

The ECE Reform Charitable Trust Deed

This deed is made on, and effective from 7th December 2020.

PARTIES

Michael Robert Purves	46 Kinghorne St, Strathmore, Wellington 6022	Management Accountant
Debbie Marguerite Purves	46 Kinghorne St, Strathmore, Wellington 6022	School Teacher
Ngairé Jean Pincott	35C Oriel Tce, Tawa, Wellington 5028	Adult Literacy / ESOL

(Trustees)

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(Settlor)

BACKGROUND

- A. The parties to this deed wish to establish a charitable trust in New Zealand for the purposes described in clause 3 of this deed and to give effect to such desire are, at the same time, giving to the trust the sum of one dollar (\$1.00) to form the basis of a fund (**Fund**) to be held for the purposes and on the terms set out in this deed.
- B. The parties to this deed have agreed to enter into this deed specifying the purposes of the trust and providing for its control and government.

OPERATIVE PROVISIONS

1 Name

The name of the Trust shall be the “ECE Reform Charitable Trust”, hereafter referred to as “the Trust”.

2 Office

The office of the Trust shall be such place in New Zealand as the Board of Trustees may determine.

3 Principles

- (a) Good quality of life in a loving and healthy environment form the best platform for learning in a child’s early years.
- (b) Society has a duty to care for its children. Human beings at any age are citizens, and we uphold the United Nations Convention on the Rights of the Child. This means that every effort should be made to ensure that children experience living conditions conducive to physical, mental, and emotional health, and enjoyment of life, to a degree no less than would be reasonable for adults.
- (c) Healthy employment conditions for those working in ECCE are not only good in their own right, but also assist the care and education of children.

4 Purposes

The purposes of the Trust are to improve long term outcomes for children's health, education, and quality of life by facilitating the:

- (a) Researching and developing of systems and proposals for improving:
 - (i) quality of life for children during early childhood (approximately birth to 8 years old);
 - (ii) quality of life for children enrolled in early childhood education and care services; and
 - (iii) care of the early childhood teaching workforce.
- (b) Promotion of the systems and proposals described in (a).
- (c) Advocacy for, including by submissions, legislation and governance that improves the matters described in (a)(i) to (iii).

5 The Board

5.1 Numbers

The Board of Trustees (**Board**) shall consist of no fewer than two (2) nor more than four (4) trustees (Trustees). The parties listed as Trustees shall be the first Trustees. 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.

5.2 Trustee term in office

Unless otherwise specified in this deed each Trustee shall hold office until she or he:

- (a) dies;
- (b) is declared bankrupt;
- (c) has his or her property affairs managed under the [Protection of Personal and Property Rights Act 1988](#) upon the grounds of lack of competency to manage those affairs;
- (d) is a "patient" as defined in [section 2 of the Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#) of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (e) indicates in writing that she or he wishes to resign from the Board; or
- (f) is removed as a Trustee by the other Trustees acting unanimously.

5.3 Appointment of new Trustees

The filling of vacancies on the Board shall be carried out as follows:

- (a) by appointment by the Board; and
- (b) the appointment of a Trustee and the cessation of the appointment of any Trustee shall not be effective until recorded by resolution recorded in the Board's meeting minutes, or by deed.

5.4 Name of the Board

The name of the Board shall be the ECE Reform Charitable Trust Board.

6 Powers

6.1 General powers

Subject to clause 6.3, the Board may exercise the following powers in order to carry out its charitable purposes:

- (a) all the powers necessary to manage the Fund and the Trust including, in relation to the Fund, all the powers of an absolute owner of the Fund;
- (b) all the powers necessary to carry out the purposes of the Trust, including powers incidental to those in paragraph 6.1(a) and the powers contained in the [Trusts Act 2019](#) (Act).

The foregoing clauses are subject to the specific restrictions contained in clause 6.3.

6.2 Specific powers

In addition to the general powers referred to in clause 6.1 and those implied by the general law of New Zealand or contained in the Act, the Board shall have the following specific powers:

- (a) to use the Fund as the Board thinks necessary or proper in payment of the costs and expenses of the Trust, including the employment of professional advisers, agents, officers and employees as appears necessary or expedient; and
- (b) to purchase, take on, lease or in exchange or hire or otherwise acquire any personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of attaining the objects of the Trust and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid; and
- (c) to do all things as may from time to time be necessary or desirable to enable the Board to give effect to and to attain the charitable purposes of the Trust.

6.3 Restrictions on powers

Despite clauses 6.1 and 6.2, the powers of the Board are restricted as follows:

- (a) the Board may not borrow money; and
- (b) May not invest money for a period exceeding six months;
- (c) The Board may not purchase real property; and
- (d) The Board may not use Trust funds for the purchase of any item with a value exceeding the threshold value for 'an item of low value' as defined in Clause EE38(2) in the Income Tax Act 2007. (This has the effect of excluding capital expenditure).
- (e) The Board may not delegate its powers, except as described in clause 11(f).
- (f) The Trust may not undertake to provide any payment for which adequate funds have not already been received, except as provided for in Clause 6.3(g).

- (g) The Trust may enter into a provisional arrangement to contract services for which funds have not yet been received, with the explicit provision in the contract that payment will only be made if sufficient future donated funds are received to make the payment, and that the Trust will not be liable for payment if sufficient donations have not been received.

For the avoidance of doubt, these restrictions modify the Board's powers under Trusts Act 2019.

6.4 Further modification of discretionary responsibilities

The duties imposed by Section 13B and 13C of the Trustees Act 1957, and from the date it comes into force, Sections 29 and 30 of the Trusts Act 2019, shall not apply to any Trustee .

6.5 Incorporation

- (a) The Board is empowered to seek incorporation in accordance with the provisions of the [Charitable Trusts Act 1957](#);
and,
- (b) at any time after registration of the Trust with the Companies Office, apply to the Charities Services or a subsequent entity for registration as a charitable entity under the applicable legislation.

7 Trustee Duties

Each Trustee and the Board, as the case may be, must:

- (a) know the terms of the Trust;
- (b) act in accordance with the terms of the Trust;
- (c) act honestly and in good faith;
- (d) hold or deal with the assets of the Trust and otherwise act to further the purpose of the Trust specified in clause 3;
- (e) exercise their powers for a proper purpose;
- (f) not exercise a power of the Board directly or indirectly for the Trustee's own benefit except as authorised by clause 9;
- (g) consider actively and regularly whether the Board should be exercising one or more of the Board's powers;
- (h) not bind or commit the Board to a future exercise or non-exercise of a discretion;
- (i) avoid a conflict between the interests of any Trustee and the interests of the Board or the purposes specified in clause 3;
- (j) act impartially when considering potential beneficiaries;
- (k) not make a profit from their trusteeship;
- (l) not take any reward for acting as a Trustee;
- (m) act unanimously, except as provided in clauses 5.2(f) and 10.5.

8 Trustee liability and indemnity

8.1 Board liability

The Board is liable for any expense or liability incurred by the Trust.

8.2 Trustee indemnity

A Trustee who incurs an expense or liability when acting with the authority of the Board is entitled:

- (a) if the Trustee has paid the expense or discharged the liability out of the Trustee's own funds, to reimbursement from the Fund; or
- (b) in any other case, the Board must pay the expense or discharge the liability directly from the Fund;

unless the expense or liability arose from the Trustee's dishonesty, willful misconduct or gross negligence or was incurred without authority from the Board.

8.3 Trustee liability

- (a) Trustees 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 or other person with whom, or into whose hands, any Trust money or security is properly deposited, or has come.
- (b) No Trust Board member shall be bound to take any proceedings against a co-trustee for any breach or alleged breach of trust committed by that co-trustee.
- (c) Trust Board members shall not be liable for the actions or statements of any other person, except where that person's actions or statements have been explicitly requested or directed by the Trust Board.

9 Income benefit or advantage to be applied to charitable purposes

9.1 Application

Any income, benefit or advantage held by the Board shall be applied to the charitable purposes of the Trust.

- (a) Trustee roles will be voluntary, and trustees and their families will not receive remuneration for services from the Trust.
- (b) Trust Board members may be reimbursed for material expenses, for example travel, incurred in the discharge of Trust Board responsibilities.

9.2 Entrenchment

The provisions and effect of this clause 9 shall not be removed from this document and shall be included and implied into any document replacing this document.

10 Proceedings of the Board

10.1 Meetings

- (a) The Board shall meet at such times and places as it determines and shall elect a chairperson from amongst the Trustees at its first meeting and at every subsequent annual general meeting.
- (b) Meetings will occur, at a minimum once a quarter, and may be held via video or telephone conference.
- (c) The Trust Board may make decisions by email. All requests for a decision must be notified to all trustees.

10.2 Officers

The Board shall appoint persons to hold the offices of chairperson, secretary and treasurer. These offices may be combined. The chairperson shall be appointed from the Trustees. The secretary and treasurer need not be Trustees.

The functions of the secretary include:

- (a) Notifying Trustees and other officers of Board meetings. of each meeting of the Trust and give all such notices as may be required by these rules
- (b) Holding the Trust records and documents, except those required for the Treasurer's functions.
- (c) Receiving and reply to correspondence as required by the Trust

The functions of the Treasurer include:

- (a) Keep proper and accurate records of the Trust's financial transactions to allow the financial position of the organisation to be readily ascertained.
- (b) Provide financial information to the Trust as it so determines.
- (c) Preparing and/or assist in the preparation of financial statements.
- (d) Manage all Trust bank accounts.

10.3 Chairperson

The chairperson shall preside at all meetings of the Board at which they are present. In the absence of the chairperson from any meeting, the Trustees present shall appoint one of their number to preside at that meeting.

10.4 Quorum

At any meeting of the Board a majority of Trustees shall form a quorum and no business shall be transacted unless a quorum is present.

10.5 Voting

- (a) The Board shall endeavour to reach consensus on all decisions before it. Where the Board has two trustees, all decisions must be unanimous. Where the Board has three members, and a unanimous decision cannot be reached, a decision may be made by 2/3 decision. Where the Board has four trustees, and a unanimous decision cannot be reached, a decision may be made by a 3/4 majority. This clause does not apply with respect to clause 5.2(f).
- (b) Notwithstanding clause 10.5(a), if a trustee registers a strong objection to a proposed decision, the matter must be brought to a consensus that resolves the strong objection.

10.6 Minutes

The secretary shall keep minutes of all Board meetings which shall be available for inspection by Board members at reasonable times. Such minutes will record the following:

- (a) the names of those present;
- (b) all decisions made by the Board; and
- (c) any other matters discussed at the meeting.

10.7 Written Resolution

A written resolution signed by all Trustees shall be as valid and have the same effect as a resolution validly passed at a meeting of the Board.

11 Accounts and financial management

11.1 True and fair accounts

- (a) The Board shall keep true and fair accounts of all money received and expended.

11.2 Financial management

- (a) The Board will choose the Bank from which it will operate the ECE Reform Trust accounts.
- (b) The financial year of the Trust will be from 1 April to 31 March.
- (c) The Board will operate two accounts called the Income Account and the Allocated Funds Account.
- (d) The Income Account will all receive funds donated to the Trust, and will receive funds returned to the account from the Allocated Funds Account. Funds in the Income Account may only be moved to the Allocated Funds Account. No payments shall be made from the Income Account.
- (e) Funds may only be allocated to the Allocated Funds Account with the agreement of two or more trustees, following the decision-making requirements of clauses 10.4 and 10.5.
- (f) Funds allocated to the Allocated Funds Account must be assigned an Allocation Code with an explicit purpose, and those funds may only be used for the purposes stated in the Allocation Code. Any excess funds remaining in the Allocated Funds Account after the needs for which they were allocated have been met, must be returned to the Income Account.
- (g) Following authorisation by two or more trustees per clause 11.1(f), any trustee may move authorised funds between the accounts, or make a payment from the Allocated Funds Account.
- (h) The Board may authorise a third party to make payments from the Allocated Funds Account, if those payments are made in accordance with the purposes associated with the applicable Allocation Code.
- (i) The Board may authorise use of a Debit Card or ETPOS card for expenditure from the Allocated Funds Account.
- (j) The Board may reverse a funding decision associated with an Allocation Code, and return those funds from the Allocated Funds Account to the Income Account.

- (k) The annual accounts will, if required by the Board, be reviewed or audited by an appropriately qualified person appointed by the Board. The accounts will be kept at the Trust offices or such other place as the Board see fit and will always be open to the inspection of the Board.

12 Power to delegate

12.1 Power to delegate

The Board may not delegate its powers, except as described in clause 11.2(h).

12.2 Delegate bound

Any committee or person to whom the Board has delegated powers or duties shall be bound by the terms of this Trust Deed.

12.3 Delegation revocable

Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.

12.4 Delegate need not be Trustee

It shall not be necessary that any person to whom any such delegation permitted in clause 11.2(h) is made, be a Trustee.

12.5 Duty to review delegations

If the Board exercises its powers to delegate under this clause 12, the Board must:

- (a) keep under review the arrangements under which the committee or person acts and how those arrangements are being put into effect; and
- (b) if the circumstances make it appropriate to do so, consider whether the Board should exercise any power to intervene (for example, a power to give directions to the committee or person, or to amend, revoke, or replace the appointment).

13 Common seal

The Board shall have a common seal which shall be kept in the custody of the secretary, or such other officer as shall be appointed by the Board and shall be used only as directed by the Board. It shall be affixed to documents only in the presence of two Trustees, and be accompanied by the signatures of those Trustees.

14 Alteration of deed

The Board 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 shall 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.

15 Trust contracts

Contracts on behalf of the Trust may be made as follows:

- (a) A contract which if made by private persons would be by law required to be by deed may be made on behalf of the Trust by writing under the common seal of the Trust attested as referred to in this clause.
- (b) A contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged, may be made on behalf of the Trust in writing signed by any person acting under the Board's authority, express or implied.

PROVIDED, HOWEVER, that no such contract shall be entered into by any person on behalf of the Trust except with the authority of a resolution passed by the Board at a properly constituted Board meeting or in accordance with clause 10.7.

16 Winding up and dissolution of assets

16.1 Winding up

The Board may, by consensus or pursuant to a motion decided by a two thirds majority of votes, resolve to wind up the Trust.

16.2 Distribution of assets

If, either on the winding up, failure or dissolution of the Trust, or in the case of the Board having incorporated in accordance with the provisions of the Charitable Trusts Act 1957 on the liquidation of the Board or on its dissolution by the Registrar, there remains, after payment of all of the Trust's debts and liabilities, any property or assets whatsoever, they shall be given or transferred to trustees for carrying out charitable purposes within New Zealand similar to those set out in this deed, or be applied for such charitable purposes within New Zealand as the Board may, by resolution, determine at, before, or during the winding up, failure, dissolution or liquidation. If the Board is unable to make such decision, such property shall be disposed of in accordance with the directions of a Judge of the High Court pursuant to s 27 of the Charitable Trusts Act 1957 on the application of any member of the Board.

17 Mediation

17.1 Process for mediation

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.

17.2 Termination of mediation

- (a) The signing of a settlement agreement by the parties; or
- (b) 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
- (c) Notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or
- (d) The expiry of sixty working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.
- (e) If the mediation should be terminated as provided in 17.2(b) or (c), 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 days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

18 Interpretation

In this deed:

- (a) Headings are for guidance only and shall not affect the interpretation of this trust deed.
- (b) Words importing the singular also include the plural or vice versa.
- (c) Any reference to any legislation shall be deemed to be a reference to any legislation passed in substitution.

19 Matters not stated

- (a) If any matter is not provided for in these rules, the Trust Board shall have the power to deal with it.
- (b) The Trust Board shall have the sole authority to interpret these rules. The decision of the Trust Board on any question or interpretation or on any matter affecting the Trust not provided for in these rules, shall be final and binding on all members.

This Deed has been executed and witnessed by:

1. Trustee name Michael Robert Purves

Signature _____

as trustee in the presence of witness: _____

Full Name of Witness:

Occupation:

Residential address:

2. Trustee name Debbie Marguerite Purves

Signature _____

as trustee in the presence of witness: _____

Full Name of Witness:

Occupation:

Residential address:

3. Trustee name Ngaire Jean Pincott

Signature _____

as trustee in the presence of witness: _____

Full Name of Witness:

Occupation:

Residential address:

I hereby certify that this is a correct copy of the Trust Deed of the ECE Reform Charitable Trust.

Full Name:.....

Signed:.....

Date:.....