourage a cultural shift towards a lifelong exclusive commitment expressed in marriage.*
- *Family relationship centres*
- *Subsidised pre-marriage and marriage counseling*
- *Amending welfare and tax systems to eliminate disincentives to marriage and marriage penalties*
- *Protect marriage in law as one man – one woman. Uphold marriage as the national community ideal.*
- *Abandon the concept of no fault divorce, and place the weight of the law on the side of spouses seeking to defend their marriage*
- *Establish joint custody following divorce, not just shared responsibility.*

### **Parenting**

- *Recognise that parents have primary responsibility for nurture, raising and educating of children, and governments should respect and support the exercise of parental responsibilities*
- *Provide greater flexibility for parents to choose the best child care arrangements for them. Particularly favour arrangements that encourage parents to spend time with their children. End discrimination against stay-home parents*
- *Create incentives and subsidies for lower income parents to attend parenting programs.*
- *Amend section 59 to decriminalise parents who use light smacking for correction of children*

### **Ministry of Families**

- *Replace the offices of Children's Commissioner and Families Commission with a Ministry of Families with a specific Minister in Cabinet to advocate, research, and oversee family-based policies and the impact of legislation on families*

### **CYFS / Child abuse**

- *Establish a non-political commission of enquiry to understand the causes of family breakdown, family violence and child abuse in NZ*
- *Establish an independent CYF complaints authority so parents have an avenue to appeal the intervention of CYF and to safeguard against abuse of state power*
- *Sentencing for those who abuse and kill our children to be substantially toughened to provide both a deterrent and a clear message of our community's disgust with the actions of people who abuse children*
- *Presume child abuse when under-age girls are pregnant or infected with STD's – it is logical to investigate the circumstances*

### **Family economics**

- *increase access to affordable housing for families*
- *Welfare payments to include vouchers which limit spending on alcohol, tobacco, gambling and other expenses which detract from the needs of the children*
- *Optional income tax splitting – similar to business partnership*
- *Equate childcare allowance/s of grandparent raising grandchildren with that of caregiver*
- *Stricter regulations on 'loan sharks' including capped interest rates and registration*
- *'Sinking lid' policy on community-based gaming machines and the availability and licencing of alcohol outlets*

### **Aged care**

- *Promote the dignity of our Elders – investigation of 'elder abuse'*
- *Tax breaks / support for those who care for elderly or infirm relatives at home.*

### **Sex education**

- *Provide support and resources for parents to be primary educators of their child's sex education*
- *Age-appropriate sex education which is values based, investing equal amounts into abstinence and comprehensive sex education*

### **Abortion**

- *Amend the law to protect the unborn children from conception (18,000 abortions per year represents the worst of child abuse)*
- *Parental notification automatically of teenage pregnancy and abortion except in exceptional circumstances approved by the court*
- *Promote married couple adoption*

### **Stem cell research**

- *Promote adult stem cell research, not embryonic stem cell research*

### **Euthanasia**

- *Oppose euthanasia – increase resourcing of hospices and palliative care*

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### **Prostitution**

- *Amend Prostitution Reform Act to prosecute the buyer*
- *Provision of resources and incentives to help prostitutes out of the industry*
- *Criminalise the act of pimping and brothel keeping*

### **Pornography**

- *Reduce the availability of pornography which undermines relationships, dehumanises women especially, and destabilises marriages and families*
- *Introduce ISP filtering of pornography so that children do not stumble across, deliberately access, internet porn at home, school or public libraries.*
- *Immediate increased resourcing in monitoring and prosecution of child pornography*
- *Substantially toughen penalties for possession, distribution and production of child pornography*

### **Standards and censorship**

- *Standards should be developed according to a family perspective, not an individual rights perspective*
- *Develop and enforce higher standards for TV, film, radio and advertising content including levels of violence, sexual content and objectionable language.*
- *Extend representation on the BSA, ASA and Censorship Board with regular changing of board members after limited terms of office to avoid desensitization or lack of accountability*
- *Amend Crimes Act to clearly define 'indecent acts'*
- *Stricter controls on the sexualisation of children through marketing and media*

Promoting these 'priorities' to political parties is political advocacy. It is promoting a point of view and advocating for the laws to be changed in a way Family First would consider acceptable.

On the website [www.votefamilyfirst.org.nz](http://www.votefamilyfirst.org.nz) the Trust states:

*Family First NZ is one of the leading voices for family issues in NZ. We see our role as a 'family watchdog' - protecting the family, and loyal at all times! As a valued member, we want to represent your concerns, and empower your views and voice. We've put together a list of issues which we believe will be on the public / political agenda in the next three years.*

*Please take a moment to tell us how high or low a priority you would put each of these family issues.*

The poll/survey indicates Family First's position on a range of issues and asks the respondent to indicate what priority they think this should be in the next three years. Family First's position on the matters includes:

*Raise the purchase and drinking age to at least 20*

*Support the recommendations of the Law Commission, including:*

- 1. Decrease availability of cheap booze and 'loss leading'*
- 2. Health warnings on alcohol (similar to tobacco)*
- 3. Decrease accessibility of alcohol and allow communities to have more say*
- 4. Decrease marketing and advertising of alcohol*
- 5. Increase drink-driving measures*
- 6. Increase treatment opportunities for heavy drinkers*
- 7. Fines for public drunkenness*

*Promote strong marriages.*

*Protect the definition of marriage as one man and one woman.*

*Oppose attempts to redefine marriage to allow for same-sex marriage or other definitions.*

*Oppose the decriminalisation of abortion. Promote the unborn's right to life.*

*Promote parental notification for teenage pregnancies Promote informed consent laws for women considering an abortion*

*Amend the anti-smacking law to decriminalise non-abusive smacking*

*Oppose the decriminalisation of euthanasia*

*Promote quality palliative care*

*Establish a non-political Commission of Inquiry into child abuse, family breakdown and family violence.*

*Establish an independent Child Youth and Family (CYF) Complaints Authority to receive and independently investigate complaints about the actions of CYF and their social workers, and to ensure that appropriate policies and procedures are followed by CYF.*

*Oppose changes to adoption laws which allow for the adoption of children by same sex couples not related to the child.*

*Promote a ban on street prostitution*

*Promote a ban on residential-based brothels*

*Oppose any liberalisation of retail trading laws around Easter and Christmas Day*

*There are many other issues that we will continue to speak up about, including:*

- \* broadcasting standards*
- \* the sexualisation of children in media and marketing*
- \* the effects of long-term daycare on babies and toddlers*
- \* income splitting*
- \* loan sharks*

\* *pokie machines*

\* *surrogacy and stem-cell research*

*What other issues would you like to see Family First NZ place a higher priority on?*

Promoting these philosophies to the public and the political nature of these issues indicates the Trust's focus is to propagate its point of view, and that it will involve itself in extensive advocacy.

Under the 'latest news' tab on the Trust's website<sup>12</sup> are published a number of news articles on political issues. The articles include:

*Collins Toughens Child Porn Laws*

*Audio: Grant Illingworth Re Churches Allowing Gay Marriages on Radio Live*

*Bill 'forces same sex marriages on church' Lawyer*

*50,000 sign against gay marriage bill*

*Marriage Commissioners must wed same-sex couples (Canada)*

*Key admits blunder over euthanasia comment*

*Marriage and Govt don't mix, says vicar*

*Slim Majority backs gay marriage bill*

*Marriage rights battle heats up*

Under the 'articles' tab on the Trust's website<sup>13</sup> are published several articles on political and contentious issues which also appear to propagate the philosophy of the Trust. The articles include:

*New Study on Homosexual Parents Top all Previous research – Children of*

*Homosexuals fare worse on most outcomes by Peter Sprigg*

*Most Gay-Parenting studies are long on bias and short on hard data*

*Does sex ed undermine parental rights?*

*Bob McCoskrie: Sex education lets down young people and parents*

*Does anything work in sex education*

*What is the effect of being raised in a homosexual household<sup>14</sup>*

*By fear and fallacy – The repression of reason and public good by the anti-smacking lobby in NZ*

*Bob McCoskrie: Why saying 'I do' is good for our families*

*The illusion of limiting legalised euthanasia*

*A reminder that the administration of the abortion law is a travesty*

*Political grandstanding a futile gesture*

*Bob McCoskrie: Pornography is not a private issue*

*Do nonphysical punishment reduce antisocial behaviour more than spanking?*

Under the 'submissions' tab on the Trust's website<sup>15</sup> is published material that indicates the Trust also engages in political advocacy through providing submissions to government. Submissions currently listed cover the:

<sup>12</sup> <http://familyfirst.org.nz/category/news/> [accessed 29 August 2012]

<sup>13</sup> <http://familyfirst.org.nz/category/article/> [accessed 29 August 2012]

<sup>14</sup> This article provides a link to Dawn Steganowicz webpage, <http://www.dawnstefanowicz.org/index.html>, which provides an endorsement for her book, 'out from under should be read by every legislator, lawyer, physician and mental health professional in a position to lobby for the best interests of children. May society heed Dawn's courageous testimony and spare others suffering she and her siblings sustained.'

<sup>15</sup> <http://familyfirst.org.nz/issues/submissions/> [accessed 29 August 2012]

*Gambling (Gambling Harm Reduction) Amendment Bill*  
*Green Paper on Vulnerable Children*  
*Victims of Crime Reform Bill*  
*Criminal Procedure (Reform and Modernisation) Bill*  
*Supporting Children Project*  
*Taxation (Income-sharing tax credit) Bill*  
*Criminal Procedure (Reform and Modernisation) Bill*  
*Manukau City Council (Regulation of Prostitution in Specified Places) Bill*  
*Law Commission report on 'Alcohol in our lives'*  
*Land Transport Amendment Bill*  
*Sentencing and Parole Reform Bill*  
*Gambling Amendment Bill (No 2)*  
*Ban on Smacking*  
*Easter Shopping trading*  
*Tax and Charitable Giving Project*

Under the 'issues' tab on the Trust's website<sup>16</sup> is published material that indicates that the Trust encourages people to make a submissions and to promote Family First's viewpoint. Further, the website provides pictures of the Trust's billboard promoting Family First's philosophy to the public.

In the Trust's 2011 financial statements is stated that \$84,140 was spent on 'Public issues.'

Under the 'research' tab on the Trust's website<sup>17</sup> are published various articles which support the Trust's point of view in regard to families and other related matters. They do not appear to be objective or impartial as would be expected for 'research' to advance education.<sup>18</sup> Instead, the 'research' could more properly be considered to be propoganda or indoctrination aimed at convincing the audience of the merits of Family First's philosophy.

The Trust's 2011 financial statements indicate that the expenditure on its website and internet presence was \$14,036.

### **Family First's forums**

Under the 'forums' tab on the Trust's website<sup>19</sup> which provides speaking notes used by the keynote speaker at the Trust's 2011 forum, the page says:

#### *WHAT*

*The 6<sup>th</sup> annual New Zealand forum on the Family wellbeing together a national network of pro-family, pro-marriage and pro-life organisations, scholars, lobby groups and leaders who seek to promote and protect the wellbeing of families the role of parents, and the welfare of our children.*

The website published the biographies of the speakers at the forum:

#### *IAN GRANT QSO*

<sup>16</sup> <http://familyfirst.org.nz/issues> [accessed 29 August 2012]

<sup>17</sup> <http://familyfirst.org.nz/research> [accessed 29 August 2012]

<sup>18</sup> In re Shaw (deceased) [1956] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46; See also *Re Collier* [1998] 1 NZLR 81; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011].

<sup>19</sup> <http://familyfirst.org.nz/forum> [accessed 29 August 2012]

#### GETTING SERIOUS ON FAMILIES AND MARRIAGE

*Author, communicator and parenting guru. Ian Grant is a household name who needs little introduction. He will break through political correctness to give some 'home truths' on:*

- *Why marriage matters for adults and kids*
- *Why the media is messing up our kids*
- *Why kids need both a mum and a dad*
- *Why childcare isn't the answer*

#### LINDSAY MITCHELL

##### HOW WELFARE HARMS CHILDREN

*Lindsay Mitchell has been researching and commenting extensively in the media on welfare since 2001 and has worked as a community volunteer mentoring beneficial families.*

*Lindsay will examine the negative effects of long term benefit dependency including the association with a dramatic rise in unmarried births. Is poverty alone to cause of poor outcomes for children and should benefits payments simply be raised? What are the options for status quo.*

#### DR ALBERT MAKARY

##### DECLARING WAR ON OUR BINGE DRINKING CULTURE

*Timaru gynaecologist Albert Makary was born in Egypt but has lived the past 23 years in the West. He is a father of three, a doctor and a thinker. Dr Makary says New Zealand has a huge alcohol and substance abuse problem and as a country we need to completely change the way we think about the issue. He says the drinking culture is a direct link to family violence, sexual health, self-esteem and youth suicide*

#### JIM WALLACE

##### HOW ARE FAMILIES DOING 'ACROSS THE DITCH'

*Jim Wallace is the Managing Director of the Australian Christian lobby....Jim will highlight some of the issues which Australia is tacking, same-sex marriage, sexualisation of children in the media, stem cell research, abortion, prostitution, euthanasia, gambling, and others. What can we learn from their experience?*

The Trust's 2011 financial statements indicate it spent \$36,893 on the forum.

It appears the Trust has selected speakers that promote views similar to those of the Trust. Therefore, the messaging provided at the forums cannot be considered objective or impartial and instead promote the philosophy of Family First to those that attend.

#### **Family First – protect marriage**

The Trust has set up the website [www.protectmarriage.org.nz](http://www.protectmarriage.org.nz). The website has several articles promoting the point of view that marriage should only be between a man and a woman. Further, the website encourages people to sign the Trust's petition, stating:

*I support the definition of marriage in New Zealand being maintained as one man one woman. I oppose any attempt to redefine it.*

The Trust's website also encourages people to download the petition and 'encourage friends and neighbours to sign.'

The Trust has posted on its website [www.protectmarriage.org.nz](http://www.protectmarriage.org.nz) a TVNZ video 'Breakfast: Wednesday, Aug 29.' The video, which is entitled 'Heated debate on gay marriage' shows Labour MP Louisa Wall and Bob McCoskrie debating the Marriage Equality Bill. Within the video the 'National Director' of Family First indicates that the Trust is firmly of the view that the definition of marriage should not be amended to include same-sex marriage. In the video he makes the following statements:

*In 2004 we changed 104 bits of legislation to bring about equality....Marriage was reflecting the relationship between a man and a women because only a man and a women can produce a child, it is discriminatory, because nature discriminates, a same sex couple cannot produce a child, so nature is discriminating.....*

*They [same-sex couples] can commit to each other, but once again the name for that is civil unions...same sex have legal recognition as it stands and we don't need to touch the name marriage*

*Once you change the definition once what stops it being changed again to allow polygamy.*

*Once you redefine once then you can redefine again.*

On the Trust's 'protect marriage' Facebook page which promotes a NZ Herald article<sup>20</sup> '50,000 sign against gay marriage' it<sup>21</sup> states:

*Lobby group Family First has presented a petition signed by 50,000 people to MPs from Labour, National and NZ First, calling on them to reject the bill.*

*The petition said: "I support the definition of marriage in New Zealand being maintained as one man one woman. I oppose any attempt to redefine it."*

*The protesters, led by conservative lobby group Family First, wanted marriage to remain between a man and a woman*

The fact that the Trust has set up a separate website to promote Family First's philosophy in regard to marriage indicates that influencing the public is a main purpose of the Trust, and is a vital component of its activities.

### **Value your Vote**

On 26 September 2010, Family First launched the website [valueyourvote.org.nz](http://valueyourvote.org.nz) which the Trust said, 'highlights the voting record of current MPs on controversial family issues from the past nine years.'<sup>22</sup> The Trust also went on to say, 'We are pleased to offer this resource to assist families in making an informed choice at the polling booth this November.'<sup>23</sup>

The brochure on the Trust's website states:

<sup>20</sup> [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10830022](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10830022)

<sup>21</sup> <http://www.facebook.com/ProtectMarriageNZ>

<sup>22</sup> <http://familyfirst.org.nz/2011/09/%E2%80%98value-your-vote%E2%80%99-website-launched-for-families/>

<sup>23</sup> <http://familyfirst.org.nz/2011/09/%E2%80%98value-your-vote%E2%80%99-website-launched-for-families/>



*In some cases, some politicians have failed to take into account what is best for the welfare and safety of families. For example. The decriminalisation of prostitution and residential brothels, attempting to liberalise euthanasia and Easter trading laws, the rejection of stronger regulations of loan sharks and Parliaments refusal to raise the drinking age.....Families deserve laws which strengthen and protect them- not ones which redefine and undermine them.*

The brochure again indicates the issues that Family First opposes, including prostitution and euthanasia, and issues it supports, including parental notification and the decriminalisation of smacking.

The brochure and website also provide a significant number of diagrams and tables which the Trust suggests show whether Members of Parliament have voted in a 'family or not family friendly way' and where they stand on family issues, rating them as 'family friendly' or 'not family friendly'.

The last page of the brochure also encourages people to join Family First as a member, stating:

*Help us to bring a strong pro-family, pro-life, pro-marriage message into the public domain, to promote the ideas and policies that will help strengthen NZ families and communities, and to give you a voice.*

This activity is clearly designed to influence people's opinion and the way that they vote in the general election. Influencing the public in this way is not educational and not charitable.

### **Financial statements**

Internal Affairs considers that much of the expenditure is likely to be for promoting a point of view and engaging in political advocacy. As well as the expenditure on forums, websites, 'value your vote' and public issues, we also have concerns that the following expenditure was to promote a point of view and engage in political advocacy:

- Media Monitors
- Promotional
- Referendum
- Research and resources

### **Conclusion – promotion of a point of view and advocacy**

The Trust's advocacy and promotion of a point of view in regard to what they consider best for families is so pervasive and predominant that it cannot be considered secondary to any other charitable purpose.

## Appendix Three

### The Courts' position on promotion of a point of view and political advocacy

#### **Advancement of education**

Advancement of education for the public benefit is a valid charitable purpose. An entity with a purpose to 'advance' education:

- (a) provides some form of education; and
- (b) ensures that learning is advanced.

The modern concept of education covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding.<sup>24</sup>

In order to advance education, there must be a genuine attempt to transmit knowledge and advance learning.<sup>25</sup> It is not enough to put forward opinion and information about a topic. What is required is some endeavour to provide a structured method of transmitting information or analysis, so as to train the mind or improve a useful branch of human knowledge.<sup>26</sup>

"Education" does not include advertisements for particular goods or services or promotion of a particular point of view.<sup>27</sup> If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available or accessible to the public.

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<sup>24</sup> *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

<sup>25</sup> See *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010]; *Re New Zealand Computer Society Incorporated* HC WN CIV-2010-485-924 [28 February 2011].

<sup>26</sup> See *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [42] - [43].

<sup>27</sup> *In re Shaw* (deceased) [1956] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46; See also *Re Collier* [1998] 1 NZLR 81; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011].

### *Promotion of a point of view*

The courts have recognised that educational activities may be charitable notwithstanding that the law or the policies and decisions of public bodies may be changed in light of those activities.<sup>28</sup> However, the courts maintain a distinction between advancement of education on the one hand, and 'propaganda or cause under the guise of education'<sup>29</sup> on the other.

In *Draco*, the High Court held that the entity in question had published partisan material in an attempt to influence local or central government or other officials to a particular point of view, and that this evidenced a political purpose and not a purpose to advance education.<sup>30</sup>

*'In a democracy citizens are free to pursue [advocacy] but the activity is essentially political and therefore not a charitable purpose. **Publicising one side of a debate is not advancing education**'* [Emphasis added]

The question whether an endeavour is political or educational is 'one of degree of objectivity or neutrality surrounding the endeavour to influence, and assesses whether the political change is merely a by-product or is instead the principal purpose of the gift or institution'.<sup>31</sup> A distinction must be made between propagating a view that can be characterised as political and the desire 'to educate the public so that they could choose for themselves, starting with *neutral* information, to support or oppose certain views'.<sup>32</sup>

The requirement that an educational charity's position must be objective and based on well-reasoned arguments was recognised by the Canadian Federal Court of Appeal in *Positive Action against Pornography v MNR*.<sup>33</sup> In that case, the Court held that the appellant organisation was political rather than educational because the material it distributed under the pretext of being educative showed a strong anti-pornography bias, weighted in favour of greater state control rather than the maintenance of the *status quo*.<sup>34</sup> The information was not neutral as required to be considered educational.

Further, the rationale for determining perpetual advocacy of a point of view was explained by Chadwick LJ in *Southward v AG*:

*The court is in no position to determine that the promotion of one view rather than the other is for the public benefit. Not only does the court have no material on which to make the choice; to attempt to do so would be to usurp the role of government.*<sup>35</sup>

The Canadian Federal Court of Appeal restated the principle in *Challenge Team v Revenue Canada*.<sup>36</sup>

<sup>28</sup> *In the Estate of Cole (deceased)* (1980) 25 SASR 489 at 495.

<sup>29</sup> *Re Collier (Deceased)* [1988] 1 NZLR 81 at 91; *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

<sup>30</sup> *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [54].

<sup>31</sup> *Re Bushnell (deceased) Lloyds Bank Ltd and others v Murray and others* [1975] 1 All ER 721 as applied by *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 at 608.

<sup>32</sup> *Ibid.*, at 729.

<sup>33</sup> [1988] 2 FC 340; (1988) 49 DLR (4<sup>th</sup>) 74.

<sup>34</sup> *Ibid.*, at 83.

<sup>35</sup> [2000] WTR 1199.

<sup>36</sup> [2000] 2 CTC 352 at [1].

*Educating people from a particular political and moral perspective may be educational in the charitable sense in that it enables listeners to make an informed and critical choice. However, an activity is not educational in the charitable sense when it is undertaken solely to promote a particular point of view.*

It is apparent that the 'research,' 'policy' and 'material' the Trust is involved in is more in the nature of propaganda or indoctrination aimed at convincing the audience of the merits of Family First's philosophy and gathering support for its lobbying activities. It is not charitable and not ancillary to any charitable purpose.

#### *Political purposes*

The Courts have held that an entity is a political entity if its main purposes are to seek to achieve its purposes by:

- (1) seeking to change the law; or
- (2) advocating for the views of, or supporting, a political party; or
- (3) perpetual advocacy of a particular point of view.<sup>37</sup>

This was set out by Lord Parker of Waddington in *Bowman v Secular Society*:<sup>38</sup>

*... a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.*

The New Zealand Court of Appeal has applied *Bowman* in *Molloy v Commissioner of Inland Revenue*<sup>39</sup> when considering whether a gift to the New Zealand Society for the Protection of the Unborn Child was tax deductible. In that case, Somers J held that a political purpose included both advocating for and opposing any change in the law.

In *Greenpeace of New Zealand Incorporated*,<sup>40</sup> and *Re Draco Foundation (NZ) Charitable Trust*<sup>41</sup>, Heath J and Ronald Young J followed the long line of case law regarding political advocacy and concluded:

*New Zealand has as part of its law a doctrine excluding political objects from charitable purposes.*<sup>42</sup>

The Courts have also recognised that political purposes, which may promote a religious viewpoint would still not be considered charitable. In *Roman Catholic Archbishop of Melbourne v Lawlor*<sup>43</sup> Dixon J, referring to a gift claimed to be for religious purposes said:

<sup>37</sup> *McGovern v Attorney-General* [1982] 1 Ch 321, 340.

<sup>38</sup> [1917] AC 406.

<sup>39</sup> [1981] 1 NZLR 688.

<sup>40</sup> HC WN CIV 2010-485-829 [6 May 2011].

<sup>41</sup> CIV 2010-485-1275, 15 February 2011

<sup>42</sup> *Re Draco Foundation (NZ) Charitable Trust* CIV 2010-485-1275, [15 February 2011] at para [58] and *Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] at para [58]

*In order to be charitable the purposes themselves must be religious; it is not enough that an activity or pursuit in itself secular is actuated or inspired by a religious motive or injunction...The law has found a public benefit in the promotion of religion as an influence upon human conduct; but it has no standard by which to estimate what public benefit of that order is produced indirectly or incidentally by means which, although they may be considered to contribute to the good of religion, are not in themselves religious and do not service directly a religious object. There have been many, and there are still some, provisions of the law, the maintenance or abrogation of which has been a matter of deep concern to adherents of one or other religious faith. But these have been considered, not charitable religious purposes, but political objects.*

Therefore, if an entity promotes a point of view, or engages in political advocacy which is more than ancillary, it cannot be recognised as a charitable entity.

The information highlighted above shows that Family First New Zealand's activities all have a political emphasis and promote the Trust's conservative philosophy to the public. This advocacy appears to be a core purpose of the entity.

We consider that political advocacy and propaganda is a main purpose of the Trust. It cannot be considered exclusively charitable, and no longer meets registration requirements.

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<sup>43</sup> (1934) 51 CLR 1 at 32-33 which was relied upon in *Molloy v CIR* [1981] 1 NZLR 688 at 696

## Appendix Four

### Ancillary purpose

Section 5(3) of the *Charities Act 2005* states:

*(3) To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity*

*(4) For the purpose of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is-*

*(a) ancillary, secondary, subordinate or incidental to a charitable purpose of the trust, society or institution; and*

*(b) not an independent purpose of the trust, society or institution*

The Courts have made it clear that the question whether a purpose is ancillary requires both a quantitative and qualitative assessment.<sup>44</sup>

The assessment involves a 'situation specific analysis of the relative relationship between public and private benefits.'<sup>45</sup>

In quantitative terms, we consider that the information provided on the Trust's websites and to news media indicates that the Trust's core purpose is to promote the Trust's philosophy in relation to what is best for the family to the public and to politicians.

Adopting a qualitative approach, we consider that the Trust's promotion of this point of view would not be necessary to advance any charitable purpose of the Trust.

It is apparent that the promotion of Family First's philosophy to the public and to politicians cannot realistically be considered ancillary to any charitable purpose. These purposes are independent of any charitable purpose of the Trust.

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<sup>44</sup> *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011]

<sup>45</sup> *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [44]