

# Deed of Trust

## Male Survivors Bay of Plenty Trust

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## **TRUST DEED**

### **PARTIES**

The founding Trustees are:

Michael Gordon Holloway, Hamilton

Peter Anthony Chamberlain, Auckland

Frank Phillip Chapman, Nelson

### **BACKGROUND**

- A. The Trust, which is to be known as Male Survivors Bay of Plenty Trust ("MSBOPT"), is formed for the purpose of pursuing the objects listed in this Trust Deed.
- B. The Trustees named above have agreed to act as the founding Trustees of MSBOPT.
- C. The Trustees wish to apply for incorporation as a Board under Part II of the Charitable Trusts Act 1957 and to register as a charitable entity in accordance with the Charities Act 2005.

### **THIS DEED RECORDS**

#### **1. TRUST FUND**

The Trustees declare that they hold all money and other property settled upon trust for those charitable purposes referred to in clause 4 of this Deed together with all other money and property which may be added to it by way of capital or income ('Trust Fund').

#### **2. NAME OF THE TRUST**

The Trust shall be known as the Male Survivors Bay of Plenty Trust ("MSBOPT") or such other name as the Trustees may, by amendment to this Deed, determine from time to time.

#### **3. OFFICE OF THE TRUST**

The registered office of the Trust shall be situated at such place as determined by the Trustees from time to time.

#### **4. CHARITABLE OBJECTS OF THE TRUST**

4.1 The charitable objects of the Trust are:

- a. To provide support services for male survivors of sexual abuse and their families and significant others, with the support of professionals and others if and when required;
- b. To advocate on all matters relating to the wellbeing of male survivors of sexual abuse;

- c. To collaborate with other organisations to enable the development of, and increase access to, support services for male survivors of sexual abuse;
  - d. To educate and train individuals, groups and communities to increase the support services available for male survivors of sexual abuse and their families and significant others;
  - e. To increase community awareness and understanding of male survivors of sexual abuse through forums, seminars and education programmes;
  - f. To engage in any other charitable activities which the Trustees consider necessary or desirable to support male survivors of sexual abuse in New Zealand.
- 4.2 No personal gain: Personal gain is not an object of the Trust and all funds shall be used to further the Trust's charitable purposes.
- 4.3 Objects Independent: The Trustees shall be empowered to carry out any one or more of the objects of the Trust independently of any other object of the Trust. The Trustees shall not be required to give effect to all objects in any given year.
- 4.4 Carried out within New Zealand: All the objects of the Trust are to be carried out exclusively within New Zealand.

**g. POWERS OF TRUSTEES**

- 5.1 General: The Trustees shall act on the Trust's behalf. In addition to all other powers conferred by law, the Trustees shall have the same powers as a natural person acting as a beneficial owner of the Trust Fund.
- 5.2 Apply Funds: The Trustees shall have the power to apply any money forming part of the Trust Fund towards the charitable objects of the Trust.
- 5.3 Deal with Land and Property: The Trustees shall have the power generally to purchase, lease, sell, mortgage, loan, borrow, maintain, manage, repair, insure, improve or develop any real or personal property, or any interest, which forms part of the Trust Fund in such manner as the Trustees think fit.
- 5.4 Collect Funds: The Trustees shall have the power to collect funds and raise money by all lawful means (including accepting money raised from gaming machines) and receive, accept, encourage and enlist financial and other contributions, grants, subscriptions, sponsorships, donations, legacies, endowments or bequests from any source. The Trustees may also conduct fund raising campaigns in order to further the exclusively charitable objects of the Trust.
- 5.5 Apply for and Receive Grants and Subsidies: The Trustees shall have the power to apply for and receive from the New Zealand Government or from any exclusively national funder, any grant, donation or payment of any kind in order to further the objects of the Trust.

- 5.6 Contributions and Distributions: The Trustees shall have the power to make payments and contribute to any charitable or other trust having substantially similar charitable objects as the objects of this Trust or who are otherwise providing services to male survivors of sexual abuse.
- 5.7 Invest Funds: The Trustees shall have the power to invest any money forming part of the Trust Fund in any of the ways authorised by law for the investment of trust funds.
- 5.8 Payment of Trustees' Costs and Expenses: Subject to Clause 4.2 of this Deed, to pay or reimburse from the Trust's funds any agreed costs or expenses incurred in the course of the Trustees discharging or exercising any of their powers and duties.
- 5.9 Affiliate or Contract: The Trustees shall have the power to affiliate, liaise, negotiate, work with, enter into and be party to contracts and agreements with any government department, community organisation, individual, business or other organisation on any terms as the Board thinks fit and to enter into deeds, memorandum, agreements or contracts accordingly.
- 5.10 Pay Debts: The Trustees shall have the power to apply any income or capital of the Trust Fund in, for, or towards payment of any fees, costs, disbursements, debts or other liabilities or any part of such liabilities, owing by or in respect of the Trust Fund or incurred in connection with the trusts of this Deed. Such power shall apply whether or not the liabilities are charged upon the Trust Fund or on any part of it, and whether or not the Trustees are contractually or otherwise legally liable for the payment.
- 5.11 Establish Reserves: The Trustees shall have the power to operate any depreciation or reserve fund for any purpose the Trustees deem advisable and to determine in their discretion whether that fund is income or capital.
- 5.12 Legal Action: The Trustees shall have the power to engage in prosecuting, defending or otherwise taking any legal action or legal proceedings on behalf of the Trust and for that purpose, to spend such money and employ solicitors, counsel and other advisers as the Board thinks fit.
- 5.13 Promote: The Trustees shall have the power to promote and further the objects of the Trust through media, written publications or otherwise.
- 5.14 Borrow: The Trustees shall have the power to borrow or raise any monies on mortgage or overdraft or otherwise, with or without security, from any person or person at such rate of interest and on such terms and conditions as the Trustees think fit. The Trustees shall also have the power to sign any mortgage, deed, charge, arrangement or other document in connection with such borrowing.
- 5.15 Make Policies and Rules: The Trustees shall have the power to make policies, rules, guidelines and other determinations in governing the Trust and/or its relationships with other organisations or individuals.

- 5.16 Give Security: The Trustees shall have the power to give security, whether alone or together with any other person or persons, the giving of which the Trustees shall consider to be in the direct interests of the Trust Fund or of the promotion of the objects or the exclusively charitable objects of the Trust.
- 5.17 Settle Accounts: The Trustees shall have the power to agree and settle accounts with all persons liable to account to the Trustees and to compromise questions relating to the Trust Fund and to grant receipts, discharges and releases from such accounts provided all discharges and releases are in accordance with the Objects of the Trust.
- 5.18 Intellectual Property: The Trustees shall have the power to license or otherwise exercise control over the use of the name Male Survivors Bay of Plenty by any organisation established after the date this Trust is incorporated.
- 5.19 Guarantee: The Trustees shall have the power to enter, or join in entering into, any guarantee by the Trustees alone or together with any person or persons, the giving of which the Trustees consider is in the direct interests the Trust Fund or the promotion of the exclusively charitable objects of the Trust.
- 5.20 Bank Accounts: The Trustees shall have the power to open or maintain such current or other accounts at such banks or other institutions and in such manner as the Trustees from time to time determine.
- 5.21 Insure: The Trustees shall have the power to insure against loss or damage by any cause of any insurable property forming part of the Trust Fund, and to insure against any risk or liability against which it would be prudent for a person to insure if they were acting for themselves, for such amounts and on such terms as the Trustees may from time to time think fit.
- 5.22 Specified Trust: The Trustees shall have the power to carry out any specified trust attaching or relating to any grant, contribution, subscription, sponsorship, donation, legacy, endowment, bequest, grant, subsidy or payment received, to the extent such specified trust conforms with the objects of the Trust.
- 5.23 Statutory Authorisation: The Trustees shall have the power to do all or any of the things which they are authorised to by the Trustees Act 1956 or its successor.
- 5.24 General: The Trustees shall have the power to do all such other things as in the opinion of the Trustees are incidental or conducive to the attainment of the objects of the Trust.
- 5.25 Exercise Powers Independently: None of the powers conferred on the Trustees by clause 5 or otherwise shall be deemed subsidiary or ancillary to any other power and the Trustees shall be entitled to exercise all or any of them independently of each other.

5.26 Charitable purpose: the powers conferred on the Trustees by clause 5 must only be used to further the charitable purpose of the Trust.

**h. DELEGATION**

6.1 Power to Delegate: The Board may from time to time delegate any of its powers and duties to any such committee or individual or organisation other than those powers and duties that relate to matters which go to the heart of the trust itself such as: the makeup of the Board, the calling of Board meetings, and the purposes for which the trust has been established.

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

6.3 Terms of delegation: Subject to the rules and directions of the Board, each special committee may regulate its own proceedings in such manner as it thinks fit.

6.4 Delegation revocable: The Board will be able to revoke such delegation at will, and any member of a special committee may have his or her appointment revoked at any time. No such delegation shall prevent the exercise of any power or the performance of any duty by the Board.

6.5 Status of Delegate

Any person who is appointed to be a member of any such committee, or to whom such delegation is made, need not be a Trustee.

**i. ADMINISTRATION OF THE TRUST**

7.1 The Trust shall be governed by a Board of Trustees.

7.2 Except as otherwise provided for in this Deed or in law, all matters of Trust administration shall be decided by the Board. The Board may adopt policies, guidelines or other resources to assist in the administration of the Trust.

7.3 The Board may employ and/or contract staff and/or volunteers to assist in the administration of the Trust.

**j. BOARD OF TRUSTEES**

8.1 Composition: The Board will be comprised of no fewer than three (3) Trustees and no more than ten (10) Trustees.

8.2 Term of Office:

a. Subject to clause 8.5 and 8.7, the term of office of every Trustee shall be three years unless they resign or are removed in accordance with this Deed.

- b. Trustees may be reappointed for subsequent terms of office;
  - c. The terms of office of the Trustees shall be rotated so that:
    - If there are 5 Trustees or less, at least one Trustee's term of office expires each year;
    - If there are more than 5 Trustees, at least two Trustees' term of office expires each year;
- 8.3 Eligibility: Unless otherwise formally resolved by the Board, an individual will be ineligible to serve as a Trustee of MSBOPT if he or she:
- a. has a conviction for a sexual offence;
  - b. has a conviction for dishonesty offence within the previous 7 years;
  - c. has a criminal conviction which the Board considers may have an impact on the reputation of MSBOPT;
  - d. has been barred from being a Trustee by either the Department of Internal Affairs or by the Board of MSBOPT;
  - e. is subject to a property order under the Protection of Personal and Property Rights Act or subsequent enactment, or
  - f. is subject to a disqualification under the Charities Act which has not been the subject of an exemption by the Department of Internal Affairs.
- 8.4 Office Holders: The signatories to this Deed will be the first Board. Once appointed, the Trustees will choose a Chairman, Secretary and Treasurer 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 Board may change or re-appoint office holders as it sees fit.
- 8.5 Cessation of Trustee Service: A person will immediately cease to be Trustee when he or she:
- a. resigns in writing
  - b. dies
  - c. is declared bankrupt
  - d. is convicted of a sexual or dishonest offence
  - e. is found to be a mentally disordered person within the meaning of the Mental Health Act 1969 or subsequent enactment
  - f. is disqualified from acting pursuant to the Charities Act 2005 or subsequent enactment, or
  - g. is removed from office in accordance with rule 8.7.
- At the Board's discretion, a Trustee may be removed from office for failing to attend three consecutive Board meetings without prior notice or explanation.
- 8.6 Vacancies: The Board will have the power to appoint any additional trustees to fill any vacancy that arises in the Board between Annual Meetings.

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.

- 8.7 Removal from Office: The Board may, by a motion decided by a 80% 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. A replacement Trustee may be appointed in accordance with rule 16 in Schedule A.

#### **k. MEETINGS OF THE TRUSTEES**

- 9.1 Time and Place for Meetings: The Trustees shall meet at least three times per year, at such places and times, and in such manner, as they decided. The Chairman shall chair Trustee meetings, or in his/her absence or inability to act, the meeting will be chaired any other Trustee chosen from among the Trustees. A schedule of meetings may be agreed in advance or notices of meetings will be sent as agreed.
- 9.2 Facsimile/Email Resolutions: A resolution in writing, signed or assented to by fax or email, or other form of visible or other electronic communication agreed to by the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several documents in like form each signed by one or more Trustees.
- 9.3 Forum: A meeting of the Trustees may be held where one or more of the Trustees is not physically present at the meeting, provided that:
- a. All persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
  - b. Notice of the meeting is given to all the Trustees;
  - c. If a failure in communications prevents clause 9.3a from being satisfied and such failure results in the quorum not being met, the meeting shall be suspended until condition 9.3.a is again met. If such condition cannot be met within 15 minutes from the interruption the meeting shall be deemed to have terminated or adjourned.
- 9.4 Any meeting held where one or more of the Trustees is not physically present shall be deemed to be held at the place where the Chairman of the meeting is located.

#### **I. MEETING ADMINISTRATION**

- 10.1 Quorum: A quorum of at least one half of the Trustees is required for all meetings of the Trustees.
- 10.2 Voting: Each Trustee present at a meeting shall be entitled to one (1) vote.



10.3 Decision Making: All questions will, wherever possible, be decided by consensus.

10.4 Conflicts of Interest: Trustees must declare any interests they have in accordance with rule 13 of this Deed.

10.5 Minutes: Minutes shall be kept of all Board meetings and shall be available to all Trustees.

10.6 Execution of Documents:

10.6.1 The Board shall agree which Trustees shall be entitled to sign on behalf of the Trust. The Board may authorise some documents or agreements being signed by a staff member alone or together with an agreed Trustee.

10.6.2 The Board shall provide a common seal for the Trust. The common seal shall be attached to all documents, which must be made by deed or as is otherwise required by law. The Secretary shall have custody of the common seal, which shall only be used by the authority of the Board. Two members of the Board shall sign every document to which the common seal is attached.

**m. STAFF AND CONTRACTORS**

11.1 Appointment: The Board may employ or contract such staff as they consider appropriate to work for the Trust on such terms as they consider appropriate.

11.2 Attendance at Board Meetings: Staff or contractors engaged under clause 11.1 may be invited to attend some or all meetings of the Board but shall not be entitled to vote.

**n. TRUSTEES' LIABILITY**

12.1 Liability: No Trustee shall be liable for any loss to the Trust Fund not attributable to his or her own dishonesty, or to the willful commission or omission by him or her of an act known by him or her to be a breach of trust.

12.2 Contract liability: It is deemed to be a term of every contract entered into by or on behalf of the Trust that the Trust alone is liable to any debts and obligations under the contract, and that no Trustee, employee or volunteer of the Trust is under any personal liability.

12.3 Indemnity: The Trustees, employees and volunteers of the Trust shall be indemnified by the Trust against all losses and liabilities incurred by them in the proper performance of their functions and duties, other than as a result of their willful or criminal act or default.

12.4 Insurance: The Trust may effect insurance for any Trustee, employee or volunteer in respect of any matter for which such person is entitled to indemnification pursuant to 12.3.

12.5 Proceedings: No Trustee shall be bound to take, or be liable for their failure to take, any proceedings against another Trustee or Trustees for any breach or alleged breach of trust committed by such other Trustee or Trustees.

**o. DEALING WITH INTERESTS**

13.1 Interests: A Board Member will have an interest in any matter if s/he:

13.1.1 may obtain a personal financial benefit from the matter;

13.1.2 is the spouse, partner, child, caregiver, guardian or parent of a person who may derive a financial benefit from the matter;

13.1.3 may have a financial interest in another organisation or business to which the matter relates; or

13.1.4 excepting rule 13.2, is a partner, director, officer, board member or trustee of a business, organisation or trust who may have a financial interest to which the matter relates.

13.2 Disclosure obligation: Where a Board Member has an interest in any decision on any matter being considered by or affecting the Trust, s/he must, as soon as s/he becomes aware of his or her interest in the matter, disclose the nature and extent of that interest to the Board.

13.3 Voting: A Board Member may not vote on any decision relating to any matter s/he has an interest in. S/he may be counted toward the quorum for the meeting.

13.4 Exclusion of interested trustee: The Board may, where it considers appropriate, exclude a Board Member from any discussion or involvement with any matter it considers the Trustee to have an interest in.

13.5 Record: The Board shall maintain a record of all Trustee interests that are disclosed.

**p. DISPUTE RESOLUTION**

14.1 Process: Dispute resolution will be conducted in accordance with the procedures set down in the Dispute Resolution policy.

**q. FINANCIAL ARRANGEMENTS**

15.1 Financial year: The financial year of the Trust will be from 1 July to 30 June in the following year.

15.2 Financial policies: The finances of the Trust shall be managed in accordance with the financial policies of the Trust.

- 15.3 Accounts and Audit: The Trustees shall keep full and correct records necessary for showing the true financial state and condition of the Trust.

As soon as practicable after the end of each financial year, the Trustees shall ensure that financial statements are prepared.

The Board shall appoint an auditor or an accountant to review the annual financial statements of the Trust. The Auditor or Reviewer must have accounting qualifications and must not be a member of the Board, or an employee or paid contractor of MSBOPT.

**r. INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES**

- 16.1 Advance charitable purpose: Any income, benefit or advantage will be used to advance the charitable purpose of the Trust. Nothing expressed or implied in this Deed shall permit the activities of the Trustees, or any business carried on by or on behalf of or for the benefit of the Trustees upon the trusts of this Deed, to be carried on for the private pecuniary profit of any individual.

- 16.2 No material influence: No trustee 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.  
Any payments made to a trustee, or person associated with a trustee, must be for goods or services that advance the charitable purposes and that payment must be reasonable and relative to payments that would be made between unrelated parties.

- 16.3 Entrenchment: 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.

**s. ALTERATIONS TO THIS DEED**

- 17.1 Alterations: The Trustees may, by consensus or, in the extraordinary circumstance where consensus cannot be reached, pursuant to a motion decided by a 80% majority of votes, by amendment or supplemental Deed make alterations or additions to the terms and provisions of this document provided that no such alteration or addition will:
- a. detract from the exclusively charitable nature of the Trust or
  - b. result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.

- 17.2 Incorporated status: If the Trust is an incorporated entity, alterations shall be registered with the Registrar of Charitable Trusts at the Companies Office within one month of the date of alteration.
- 17.3 Charitable status: If the Trust is a registered charitable entity, alterations shall be registered with the Charities Registration Board at the Department of Internal Affairs within three months of the date of alteration.

**t. LIQUIDATION/ DISSOLUTION**

- 18.1 Resolution: The Trust may be wound up if:
- a. a resolution is passed by a two-thirds majority at a meeting of Board members that the Trust be wound up, or
  - b. the objects of the Trust shall fail or be frustrated.
- 18.2 Distribution of surplus property: On the winding up of the Trust all surplus assets after the payment of costs, debts and liabilities will be:
- 18.2.1 given or transferred to an organisation or organisations working with male survivors of sexual abuse and which is/are registered with the Charities Registration Board established by s.8 of the Charities Act 2005, or its successor, or
  - 18.2.2 Given to further any other charitable purpose or purposes recognised under New Zealand law and chosen by the Trustees.
  - 18.2.3 If the Trustees are unable to decide about distribution, the remaining assets will be disposed of in accordance with the Charitable Trusts Act 1957 or subsequent enactment