

EXPLANATORY NOTES TO PROPOSED NEW TRUST DEED 2025

The establishment and operation of a Charitable Trust is governed by the Charitable Trusts Act 1957 and the Trusts Act 2019. The proposed Heart Kids New Zealand Charitable Trust Deed largely follows the existing Heart Kids Constitution, however, references and requirements for membership have been removed because they are not applicable to a trust structure. Under a Charitable Trust structure, the Trustees of Heart Kids New Zealand Charitable Trust would be legally required to act in the best interests of Heart Kids, to enable the organisation to fulfil its charitable purpose.

Section in proposed HKNZ Charitable Trust Deed	Section number in current HKNZ Constitution	Content in proposed section of the Heart Kids New Zealand Charitable Trust Deed
Section 1: Definitions and Interpretations	2	Defines terms used elsewhere in the Charitable Trust Deed for clarity and consistency.
2 Establishment of the Trust	-	Sets out how the Trust is established.
3 Charitable Purposes	3	Details the purpose of the Trust. Note: The purpose of Heart Kids remains unchanged, no changes to the organisational purpose are proposed.
4 Trustees	7	Sets out the number of trustees to be appointed – there must be at least 2 trustees but not more than 7 trustees serving at any given time. This section also sets out how trustees are appointed and removed, and the term of appointment.
5 Trustee Duties	7	Trustee duties are largely in line with duties of directors/officers under a company structure. These duties include acting in accordance with the Terms of the Trust, dealing with the Trust Fund in a way that benefits the organisational purpose, and acting honestly and in good faith for the benefit of the organisation.

6 Powers of the Board	7	The Board has the powers necessary for Heart Kids to achieve its purpose. These powers are detailed in the Trust Deed Schedule for clarity and completeness.
7 Appointment and Removal of Officers	7	The Board appoints and Chairperson and Deputy Chairperson. Each Officer may hold their position for a term of 3 years but may be re-elected.
8 Proceedings of the Board	7	<p>This section sets out the procedural detail for the frequency and notice of meetings. The Board must hold at least four meetings every year, and a quorum will be two-thirds of the Trustees. Board members will endeavour to reach an agreement on all matters, but if there is a disagreement, a majority vote will take place.</p> <p>This section also establishes the Board Advisory Group, comprising of individuals with lived experience of being a Heart Child or a Parent of a Heart Child.</p>
9 Delegation	-	The Board has the power to delegate to any trustees, any officers or employees of the Board, or any attorney or other person nominated or appointed by the Board. Any delegation can be taken back at any time. Delegation is governed by legislation and any person to which the Board has delegated power, must act in the best interests of the organisation.
10 Remuneration and Reimbursement of Expenses of Trustees	-	There will be no remuneration for Trustees, however they may be reimbursed for all reasonable expenses incurred on behalf of and approved by the Board. (This is no different to how the Board currently operates).
11 No Private Pecuniary Profits	9	No person can individually profit from the Trust's activities.
12 Interested Trustees	10	Trustees must disclose any interests that could cause (or be perceived to cause) a conflict with their duties to the Trust. Trustees cannot vote on any decision where they have a personal or financial interest.
13 Liability of Trustees	7	Trustees will not be personally liable for any loss incurred by the Trust. Trustees will be indemnified from the Trust Fund for any personal liability in connection with their role as Trustee. This is provided there has not been any dishonesty, wilful misconduct or gross negligence by the Trustee. The Board will take out professional indemnity insurance for trustees.

14 Control of Funds	-	All money will be held in the Trust's bank accounts. Bank accounts require the signature of at least two Trustees, or other persons with requisite authority.
15 Accounts	13	Accurate and complete financial accounts must be kept and made available to the Trustees. An audit will be conducted annually by an independent auditor.
16 Annual Public Meeting	14	Each year, there will be an Annual Public Meeting where the Board will present an annual report on the operations and affairs of Heart Kids, the financial statements and any other general business.
17 Execution of Documents	12	Any document to be executed on behalf of the Trust must be signed by at least two trustees.
18 Alterations and Review	15	Alteration to the Trust Deed may only occur if at least 70% of Trustees vote in favour of such resolution. There are limitations on the amendments that can be made. The governance procedures must be reviewed at least every 3 years to ensure they are fit for purpose and assist the Trust to achieve its charitable purpose.
19 Winding Up	16	The Trustees can only wind up the Trust if a unanimous written resolution is reached, or if at least 70% of Trustees vote in favour of the Trust being wound up. If the Trust is wound up, the Board may transfer any remaining funds to a charity with a similar purpose.
	1	The Trust is governed by the laws of New Zealand.