

Sample Charitable Trust Deed and Guide to its Clauses (extended version)

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. The attached sample trust deed has been updated to reflect the Trusts Act 2019.

The **sample charitable trust deed** template has been updated to reflect the new Trusts Act 2019 that came into force on 30 January 2021.

Need to update your existing deed to comply with the new Act? A template for the **variation of a trust deed** has been added below to assist Trusts that were registered under earlier Acts.

Sample Charitable Trust Deed

[This resource includes a Charitable Trust Sample Deed for New Foundations which you can download here.](#)

Variation of a Trust Deed

[If you need to change the wording of your Trust Deed, you can also download the template here.](#)

Using the Sample Charitable Trust Deed

The Charitable Trust Deed Template meets all the requirements for incorporation. If you wish to use the template 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 [Charitable Trusts Register](#) (found on the Companies Office website - <https://www.companiesoffice.govt.nz/all-registers/>)
2. Enter a trust board name, number or NZBN (NZ Business Number). You can 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).
3. Click on the name of a group whose trust deed you want to look at.
4. Click on the 'Filings' tab and you will see a list of the most recent documents, including the group's rules. Other organisation's documents may be available in their [Charities register](#) listing.
5. Click on the most recent set of rules (you will need a PDF reader to view this document. Adobe Acrobat Reader is a common option and is available as a free download from www.adobe.com)

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 Māori 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 on:

- the **Charitable Trusts Register** at: <https://ctregister.companiesoffice.govt.nz/> and
- the **Incorporated Societies Register** at: <https://isregister.companiesoffice.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 may find 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 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.

You can look at the objectives 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 New Zealand 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 is otherwise found to be unqualified in terms of the Act (section 16 of the Charities Act 2005) are not allowed to be Trustees (see 5 October 2023 update [here](#) covering disqualified officers as per the 5 July 2023 Charities Amendment Bill).

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 Charitable Trusts Act 1957 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 from IRD. The clause is designed to prevent members of the society using their position to benefit themselves or 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 or 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 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 14 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 15 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. If the trustees wish to be a donee organisation they should limit any distributions to New Zealand.

Clause 16 Alterations of Rules: If trustees decide to amend the rules of a trust, this clause allows any of the rules to be amended by a majority of the Trustees as long as it does not affect the charitable nature of the Trust. If an amendment clause is not included, trustees will have to apply to the High Court to amend the trust deed.

Disclaimer

This template is meant to help your community organization, but it's just a guide. Please seek more information and legal advice on specific issues.

We've tried to make sure the information in this template is current and accurate, but it's provided as is. The Department of Internal Affairs accepts no liability for any claims arising from the use of this template.