



Arts Centre of Christchurch Trust Act 2015

Private Act 2015 No 1
Date of assent 5 June 2015
Commencement see section 2

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Preamble

- (1) The Arts Centre, in particular its collection of historic stone buildings, is a cultural asset of local, national, and international heritage significance situated in the heart of Christchurch:
- (2) The Arts Centre was previously occupied by 2 of the city's original secondary schools and was the home of the University of Canterbury (previously Canterbury College and Canterbury University College) for more than a century from 1873 to 1974:
- (3) By deed of trust dated 31 December 1978, Albert Dempster Brownlie, Malcolm Douglass, Peter Douglas Dunbar, Richard William John Harrington, Graham Monteith Miller, Noel Robert Searell, and Thomas John Taylor formed a charitable trust (The Arts Centre of Christchurch Trust) to provide for a cultural centre for the people of Christchurch and elsewhere in New Zealand on the site formerly occupied by the University of Canterbury, and for the preservation of the architectural character and integrity of the historic stone buildings presently on that site:
- (4) Since 1978, the trust board has amended the deed of trust on a number of occasions:
- (5) The trust is governed by The Arts Centre of Christchurch Trust Board (the **trust board**), a board of trustees incorporated under the Charitable Trusts Act 1957:
- (6) In 2010 and 2011, the Canterbury region was struck by a series of devastating earthquakes, and the buildings at The Arts Centre suffered significant damage. A multi-million dollar restoration programme is now underway:
- (7) In light of the earthquakes and the challenges faced by the trust board in relation to the restoration programme and securing the ongoing advancement of the trust's objects, the trust board considers that it is necessary to set out the objects of the trust in an Act. The trust board considers that setting out the trust's objects in an Act recognises the local, national, and international heritage significance of The Arts Centre and its historic stone buildings and the importance of the trust's objects in relation to ensuring that The Arts Centre continues as a cultural centre for the people of Christchurch and visitors to Christchurch and that the heritage integrity of The Arts Centre and its historic stone buildings is preserved:
- (8) In addition, legislation is the preferred method to—
 - (a) clearly distinguish the objects of the trust and the powers conferred on the trust board to advance those objects; and
 - (b) update and modernise the governance arrangements of the trust board, and consolidate and revise other aspects of the governance and administration of the trust:

- (9) Changes of the nature proposed in recital (8) to the terms of the trust as currently set out in its trust deed would almost certainly require the trust board to apply to the High Court (under the Charitable Trusts Act 1957, the Trustee Act 1956, or otherwise) for confirmation that the trust board has the power to effect such changes under the trust deed and approval of a scheme to effect the changes. The outcome of such proceedings would be uncertain. Such proceedings would also be time-consuming and costly:
- (10) Accordingly, the trust board considers that legislation is the more effective way to achieve the matters specified in recital (8):

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the Arts Centre of Christchurch Trust Act 2015.

2 Commencement

This Act comes into force 28 days after the date on which it receives the Royal assent.

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to—

- (a) set out the objects of the trust (and the powers of the trust board to advance those objects) in an Act; and
- (b) provide for other terms of the trust relating to its governance and administration to be replaced by the constitution set out in Schedule 2 in order to—
 - (i) update and modernise the governance arrangements of the trust board; and
 - (ii) consolidate and revise other aspects of the governance and administration of the trust.

4 Interpretation

In this Act, unless the context otherwise requires,—

appointments committee means the committee appointed by the trust board in accordance with clause 4 of the constitution

commencement date means the date on which this Act comes into force

constitution means the constitution setting out the terms of the trust relating to the governance and administration of the trust, as set out in Schedule 2

implementation date means the date that is 6 months after the commencement date

The Arts Centre—

- (a) means the land described in Schedule 1 (being the site bounded by Worcester Boulevard, Rolleston Avenue, Hereford Street, and Montreal Street, all in Christchurch); and
- (b) includes the buildings, including the historic stone buildings, situated on the land

trust means the charitable trust established in respect of The Arts Centre, known as The Arts Centre of Christchurch Trust, previously subject to the terms set out in the trust deed and now subject to the terms set out in this Act, including the constitution

trust board or **board** means The Arts Centre of Christchurch Trust Board, a board incorporated under the Charitable Trusts Act 1957

trust deed—

- (a) means the deed of trust dated 31 December 1978 between Albert Dempster Brownlie, Malcolm Douglass, Peter Douglas Dunbar, Richard William John Harrington, Graham Monteith Miller, Noel Robert Searell, and Thomas John Taylor to form a charitable trust to provide for a cultural centre for the people of Christchurch and elsewhere in New Zealand on the site formerly occupied by the University of Canterbury, and for the preservation of the architectural character and integrity of the historic stone buildings presently on that site; and
- (b) includes all amendments validly made to the deed of trust since that date

trust property means—

- (a) The Arts Centre; and
- (b) all other real and personal property held by the trust board, being any property vested in the trust board at any time before or after the date on which this Act comes into force.

Part 2

Objects of trust and other matters

5 Objects of trust

- (1) The trust board holds the trust property for the following objects:
 - (a) holding and developing The Arts Centre in trust as a unique and outstanding cultural centre for use by the people of Christchurch and its visitors;
 - (b) fostering, promoting, and facilitating interest and involvement in art, culture, creativity, the creative industries, and education:

- (c) providing accommodation for the objects stated in paragraphs (a) and (b):
 - (d) promoting, conserving, and maintaining the heritage integrity of The Arts Centre and to that end adopting, and from time to time amending or varying, a conservation plan in accordance with accepted conservation principles and in terms approved by the trust board.
- (2) All income, benefits, and advantages received by or accruing to the trust board must be applied for a charitable purpose in advancing the trust's objects.

6 Trust deed replaced

- (1) On and from the commencement date, the terms of the trust deed are replaced by section 5 in relation to the objects of the trust, section 7 in relation to the trust board's powers, and Schedule 2 in relation to the constitution.
- (2) The trust board must, as soon as is reasonably practicable after the commencement date, arrange for a copy of sections 5 and 7 and the constitution to be lodged with the Registrar of Incorporated Societies.
- (3) If the objects of the trust, the trust board's powers, or the constitution is subsequently amended, the trust board must, as soon as is reasonably practicable after the amendment is made, arrange for a record of the amendment to be lodged with the Registrar of Incorporated Societies in accordance with section 23 of the Charitable Trusts Act 1957.
- (4) To avoid doubt, subsection (3) does not limit section 8.

7 Powers of trust board

- (1) In order to advance the objects of the trust as set out in section 5, and to develop and maintain a sustainable and financially viable organisation with the means to advance those objects, the trust board has, in addition to the powers conferred on the trust board by law,—
- (a) full capacity to carry on or undertake any activity, do any act, or enter into any transaction; and
 - (b) for the purposes of paragraph (a), full rights, powers, and privileges.
- (2) Without in any way limiting the powers of the trust board under subsection (1), the powers of the trust board include—
- (a) to acquire further real and personal property whatsoever and wheresoever by way of gift, purchase, or otherwise and sell the same; and
 - (b) to let or lease any land or buildings on such terms and conditions as the board may think fit; and
 - (c) to construct, alter, pull down and re-erect, improve, maintain, and provide any buildings required for the general purposes of the board and provide those buildings with such services and other amenities as are thought desirable; and

- (d) to employ such staff upon such terms and conditions as the board shall think fit, including appointing a person to be the chief executive of The Arts Centre for the purpose of managing its affairs upon such remuneration and other terms as it determines; and
- (e) to borrow money whether by way of unsecured advance or by mortgage, debenture, or any form of security or acknowledgement of debt whatsoever whether or not the same creates any charge upon the property of the board and otherwise upon such terms or conditions as the board may in its absolute discretion deem fit; and
- (f) to accept subscriptions or donations from any person; and
- (g) to do all things as may from time to time appear necessary or desirable to the board to give effect to and attain the objects of the trust as set out in section 5, including all things incidental or conducive to the attainment of any of those objects.

8 Application of Charitable Trusts Act 1957

Despite anything in this Act, the provisions of the Charitable Trusts Act 1957 continue to apply to the trust and the trust board, as if the objects of the trust, the powers of the trust board, and the constitution were set out in a deed and not in this Act.

9 Transitional provisions

- (1) On and from the commencement date,—
 - (a) the trust board constituted under the trust deed and the members of that trust board as at the commencement date are entitled to continue to act in respect of the trust in accordance with this Act, as if the members had been appointed under the constitution; and
 - (b) the chief executive of The Arts Centre appointed by the trust board under the trust deed as at the commencement date is deemed to be the first chief executive under the constitution.
- (2) As soon as practicable after the commencement date,—
 - (a) the trust board must form an appointments committee in accordance with clause 4 of the constitution; and
 - (b) the chief executive and the appointments committee must act under clause 1(c) to (i) of the constitution in respect of all of the positions on the trust board; and
 - (c) the trust board must appoint the members of the board in accordance with clause 1(j) of the constitution.
- (3) Clause 1 of the constitution applies to the processes described in subsection (2) with all necessary modifications.

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- (4) Members of the trust board on the commencement date cease to hold office at the end of the day before the implementation date.
 - (5) The terms of office of the first members appointed under subsection (2)(c) begin on the implementation date.
 - (6) From the implementation date, the trust board will be constituted in accordance with clause 1 of the constitution.
 - (7) Despite clause 5(b) of the constitution, in the period beginning on the implementation date and ending with the next annual general meeting, the trust board must elect a chair and a deputy chair to hold office until the next annual general meeting.

Schedule 1
Land comprising The Arts Centre site

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1.4572 hectares, more or less, being Lot 1 DP 435041. All computer freehold register 531681.

390 m², more or less, being Lot 2 DP 435041. All computer freehold register 531682.

1 619 m², more or less, being Lot 3 DP 435041. All computer freehold register 531683.

2 112 m², more or less, being Lot 4 DP 435041. All computer freehold register 531684.

677 m², more or less, being Lot 5 DP 435041. All computer freehold register 531685.

3 195 m², more or less, being Lot 6 DP 435041. All computer freehold register 531686.

Schedule 2

Constitution of The Arts Centre of Christchurch Trust Board

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1 Membership of trust board and appointments

- (a) The trust board must consist of not fewer than 7 nor more than 9 members.
- (b) The members of the trust board are appointed as described in this clause.
- (c) As soon as practicable after the chief executive becomes aware that a position on the trust board has become vacant, the chief executive must comply with paragraphs (d) to (f).
- (d) The chief executive must advise, in writing,—
 - (i) the University of Canterbury, that a vacancy has arisen on the trust board and that the university may nominate a person to be considered for that vacancy; and
 - (ii) the Christchurch City Council, Heritage New Zealand Pouhere Taonga, the Christchurch Civic Trust, Papatipu Rūnanga of Canterbury, and such other local, business, and community organisations the chief executive considers have an interest in The Arts Centre, that a vacancy has arisen on the trust board and that they are each able to nominate a person to be considered for that vacancy.
- (e) The chief executive must publicly advertise that a vacancy has arisen on the trust board and that any person may apply to be considered for that vacancy.
- (f) In any advice or advertisement under paragraphs (d) and (e) respectively, the chief executive must specify—
 - (i) the date by which all nominations and applications must be received; and
 - (ii) that all nominations and applications will be assessed by the appointments committee of the trust board.
- (g) On receiving the nominations and applications, the appointments committee must compile a shortlist of potential board members (the **shortlist**) to be provided to the board together with any recommendations.
- (h) The appointments committee must have regard to the following criteria when compiling a shortlist:
 - (i) prior experience as a director or trustee or experience in any other governance role; and
 - (ii) occupational skills, abilities, and experience; and

- (iii) the need for there to be diversity of community representation and a wide range of skills and expertise present among the members of the board.
- (i) The appointments committee may use any process it thinks fit to compile the shortlist and to make recommendations for appointment.
- (j) On receiving the shortlist and any recommendations, the trust board must determine to fill the vacancy from the shortlist and appoint a person as member of the board.
- (k) Where the chief executive becomes aware that more than 1 position on the trust board has become vacant at the same time,—
 - (i) the chief executive and the trust board must deal with those vacancies together; and
 - (ii) the provisions of this clause apply with any necessary modifications.

2 Term of appointments

- (a) A person appointed as a member of the trust board holds office for the term specified in the instrument of appointment, which term must be not less than 1 year and not more than 3 years.
- (b) The trust board may reappoint a person as a member of the board for a further term or terms provided that no person may serve as a member of the board for more than 6 years, whether consecutively or not.
- (c) Paragraph (b) is subject to the exception that an extension of 1 year is permissible in exceptional circumstances.

3 Vacation of office and disqualification

- (a) The office of a member of the trust board is vacated—
 - (i) if the member—
 - (A) resigns; or
 - (B) dies; or
 - (C) is, under paragraph (b), not capable of holding office as a member of the board; or
 - (D) refuses to act; or
 - (E) is absent without leave from 3 consecutive ordinary meetings of the board; or
 - (ii) if the term of the appointment of the member expires.
- (b) Each of the following persons is not capable of being appointed or reappointed, or holding office as a member of the trust board:

- (i) a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term that has not yet expired, or is subject to a condition not yet fulfilled:
 - (ii) a person who has been convicted within the last 3 years of a criminal offence punishable by imprisonment:
 - (iii) a person to whom an order made under section 383 of the Companies Act 1993 applies:
 - (iv) subject to paragraph (c), a person who is subject to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988.
- (c) If a property order is made in respect of a member of the board under section 30 of the Protection of Personal and Property Rights Act 1988 (which relates to temporary orders),—
- (i) paragraph (a)(i)(C) does not apply to the member by virtue only of the making of that order; but
 - (ii) while the order remains in force, the member is deemed to have been granted leave of absence and is not capable of acting as a member during that period.
- (d) While the trust board is registered as a charitable entity under the Charities Act 2005, paragraphs (a) to (c) apply subject to section 16 of that Act.
- (e) Subject to the requirement of a quorum, no vacancy in the office of a board member vitiates or renders invalid any proceedings, resolutions, or decisions of the trust board.

4 Appointments committee

- (a) The trust board appoints the appointments committee.
- (b) The appointments committee comprises—
 - (i) the chair of the trust board; and
 - (ii) 3 other persons as follows:
 - (A) 1 person being a board member:
 - (B) 2 persons being suitably qualified independent advisers.
- (c) Clause 3(b) applies with respect to any person who is a member of the appointments committee.
- (d) The board must appoint another member of the board to the appointments committee in place of the chair of the trust board if—
 - (i) the appointments committee is appointed to consider nominations and applications for the position of the chair of the trust board:
 - (ii) the chair of the trust board is unavailable.

5 Proceedings of trust board

- (a) The trust board may meet at such times and places as it determines, but it must, once in each calendar year, hold an annual general meeting.
- (b) At each annual general meeting, unless the trust board otherwise determines, the board must elect a chair and deputy chair from among its members, and each of the persons so elected holds office until his or her successor is elected.
- (c) The trust board must, once in each calendar year, hold an annual public meeting, and at each annual public meeting the board must present its annual report and make a copy of its current conservation plan and strategic plan available to the general public.
- (d) The chair presides at all meetings of the trust board at which the chair is present. In the absence of the chair from any meeting, the deputy chair presides at that meeting. In the absence of both the chair and deputy chair from any meeting, the members present must appoint one of their number to preside at that meeting.
- (e) A trust board meeting will only be held if a quorum is present. A quorum at a meeting of the trust board will be established only if the number of board members in attendance exceeds 50% of the total number of board members.
- (f) All questions before the trust board must be decided by a majority of votes of the members present at the meeting of the board and entitled to vote on those questions.
- (g) Subject to paragraphs (a) to (f), the trust board governs its own procedures and may make and alter the rules as to its procedures, including fixing the periods of notice to be given for meetings of the board and committees and of resolutions to be proposed at such meetings. All such rules are binding on the members of the trust board and its officers and employees.
- (h) Unless the trust board otherwise requires, the chief executive must attend each meeting of the board and of such committees as the board directs.
- (i) A meeting of the trust board may be held by means of audio, or audio and visual, communications by which all board members participating and constituting a quorum can simultaneously hear each other throughout the meeting.

6 Conflicts of interest policy

- (a) The trust board must adopt a policy to identify and mitigate conflicts of interest that may arise for members of the trust board.
- (b) The trust board must make the policy available to the general public at each annual public meeting.

7 Accounts

- (a) The trust board must keep full and correct accounts of all money received and expended by it.
- (b) The accounts must be audited by a chartered accountant in public practice who must be appointed by the trust board for that purpose.
- (c) The financial year of the trust board is the period of 12 months ending on 31 December.
- (d) The trust board must, as soon as practicable after the end of its financial year, prepare a full and complete statement of its income and expenditure for that financial year, together with a balance sheet showing all the assets and liabilities of the board as at 31 December.

8 Appointment of chief executive and other personnel

- (a) The trust board must appoint a person to be the chief executive of The Arts Centre for the purpose of managing its affairs, upon such remuneration and other terms as the trust board determines.
- (b) The trust board may employ any other staff upon such terms and conditions that the trust board thinks fit.

9 Power to appoint committees and delegations

- (a) The trust board may from time to time appoint any committee. The trust board may also discharge a committee or alter a committee's membership.
- (b) A person may be appointed to be a member of a committee despite not being a member of the trust board.
- (c) The trust board may, by resolution, delegate any of its powers and duties to any committee or to any person.
- (d) Any committee or person may exercise or perform any power or duty delegated to it under this clause in the same manner as if it were the trust board.
- (e) Any committee or person purporting to act in accordance with a delegation is presumed to be doing so in the absence of proof to the contrary.
- (f) A delegation does not prevent the trust board from performing the delegated duty or exercising the delegated power.
- (g) A delegation is revocable at will.
- (h) A delegation continues in force according to its tenor until it is revoked.

10 Common seal

- (a) The common seal of the trust board must be kept in the custody of such officer as is appointed by the board.
- (b) The common seal may be used only as directed by the trust board.

- (c) The common seal may be affixed to any document only in the presence of 2 members of the trust board who must attest its affixation.

11 Liability and indemnification of board members

- (a) No board member (including any former member) acting under this Act and this constitution is liable for any loss to the trust arising from any act or omission of the member or any members unless it is attributable to that member's own dishonesty or lack of good faith, or wilful conduct by that member which is known by that member to be a breach of trust, or recklessness or gross negligence on the part of that member.
- (b) Each board member (including any former member) acting under this Act and this constitution is entitled to be indemnified by the trust against all actions, proceedings, claims, damages, losses, demands, costs (including legal costs), and expenses suffered by or incurred by that member in connection with the trust.
- (c) Paragraph (b) does not grant the board member any indemnity against the trust property in respect of liability to the extent that liability is attributable to that member's own dishonesty or lack of good faith, or wilful conduct by that member that is known by that member to be a breach of trust, or recklessness or gross negligence on the part of that member.

12 Remuneration of board members

- (a) A board member may be remunerated for services provided as a member, provided that such remuneration is reasonable and set in accordance with independent external criteria having regard to that member's duties and responsibilities and the services provided.
- (b) The amount of the remuneration must not exceed fair market value for the services provided.
- (c) Any board member engaged in any profession, business, or trade may be paid all usual professional, business, and trade charges for services that are requested by the trust board and that are provided by the member or by the member's employee or partner.
- (d) For the purposes of paragraph (c), **services**—
 - (i) means services provided in a person's capacity as a person engaged in a profession, business, or trade; and
 - (ii) includes incidental or ancillary services that the member could have provided if the member were not engaged in the profession, business, or trade.
- (e) A member is entitled to be reimbursed for expenses properly incurred by the member in connection with the trust, including travel and other expenses.

13 Amendment of constitution

- (a) The trust board may, by deed, amend this constitution.
- (b) However, an amendment under paragraph (a) must not—
 - (i) limit or affect the objects of the trust; or
 - (ii) revoke or amend this clause.

Legislative history

16 June 2014	Introduction (Bill 220–1)
25 June 2014	First reading and referral to Local Government and Environment Committee
23 March 2015	Reported from Local Government and Environment Committee (Bill 220–2)
1 April 2015	Second reading
6 May 2015	Committee of the whole House
3 June 2015	Third reading
5 June 2015	Royal assent