

Sample Charitable Trust Deed and Guide to its Clauses

From Department of Internal Affairs

CommunityNet Aotearoa

<http://www.community.net.nz/how-toguides/legalstructures/Templates/Trust.htm>

A charitable trust is an agreement between people (called trustees) to manage property, over which they have control, for charitable purposes.

The broad details of how a charitable trust will operate are set out in its trust deed. Existing charitable trusts can apply to be incorporated as a board under the Charitable Trusts Act 1957. New groups with charitable purposes can also apply for incorporation.

The steps of incorporation, including the relevant contact addresses are outlined below Setting up an Incorporated Charitable Trust.

Using the Sample Trust Documents

The sample charitable trust documents outlined below meet all the requirements for incorporation. If you wish to use the sample as the basis for your trust deed it is important to carefully go through it to make sure that it will meet your needs. If there are any provisions you are unhappy with, unclear about or feel are not covered, you should discuss alternative wordings as a group.

Most of the clauses in the deed have been developed as useful provisions with very few specifically required by law. Most can therefore be changed to suit the needs of the group. You can obtain advice from other groups, consultants, and lawyers as to appropriate wording or look at other trust deeds by taking the following steps:

1. Go to the Companies Office Trusts and Societies website (www.societies.govt.nz)
2. Click on Name Search
3. Type in the first word of a name of a charitable trust you know of or a keyword or that will help you find a similar group (eg Youth)
4. Click on the name of a group whose trust deed you want to look at.
5. Click on Documents and you will see a list of the most recent registered version of the group's rules as well as recent annual accounts.
6. Click on the most recent set of rules (you will need Adobe Acrobat Reader which is available as a free download or on CD Roms in most computer magazines)

Guide to Sample Trust Deed Clauses

This deed contains some clauses required by law and others that are included to encourage good practice. The sample deed also includes Maori translations of the headings that are also optional.

Introductory clauses A, B and C: These make clear that the trust has property (in this case by a small donation by each of the trustees). If there are other assets, this could be briefly mentioned here.

Clause 1. Name: Once a name has been decided on by the group, it should be checked to ensure no other registered organisation has a name that is too similar. If another has a name that is similar and is likely to cause confusion your group will not be able to register under this name. You can check on which names are available by contacting the Companies Office on 0508266726 or go to their websites at www.companies.govt.nz and www.societies.govt.nz and use the steps outlined earlier in this section. You need to check both websites because if your proposed name is very similar to that of an existing company you will not be able to use it. Simply adding Trust or Society or Incorporated on to the end of your name will not make it sufficiently distinguishable and you will not be able to register with it.

Clause 2 Principles: While not required by law it is often worthwhile to agree on some principles your group will follow as it operates. You could also include a mission and/or vision statement here. This can be a useful way of giving the public a good idea of what you stand for.

Clause 3 Purposes: This needs to be practical and succinct, describing in short sentences what the organisation wants to achieve and how it will do it.

The wording of your purposes (or objects) is critical to ensuring your group obtains charitable tax status; if the objects are not charitable, registration under the Charitable Trusts Act 1957 (CTA) is not possible.

The wording should also fully reflect your intentions and needs to cover the main activities your group intends to carry out, as well as allowing for possible activities you may wish to carry out in the future. You do not need to do everything listed in your purposes at the same time so don't be afraid to include purposes even though you may not be able to carry them out immediately.

As you may not be permitted to carry out activities that fall outside the stated purposes it is useful to include, as in this sample, a general statement allowing the society to do anything else to further its charitable aims.

You can look at the objects of other charitable groups by going to the Companies Office website and using the steps outlined above.

Clause 4 Area of Operation: If you don't plan to operate outside just state that you will limit your activities to New Zealand. This is normally required should your group wish to obtain donee status from Inland Revenue.

Clause 5 Registered Office: All incorporated bodies are required to provide a physical address to the Companies Office, however the actual address can be included in the covering letter when incorporation is sought (rather than in the trust deed) and updated if

and when it changes. If the group does not have an office address, it can provide the home address of one of its members or of its accountant or solicitor.

Clause 6 Makeup of the Board:

6.1: The trust deed should set a maximum and minimum number of people to be on the board. Legally there is a minimum of two and no maximum, although you should not set it so high that meetings become impossible to organise or run.

6.2: Your group needs to determine what office holders there will be and how they will be appointed and removed. While the law does not stipulate what particular office holders there should be, it is prudent to always have a treasurer, someone to run meetings (chairperson or facilitator) and someone to ensure the records of the board are well maintained (secretary or note taker).

6.3: The deed needs to outline how people cease to be trustees (see also 6.5). As outlined in the sample deed, people who are undischarged bankrupts or who are mentally ill under the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 are not allowed to be.

6.4: The deed needs to outline how new trustees are appointed and how long trustees should be on the board. This can be either a fixed term with or without options for renewal or can be for an unlimited term subject to removal as outlined below. Alternatively trustees could be nominated by other organisations or quotas could be provided for where it is important to have broad representation on the board. You need to decide what will suit your trust best and it is useful to discuss this with other organisations. In this sample deed trustees remain on the board unless they resign or are removed. Alternatively trustees could have a set term.

6.5: This clause enables appointment of new trustees should the number fall below the minimum number specified in 6.1.

6.6: It is useful for the board to have broad discretion to remove trustees should they not be acting in the best interests of the trust.

6.7: The CTA requires the deed to state the name of the board which will normally be the same as the name of the trust.

Clause 7: How the Board will Operate: This clause outlines essential minimum requirements for operation of the board meetings.

7.1.1 It is important to set an appropriate quorum that balances the need for reasonable attendance with the need for meetings to proceed where some people are not present. Proxy votes (having someone else vote on your behalf when you are not present) are only allowed if specifically provided for in the deed. Any ongoing problems with attendance need to be addressed looking firstly at why attendance is poor.

7.1.2 It is useful to have provision to remove trustees who for no good reason do not attend.

7.1.3 The Trust may decide to use consensus decision-making, where an issue is talked through until an agreement on how to proceed has been reached by all Board members. As in this case it is important to have backup provision where consensus cannot be reached.

7.1.4 This is one way of avoiding deadlock where votes are tied based on the idea that something should only be done where more than half of those voting agree. Another way is giving the chairperson a casting vote.

7.1.5 This is to ensure someone is responsible for chairing the meetings

7.2 It is good to decide on a minimum number of meetings that will be held each year. This clause enables meetings to be held by teleconference or via the internet in case people cannot meet face to face.

Charitable trusts are not required by law to hold annual general meetings and these are usually associated with organisations that have a membership. However some charitable trusts do have members that vote for trustees and these would normally have AGMs.

7.3 This is to ensure minutes are properly kept.

Clause 8 Powers: The powers of the board allow it to buy and sell property, employ people (including members of its board), and do a number of other things necessary to carry out its job properly. This section is written broadly to give the board wide powers so it is not hampered.

Clause 9 Pecuniary Benefit: The pecuniary benefit clause is required by Inland Revenue for all organisations wanting charitable, non profit, or sports promoter tax status. The clause is designed to prevent members of the society using their position to benefit themselves, their close family members. In simple terms it means:

- members may be paid for services to the society, or reimbursed for legitimate expenses
- where a member, their family members (including some members of extended family) may benefit financially from a decision of the Society they must not participate in or influence any such decisions
- any payments to members or their families must be made at no more than “market rates” but may be at less than market rates.

Clause 10 Delegation: This clause allows the board to delegate day-to-day management of the trust’s affairs and to delegate matters to committees as it sees fit. The board retains ultimate responsibility for decisions made.

Clause 11 Financial Arrangements: The deed must provide for the investment and control of funds. The sample clause is worded very generally to give flexibility enabling the board to change the financial procedures from time to time without having to alter the deed. The sample trust has a financial year of 1st January to 31st December although this can be changed. Many organisations find it easiest to have their financial year lined up with their main funders so for example if they are mainly funded by government their financial year would be from 1 July to 30 June the following year.

11.4 Gives the board the option of having its accounts audited. Most funders you approach will ask for your accounts to be audited.

Clause 12 Common Seal: The common seal is the deed’s official stamp, which is sometimes required to be used on documents (e.g. particularly when borrowing money or purchasing property). The Rules must state who can use the common seal (e.g. the

Chairperson and one other person appointed by the committee). They must also state who is to look after the common seal.

Clause 13 Alteration of Trust Deed: This provides a simple process for alteration of the deed although as noted the rules that affect the charitable nature of the trust can only be altered with Inland Revenue approval.

Clause 14 Mediation/arbitration: This provides a dispute resolution mechanism to enable individual trustees unhappy with particular decisions to have these resolved with external assistance without having to go to the High Court.

Clause 15 Trustee Liability: This clause limits trustee liability although it is important to remember the board and individual trustees still need to act prudently, in line with the trust deed and any other policies, and legally.

Clause 16 Winding Up: If, for whatever reason, a board decides it should wind up, this clause enables the gifting of surplus assets (after all debts have been paid) to another charitable organisation/s. Alternatively a particular charitable organisation/s could be named here, although it is usually better to give the trustees at the time the flexibility to decide who to give surplus funds to.

Disclaimer

This template has been provided to assist your community organisation. It is provided for guidance only. Users are encouraged to seek more information on specific topics and to seek opinion from a legal practitioner on any employment or legal issue.

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Charitable Trust Sample Deed for New Foundations

THIS DEED is made the _____ day of _____ 2005

BETWEEN

Name	Address	Occupation
Jill Judge of	30 Juniper Ave, Christchurch	Student
Kerry Kimble of	15 Konini Lane, Christchurch	Bus driver
Kelly Kipper of	8 Wattle Drive, Christchurch	Homemaker

WHEREAS:

- A. The parties to this Deed wish to establish a charitable trust (in this Deed referred to as "the Trust") for the purposes described in Clause 3 of this Deed, and
- B. The parties to this deed have agreed to contribute the sum of one dollars each to establish the Trust; and
- C. They have agreed to enter into this Deed specifying the purposes of the Trust and providing for its control and government.

1. TE INGOA/ NAME:

The name of the Trust is New Foundations, hereafter called 'the Trust'.

2. MÄTÄPONO/PRINCIPLES

The Trust is committed, in attaining its purposes, to:

- 2.1 respecting and implementing the dual heritage of the partners of Te Tiriti o Waitangi (the Treaty of Waitangi);
- 2.2 respecting the cultural diversity of people and encourage people from all nationalities to utilize the Trust's facilities and services;
- 2.3 inspiring people to reach their full potential;
- 2.4 working cooperatively with others in the youth development area; and
- 2.5 maintaining the highest standards of professionalism and integrity.

3. WHÄINGA/ PURPOSE

The purpose of the Trust will be to educate and train people, particularly youth and unemployed, about options for employment and career development. In particular the Trust will:

- 3.1 operate a mobile careers expo service;

- 3.2 provide an internet based career counselling service; and
- 3.3 provide other support and assistance consistent with this charitable purpose.

4. NGA MAHI KI AOTEAROA ANAKE/ ACTIVITIES LIMITED TO AOTEAROA/NEW ZEALAND

The activities of the Trust will be limited to Aotearoa/New Zealand.

5. TARI/OFFICE

The office of the Trust will be in such place in New Zealand as the Board of Trustees may from time to time determine.

6. TE RUNANGA WHAKAHAERE/ THE BOARD OF TRUSTEES

6.1 The Board will comprise of no less than three (3) Trustees and no more than ten (10) Trustees.

6.2 The signatories to this Deed will be the first Board. The Trustees will elect from among themselves a Chairperson. A Secretary and Treasurer will also be appointed from among themselves or from non-trust members. An election of office-bearers will be held at the first meeting of the Board following the execution of this Deed and whenever a vacancy occurs. The positions of Secretary and Treasurer may be combined.

6.3 A person will immediately cease to be Trustee when she or he resigns in writing, dies, is declared bankrupt or is found to be a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or subsequent enactment.

6.4 The Board will have the power to fill any vacancy that arises in the Board or to appoint any additional trustees subject to clause 6.1.

6.5 The Board may continue to act notwithstanding any vacancy, but if their number is reduced below minimum number of trustees as stated in this deed, the continuing trustee/s may act for the purpose of increasing the number of trustees to that minimum but for no other purpose.

6.6 The Board may, by a motion decided by a two-thirds ($2/3^{\text{rd}}$) majority of votes, terminate a person's position as a Trustee and member of the Board, if it believes that such action is in the best interests of the Trust.

6.7 The name of the Board will be New Foundations.

7. NGA HUI O TE RUNANGA WHAKAHAERE/ MEETINGS OF THE BOARD

7.1. The procedure for Board meetings will be as follows:

7.1.1 A quorum will be at least half of its members.

7.1.2 If a Trustee, including an office-bearer, does not attend three (3) consecutive meetings of the Board without leave of absence that member may, at the discretion and on decision of the Board, be removed as a Trustee, and/or from any office of the Trust which she or he holds.

7.1.3 All questions will if possible be decided by consensus. In the event that a consensus cannot be reached then a decision will be made by a majority vote by show of hands, unless otherwise determined by the Board.

7.1.4 If the voting is tied, the motion will be lost.

7.1.5 In the absence of the Chairperson, the Board will elect a person to chair the meeting from among the Trustees present.

7.2 The Board will meet at least three (3) times every year. Meetings may be held in person or by any other means of communicating as decided on by the Board from time to time. The Secretary will ensure that all members of the Board are notified of the meeting, either verbally or in writing.

7.3 The Secretary will ensure that a minute book is maintained which is available to any member of the Trust and which, for each meeting of the Board, records

7.3.1 the names of those present;

7.3.2 all decisions made by the Board; and

7.3.3 any other matters discussed at the meeting.

8. TAKETAKE/ POWERS

In addition to the powers provided by the general law of New Zealand or contained in the Trustee Act 1956, the powers which the Board may exercise in order to carry out its charitable purposes are as follows:

8.1 to use the funds of the Trust as the Board thinks necessary or expedient in payment of the costs and expenses of the Trust, including the employment and dismissal of professional advisors, agents, officers and staff, according to principles of good employment and the Employment Relations Act 2000 or any subsequent enactment;

8.2 to purchase, take on, lease or in exchange or hire or otherwise, acquire any real or personal property and any rights or privileges which the Board thinks necessary or expedient in order to attain the purpose of the Trust and to sell, exchange, let, bail or lease, with or without option of purchase or, in any other manner, dispose of such property, rights or privileges;

8.3 to invest surplus funds in any way permitted by law for the investment of Charitable Trust funds and upon such terms as the Board thinks fit;

8.4 to borrow or raise money from time to time with or without security and upon such terms as to priority or otherwise as the Board thinks fit; and

8.5 to do all things as may from time to time be necessary or desirable to enable the Board to give effect to and attain the charitable purposes of the Trust.

9. KO NGA RAWA HEI PAINGA MO TE IWI/ INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES

9.1 Any income, benefit or advantage will be applied to the charitable purposes of the Trust.

9.2 No trustee or members of the Trust or any person associated with a trustee shall participate in or materially influence any decision made by the trustees in respect of any payment to or on behalf of that trustee or associated person of any income, benefit or advantage whatsoever.

Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value).

9.3 The provision and effect of this clause shall not be removed from this deed and shall be implied into any document replacing this deed of trust.

10. TURU TAKETAKE/ POWER TO DELEGATE

10.1 The Board may from time to time appoint any committee and may delegate any of its powers and duties to any such committee or to any person. The committee or person may without confirmation by the Board exercise or perform the delegated powers or duties in the same way and with the same effect as the Board could itself have done.

10.2 Any committee or person to whom the Board has delegated powers or duties will be bound by the terms of the Trust and any terms or conditions of the delegation set by the Board.

10.3 The Board will be able to revoke such delegation at will, and no such delegation will prevent the exercise of any power or the performance of any duty by the Board.

10.4 It will not be necessary for any person who is appointed to be a member of any such committee, or to whom such delegation is made, to be a Trustee.

11. PŪTEA/ FINANCIAL ARRANGEMENTS

11.1 The financial year of the Trust will be from 1 January to 31 December.

11.2 At the first meeting of the Board in each financial year, the Board will decide by resolution the following:

11.2.1 how money will be received by the Trust;

11.2.2 who will be entitled to produce receipts;

11.2.3 what bank accounts will operate for the ensuing year, including the purposes of and access to accounts;

11.2.4 who will be allowed to authorise the production of cheques and the names of cheque signatories; and

11.2.5 the policy concerning the investment of money by the Trust, including what type of investment will be permitted.

11.3 The Treasurer will ensure that true and fair accounts are kept of all money received and expended by the Trust.

11.4 The Board may arrange for the accounts of the Trust for that financial year to be audited by an accountant appointed for that purpose.

12. TE TOHE TAKETAKE/ COMMON SEAL

12.1 The Common Seal of the Board, following its incorporation, will be kept in the custody and control of the Secretary, or such other officer appointed by the Board.

12.2 When required, the Common Seal will be affixed to any document following a resolution of the Board and will be signed by the Chairperson (or a trustee acting as the Chair) and one other trustee appointed by the Board.

13. WHAKAREREKĒTANGA TURE/ ALTERATION OF THIS DEED

13.1 The Trustees may, by consensus or pursuant to a motion decided by a two-thirds majority of votes, by supplemental Deed make alterations or additions to the terms and provisions of this Deed provided that no such alteration or addition will:

13.1.1 detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or

13.1.2 be made to the Purpose Clause (3), the Activities Limited to New Zealand Clause (4), the Pecuniary Interests Clause (9) or the Disposition of Surplus Assets Clause (15) unless it is first approved in writing by the Department of Inland Revenue.

14. TAKAWAENGA/ MEDIATION & ARBITRATION

14.1 Any dispute arising out of or relating to this deed may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between parties. Mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation. The other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' institute of new Zealand Inc.

14.2 The mediation shall be terminated by-

14.2.1 The signing of a settlement agreement by the parties; or

14.2.2 Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or

14.2.3 Notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or

14.2.4 The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

14.3 If the mediation should be terminated as provided in 14.2.2, 14.2.3 or 14.2.4 any dispute or difference arising out of or in connection with this deed, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty -one (21) days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

15. TAUNAHA/ TRUSTEE LIABILITY

It is declared that:

15.1 The Trustees are chargeable respectively only in respect of the money and securities they actually receive, or which, but for their own acts, omissions, neglects, or defaults they would have received, notwithstanding their signing any receipt for the sake of conformity; and

15.2 They are each answerable and responsible respectively only for their own acts, receipts, omissions, neglects and defaults and not for those of each other, or of any banker, broker, auctioneers, or other person with whom, or into whose hands, any Trust money or security is properly deposited or has come;

15.3 No Trustees shall be liable personally for the maintenance, repair, or insurance of any charges on such property;

15.4 No Trustees hereof shall be liable for any loss arising from any cause whatsoever including a breach of the duties imposed by Section 13B and/or Section 13C Trustees Act 1956 (as enacted by the Trustee Amendment Act 1988) (or any statutory replacement or equivalent) unless such loss is attributable:

15.4.1 To his or her own dishonesty; or

15.4.2 To the wilful commission by him or her of an act known by him/her to be a breach of Trust.

And pursuant to Section 13D of the Trustees Act 1956 it is intended by this clause that the duties imposed by Section 13B and 13C of the Trustees Act 1956 shall not apply to any Trustee hereof.

15.5 No Trustees shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of Trust committed by that co-Trustee.

15.6 Notwithstanding the procedure or otherwise of retaining assets in the Trust Fund no Trustee shall be liable for any loss suffered by the Trust Fund by reason of the Trustees retaining any asset forming part of the Trust Fund.

15.7 The Trustees shall from time to time and at all times be indemnified by and out of the Trust property from and against all costs, charges, losses, damages, and expenses sustained or incurred by them or in or about the execution and discharge of their office or in or about any claim, demand, action, proceeding or defence at law or in equity in which they may be joined as a party.

16. TE TUKU TOENGA RAWA/DISPOSITION OF SURPLUS ASSETS

On the winding up of the Trust, or on its dissolution by the Registrar, all surplus assets, after the payment of costs, debts and liabilities will be given to other charitable organisation/s within New Zealand as the Board will decide. If the Trust is unable to make such a decision, the surplus assets will be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 or subsequent enactment.

IN WITNESS OF WHICH this Deed has been executed:

SIGNED by the above named) Jill Judge
) _____

as Trustee in the presence of:) _____

Full Name of Witness:

Occupation:

Residential address:

SIGNED by the above named) Kerry Kimble
) _____

as Trustee in the presence of:) _____

Full Name of Witness:

Occupation:

Residential address:

SIGNED by the above named) Kelly Kipper
) _____

as Trustee in the presence of:) _____

Full Name of Witness:

Occupation:

Residential address:

“A”

This is the document marked “A”
referred to in the annexed
declaration of
..... made at
Christchurch this
..... day of
....., 2005
before me