

Decline decision: Digital Democracy Limited (DIG54724)

1. The role of the independent Charities Registration Board (“the Board”) is to maintain the integrity of the register by ensuring that entities on the Charities Register qualify for registration. The Board’s decision is to decline the application to register Digital Democracy Limited (“the Company”) as a charity because it does not advance exclusively charitable purposes.
2. The Board considers that the Company’s primary purposes are to provide the public with information on government bills, and to provide online digital polls for the public to vote on government bills. The Board considers the Company is not promoting good citizenship by promoting public participation in democratic processes, advancing education, or advancing a political purpose for the public benefit, or any other charitable purpose in a way previously accepted as charitable.
3. 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* (“FAAR and FRSSH”)¹ the Board has considered:
 - a. whether the Company’s stated purposes are capable of being charitable;
 - b. whether the Company’s activities are consistent with or supportive of a charitable purpose; and
 - c. if the Company’s activities are found not to be charitable, whether they can be said to be merely ancillary to an identified charitable purpose.²
4. The Board has carefully considered all of the Company’s submissions and the information on its activities collected by Charities Services.³ The Board has based its conclusions on the facts before it and the application of the law. This decision is separated into the following sections:
 - a. Background
 - b. What are the purposes of the Company?

¹ *Re the Foundation for Anti-Aging Research and the Foundation for the Reversal of Solid State Hypothermia* [2016] NZHC 2328 (“FAAR and FRSSH”).

² FAAR and FRSSH at [88].

³ Charities Services, Ngā Rātonga Kaupapa Atawhai, is part of the Department of Internal Affairs, and administers the Charities Act 2005 (“the Act”).

- c. Does the Company have a charitable purpose to promote good citizenship by promoting public participation in democratic processes?
- d. Does the Company have a charitable purpose to advance education?
- e. Does the Company have a charitable purpose to advance political purposes?

Background

5. The Company incorporated on 21 July 2016, and applied for registration as a charity under the Charities Act 2005 (“the Act”) on 22 August 2016.
6. Charities Services requested information from the Company on how it intends to carry out its purposes.⁴ The Company informed Charities Services that it would run a poll on its website where members of the public could vote on every government bill,⁵ with each bill being accompanied by a brief explanation.⁶ The results of the polling would be displayed on the website, alongside the votes of each “government party.”⁷ “Political parties” would be notified of each bill receiving 66% or more support from users of the poll. The website would also contain information on when and where people could vote in general elections, as well as encouraging people to vote.⁸
7. Based on the stated purposes and the information provided, Charities Services notified the Company that it did not meet registration requirements, as its purposes were not exclusively charitable.⁹ The Company made further submissions¹⁰ and Charities Services notified the Company that it continued not to meet registration requirements.¹¹ The Company provided final submissions after being invited to do so by Charities Services.¹²

⁴ Charities Services’ email to the Company dated 18 October 2016.

⁵ The Company’s submissions to Charities Services dated 25 October 2016.

⁶ The Company’s submissions to Charities Services dated 13 April 2017.

⁷ The Company’s submissions consistently referred to “government party” voting data (The Company’s submissions to Charities Services dated 25 October 2016, 11 January 2017, 10 February 2017 and 13 April 2017). It is not clear whether “government party” refers to all members of parliament, the parties in government coalition or the majority party in government. The Board does not consider this distinction is material in terms of its decision to decline the Company’s application.

⁸ The Company’s submissions to Charities Services dated 10 February 2017. It is not clear what the Company means by “political parties.” This could be a reference to all political parties, whether or not they are represented in parliament, or it could be limited to political parties represented in parliament. Again, the Board does not consider this distinction is material in terms of its decision to decline the Company’s application.

⁹ Charities Services’ notice to the Company dated 21 December 2016.

¹⁰ The Company’s submissions to Charities Services dated 11 January 2017, 10 February 2017 and 13 April 2017.

¹¹ Charities Services’ notices to the Company dated 20 January 2017 and 14 March 2017.

¹² The Company’s submissions to Charities Services dated 13 April 2017.

What are the purposes of the Company?

8. The stated purposes of the Company are as follows:¹³

“There are two purposes of the Organisation, the first purpose is to provide information in a digital format to New Zealand citizens, voters and members of the public about how they are being represented by our elected government parties in Parliament. The second is to provide the New Zealand users of the NZ Post REALME system a free, open and transparent digital service to digitally represent their vote on each government bill being voted on in Parliament. In particular, the Organisation will;

- A. Provide unbiased information about how the New Zealand voters and¹⁴ being represented by our elected leaders and government parties in Parliament;
- B. Promote open clear communication between the New Zealand government and the New Zealand public/voters; and
- C. Provide an internet based digital poll to the New Zealand public, to digitally represent the New Zealand public’s political positions.”

9. The Company submits these purposes are analogous to purposes previously accepted as charitable by the courts:¹⁵

- a. the promotion of good citizenship by promoting public participation in democratic processes;
- b. the advancement of education; and
- c. the advancement of a political purpose recognised as charitable.

Does the Company have a charitable purpose to promote good citizenship by promoting public participation in democratic processes?

10. The Company submits that its “long-term goal is to improve and promote public discussion and debate about the future of NZ and our Government Bills that control the country's laws”.¹⁶

¹³ The Company’s constitution, clause 3. The Company’s constitution provided to Charities Services is different from the constitution lodged with the Companies Office. The Company’s constitution lodged with the Companies Office has no stated purposes.

¹⁴ The Board notes there appears to be a typographical error in clause 3.1 of the Company’s constitution. The words “New Zealand voters and” should read “New Zealand voters are”.

¹⁵ The Company’s submissions to Charities Services dated 10 February 2017.

¹⁶ The Company’s submissions to Charities Services dated 11 January 2017.

11. The Board recognises that purposes to promote good citizenship by promoting public participation in democratic processes are capable of being charitable under the fourth head of charity (other purposes beneficial to the community).¹⁷
12. Although New Zealand courts followed earlier decisions in accepting that purposes directed towards good citizenship may be charitable, they did not accept that anything directed at what a group considers improves citizens will be charitable.¹⁸ Where a charity advances an abstract concept, such as good citizenship, the focus should instead be on how that abstraction is going to be furthered.¹⁹ For a purpose to advance citizenship to be charitable, the purpose would need to advance a public benefit similar to what has previously been accepted as charitable.
13. The most recent New Zealand case that addressed the promotion of good citizenship as a charitable purpose, *Re Draco Foundation (NZ) Charitable Trust* (“*Re Draco*”), considered whether the Draco Foundation promoted good citizenship alongside the issue of whether it advanced education.²⁰ The High Court found that stated purposes directed at “the promotion of democracy and natural justice in New Zealand,” and to “raise awareness of and involvement in the democratic process amongst the citizens, organisations, and communities of New Zealand” were capable of being charitable.²¹
14. The Draco Foundation’s main activity was populating two websites with basic information about local authorities and government agencies, and an overview of citizen’s rights and responsibilities, including plain-language summaries of particular legal rights and opinion pieces on local government.²² In that case, the Court held that simply posting summaries of information available from other sources on a website would not be sufficiently structured to promote a public benefit aligned with either education or good citizenship.²³

¹⁷ *Re Draco Foundation (NZ) Charitable Trust* HC WN CIV-2010-485-1275 [3 February 2011] (“*Re Draco*”) at [22]; *Re Greenpeace of New Zealand Incorporated* [2014] NZSC 105 (“*Greenpeace*”) at [71].

¹⁸ *Re Draco*.

¹⁹ *Greenpeace* at [102].

²⁰ *Re Draco*.

²¹ *Re Draco* at [21].

²² *Re Draco* at [39].

²³ *Re Draco* at [41] and [72]; see also *Re Positive Action Against Pornography v Minister of National Revenue* 49 D.L.R (4th), 74 (HEU), where the Canadian Supreme Court held that simply presenting information does not advance education.

15. Notwithstanding *Re Draco*, there is a lack of cases in New Zealand addressing the promotion of good citizenship by promoting public participation in democratic processes. The New Zealand courts treat other jurisdictions' analysis as persuasive and have been regularly guided by how the United Kingdom regulators address other areas of charitable purpose.²⁴ In England and Wales, the advancement of citizenship or community development, including the promotion of civic responsibility, is defined in statute as a charitable purpose.²⁵
16. The England and Wales assessment of the advancement of citizenship as a charitable purpose is discussed in a recent decision by the First-Tier Tribunal declining the application of Full Fact to the Charity Commission. Full Fact is a company whose main activity was fact-checking news stories.²⁶ In its decision the Tribunal recognised that a purpose to build the capacities of persons by equipping them with knowledge and skills to verify information and factual material, enabling them to participate fully in existing democratic processes for public benefit may be a charitable purpose to advance education and promote good citizenship.²⁷ The Tribunal held that Full Fact needed to demonstrate that it provided accurate information based on rigorous standards of objective analysis and factual research. Full Fact failed to demonstrate this.²⁸ As in the *Re Draco* case, sufficient structure was required to demonstrate that the activities were objectively directed to promote good citizenship or education in the charitable sense.
17. Both decisions suggested that without sufficient structure to activities there was nothing to prevent an organisation promoting its own point of view on political issues rather than promoting public participation in democratic processes.

Do the Company's activities promote good citizenship by promoting public participation in democratic processes?

18. To assess whether the Company advances a purpose analogous to the promotion of good citizenship, the Board examined whether the Company's activities are objectively directed at promoting public participation in democratic processes for the public benefit.

²⁴ For example in *Re Draco* at [74].

²⁵ *Charities Act 2011* s 3(1)(e) and 3(2)(c)(ii).

²⁶ *Full Fact v The Charity Commission for England and Wales* Case (2011) No CA/2011/0001 ("*Full Fact*").

²⁷ *Full Fact* at [3.2.2].

²⁸ *Full Fact* at [3.2.1]. Full Fact was later registered, on the basis that it was advancing education, after amending its stated purposes and activities in the light of the First-Tier Tribunal's decision; see Charity Commission for England and Wales, Full Fact – Application for Registration, Decision of the Commission, 17 September 2014.

19. The Company's primary activity will be to provide a website on which members of the public can vote on each government bill. Each bill will be accompanied by a simple, unbiased explanation. The polling results will be displayed on the website alongside the votes of each "government party" on each bill. If a particular bill receives more than 66% approval from users of the poll, it will be labelled a "Citizen Supported Government Bill". The Company will notify "political parties" of every "Citizen Supported Government Bill".²⁹
20. The Company's website will also be used as a platform to communicate information on how to vote. The Company will encourage users of the website to vote and ask them to spread the message that people need to perform their duty as citizens in a democracy by voting.³⁰
21. The Board considers that the Company's activities lack sufficient structure to ensure it promotes good citizenship in a charitable manner. The presentation of the data and government bill summaries on the Company's website would simply be posting summaries of information available from other sources on a website.³¹ As stated in *Re Draco*, posting publically available information may have "high convenience value" but "does not have any independent educative value."³² The Company has not provided any information demonstrating its activities will train or assist people to participate fully in democratic processes.
22. The Board also does not consider that the provision of an online resource will necessarily translate into public participation in democratic processes. The Company has not demonstrated how the resource supports individuals to make submissions to select committees, write to members of parliament, vote in elections, or otherwise participate in democracy. The Company has not provided evidence of any facilities or mechanisms on its proposed website that will assist or enable members of the public to participate in democratic processes. The Board does not consider that voting on bills and notifying "political parties" of bills the Company deems popular constitutes public participation in democratic processes in any effective sense.

Summary of purpose – good citizenship by promoting public participation in democratic processes

23. The Company's proposed website, including an online public poll and posting of readily available information, is not enough to demonstrate these activities will promote public participation in democratic processes. The Board considers the Company's activities are not sufficiently structured to promote good citizenship in a way previously accepted as charitable.

²⁹ The Company's submissions to Charities Services dated 10 February 2017.

³⁰ The Company's submissions to Charities Services dated 10 February 2017.

³¹ *Re Draco* at [41] and [72].

³² *Re Draco* at [41].

Does the Company have a purpose to advance education?

24. The Company submits that it has a purpose to advance education as a charitable purpose, and that the data collected from users on its website will be of educational value.
25. The advancement of education falls within the description of charitable purpose at section 5 of the Act, and is capable of being charitable. The most recent New Zealand decision on whether an entity advances education is *FAAR and FRSSH*, which applied the summary of the law from *Re Collier*.³³ In *Re Collier*, Hammond J stated that for research to qualify as educational:³⁴
- ...it must first confer a public benefit, in that it somehow assists the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard.”³⁵
26. Where it is established that an entity has a purpose to advance education, it is presumed this will lead to a benefit to the public. *Re Collier* and *FAAR and FRSSH* confirm that although there is a wide scope to what can be educational in charities law, there are limits.
27. The education must be sufficiently structured to assist the training of the mind or advancement of research: the compiling and publishing of facts already in the public domain will not amount to research.³⁶ The provision of materials or information by which people *might* be educated is not sufficient to advance education.³⁷

Do the Company's activities advance education?

28. The Company submits that publishing live-use data and graphs tracking the polls that are being viewed or polled each day, and storing it as historical data for future analysis, will be of educative value to the New Zealand public. The Company submits that historical data may be used for future analysis “to understand how the New Zealand public moved through each Government Bill.”³⁸

³³ *FAAR and FRSSH* at [56]; *Re Collier (Deceased)* [1998] 1 NZLR 81 (HC) (“*Re Collier*”) at 91-92.

³⁴ *FAAR and FRSSH* at [63].

³⁵ *Re Collier* at 91-92.

³⁶ See for example: *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10; (1999) 169 DLR (4th) 34 (“*Vancouver Society*”) at 118 adopted by Ronald Young J in *Re Draco* at [75].

³⁷ *Vancouver Society* referred to in *Re Draco* at [75].

³⁸ The Company's submissions to Charities Services dated 10 February 2017.

29. The Board considers the data to be collected from the Company's online polls is likely to be of limited educative value because the collection is not sufficiently structured. The Company has not provided evidence of statistical methodology in the collection or dissemination of the data. The Board considers that the mere presentation of Company's poll data, in the absence of any discernible statistical methodology, does not meet the minimal standard required to advance education through research.
30. The Board does not consider the Company's other activities advance education. The bulk of the material planned for the Company's website – voting information, "government party" voting data and bill summaries – is already publicly available elsewhere. In line with the cases discussed in *Re Draco*, the posting of publicly available information (including summaries) may be convenient but it cannot be considered educational in a charitable sense.³⁹

Summary of purpose - education

31. As with the promotion of good citizenship, the majority of the Company's activities do not advance education as they consist of posting information (or summaries of information) that is already publicly available. *Re Draco* makes it clear that this does not advance education in a charitable sense. In addition, the planned collection of polling data lacks sufficient statistical methodology to advance research in a charitable sense.

Does the Company have a purpose to advance a political purpose recognised as charitable?

32. In its most recent submission, the Company submits that its primary purpose is "politics" as a charitable purpose by supporting government bills approved by a majority of the users of the Company's website.⁴⁰
33. The Supreme Court in *Greenpeace* held that advocating for a cause may be charitable when it advances a public benefit in a similar way to a previously accepted charitable purpose.⁴¹ To advance a public benefit, an organisation must advocate for an *end* previously accepted as charitable by the courts. The *means* promoted to achieve that end and the *manner* in which the cause is promoted must also be considered in relation to previous cases.⁴²

³⁹ *Re Draco* at [77].

⁴⁰ The Company submissions to Charities Services dated 10 February 2017.

⁴¹ *Greenpeace* at [72].

⁴² *Greenpeace* at [76].

34. The Supreme Court in *Greenpeace* cautioned that “[a]dvancement of causes will often, perhaps most often, be non-charitable”⁴³ because it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable.⁴⁴ The Supreme Court approved the reasoning of Keifel J in *Aid/Watch Incorporated v Commissioner of Taxation*⁴⁵ that “reaching a conclusion of public benefit may be difficult where activities of an organisation largely involve the assertion of its views”.⁴⁶ Even if an end promoted is recognised as a charitable purpose, “the means of promotion may entail a particular point of view which cannot be said to be of public benefit”.⁴⁷

Do the Company’s activities advance a political purpose recognised as charitable?

35. The Company initially submitted it had no political agenda. It stated that its promotion would “be very mild and unbiased” and that it would “act as a neutral third party”⁴⁸ by simply presenting voting data. During the application process, the Company submitted that its primary purpose was politics as a charitable purpose, and it provided further activities information on how it would advance this purpose.⁴⁹
36. The Company submits it will notify “political parties” of every government bill that receives more than 66% approval from users of its website. The Company intends to create a political agenda consisting entirely of supporting bills deemed popular by users of its poll. The Company made no submissions that the ends, means and manner of the political positions on bills that the Company promotes would be analogous to a previously accepted charitable purpose.
37. The Board considers it is not possible to say whether the promotion of the bills the Company supports will be directed towards an end - or means- recognised as charitable. It may be that some of the bills promoted are supported by a majority of New Zealanders. Popular support of a bill does not demonstrate that the bill promotes a charitable purpose. The Supreme Court in *Greenpeace* held that controversy or the lack thereof is not determinative of charitable purpose.⁵⁰
38. Further, it is not clear that any of the bills promoted by the Company will be supported by a majority of New Zealanders. The participants in the Company’s polls are self-selected and there is no evidence of statistical methodology to ensure the results of the polls are an indication of broad-based national support for the bills the Company intends to promote.

⁴³ *Greenpeace* at [102].

⁴⁴ *Greenpeace* at [73].

⁴⁵ *Aid/Watch Incorporated v Commissioner of Taxation* [2010] 241 CLR 539 (“*Aid/Watch*”) at [68]-[69].

⁴⁶ *Greenpeace* at [73].

⁴⁷ *Greenpeace* at [116]. The Supreme Court did not follow *Aid/Watch* and accept that the generation of public debate may be a charitable purpose.

⁴⁸ The Company submissions to Charities Services dated 25 October 2016.

⁴⁹ The Company submissions to Charities Services dated 10 February 2017.

⁵⁰ *Greenpeace*, at [75].

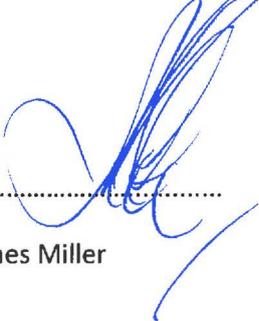
Summary of purpose – politics

39. The Board considers that the Company does not have a purpose to promote a political purpose that is recognised as charitable by the courts. The Company's purpose to advocate for bills supported by users of the Company's website is not promoting a charitable purpose. The information provided by the Company does not demonstrate that the bills it advocates for will promote an end or ends recognised by the courts as charitable.

Determination

40. The Board determines that the Company does not qualify for registration because it is not established for exclusively charitable purposes as required by s 13(1) of the Act.
41. The decision of the Board is therefore to decline the application for registration as a charitable entity.

Signed for and on behalf of the Board


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Roger Holmes Miller

11th OCTOBER 2017
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Date 