

the Arts Foundation

THE ARTS FOUNDATION OF NEW ZEALAND
Charities Commission Registration: CC24256

GIFTS AND BEQUESTS

**A GUIDE FOR SOLICITORS
AND PROFESSIONAL ADVISERS**

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A message to solicitors and professional advisors

The Arts Foundation of New Zealand (“Arts Foundation”) was incorporated as a Charitable Trust in 1998. Its primary object is to encourage and facilitate excellence in the arts in New Zealand and to assist selected artists at various levels of their careers, to achieve such standards. This objective is being met by means of private patronage from those who have an interest in the arts in New Zealand. The Arts Foundation receives no government funding.

The costs of administering the Arts Foundation are met from sponsorship and by those who take up the option of becoming Patrons of the Foundation. For those who wish to ensure that their gift directly benefits artists and is not applied to cover costs of administration, there is the option of making a gift to the Foundation’s permanent endowment fund.

This document is intended as an aid to advisors of potential donors who are thinking of donating a significant amount to the endowment fund, whether as a gift or bequest or both. The Arts Foundation can provide assistance to private individuals or trusts that are seeking to support to the arts in a cost effective manner. The Foundation has developed nationally recognised processes for identifying recipients of support that provide direct benefits to the arts sector (for example, processes that do not require artists or organisations to fill in application forms). The Foundation’s non-bureaucratic processes are of particular benefit to private trusts or individuals seeking to impact strategically on the arts.

Details of the options to become Patrons are set out in a separate brochure, which is available on request.

Contact details and people involved

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Simon Bowden

Arts Foundation of New Zealand

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Wellington 6011

Arts Foundation of New Zealand Trustees

Ros Burdon CNZM (Chair)	Richard Cathie MNZM
Sir Eion Edgar DCNZM, CNZN	Elizabeth Ellis CNZM
Andrew Harnos	John McCormack
Fran Ricketts	David Ross
Sir Ronald Scott	Brian Stevenson
Sue Wood	

Arts Foundation of New Zealand Governors

John McCormack (Chair)	David Carson-Parker
Dr Robin Congreve	Briar Grace-Smith
Roger Hall QSO	Elizabeth Knox ONZM
Mary-Jane O'Reilly QSM	Jonathan Mane-Wheoki
Helen Medlyn	Gaylene Preston ONZM
Marilynn Webb ONZM	Gillian Whitehead MNZM
Lloyd Williams	

Vice Regal Patron

His Excellency the Honourable Anand Satyanand, PCNZM

For a full list of patrons and supporters:

<http://www.thearts.co.nz/patrons.php>

Awards

1 **The Icon Awards**

The Arts Foundation has established an honours system to celebrate the living icons of New Zealand arts. Recognised as leaders in their fields, these artists are our icons, in some cases internationally renowned and often local pioneers in their chosen art forms.

Every two years the Arts Foundation honours the Icon Artists. In 2003 an inaugural ten icon artists were appointed. In time there will be a living circle of up to **20** Icon Artists.

More information at: http://www.thearts.co.nz/icon_award.php

2 **The Laureate Awards**

The Laureate Award is one of New Zealand's largest cash awards and the only private award to cover a range of art forms. It is a career award, not tagged to any particular project. Its recipients fill out no forms, read no fine print and make no special applications. Their selection is a surprise – to them, and to the rest of New Zealand. A panel of distinguished peers and arts experts – independent from the trustees and management of the Arts Foundation – makes the selection. Five Laureates are acknowledged each year and they each receive \$50,000. Up to the end of 2006 34 laureates have been appointed.

More information at: http://www.thearts.co.nz/laureate_award.php

3 **The New Generation Awards**

These celebrate early achievement and are an investment in the careers of outstanding young artists. Every two years five artists are awarded \$25,000 each. The Arts Foundation, in partnership with the arts community, selects artists without their knowing they are under consideration. Applications are not required. The inaugural New Generation Awards were held in 2006 in Wellington

More information: http://www.thearts.co.nz/new_generation_awards.php

4 **The Governors Award**

The Governors Award recognises an individual or institution that has contributed in a significant way to the development of the arts and artists in New Zealand. It is an honorary award selected by the governors of the Arts Foundation. The recipient receives a medallion.

More information: http://www.thearts.co.nz/governors_award.php

5 **Award for Patronage**

This celebrates philanthropic support for the arts in New Zealand. It is an annual award, made to a person, couple or private trust for outstanding contributions as arts patrons. Selection is carried out by the trustees of the Arts Foundation. To demonstrate patronage in action, the Arts Foundation gives the recipients of the award the task of distributing \$20,000 gifted by the Foundation, to artists or arts projects of their choosing. Knowing that patrons like nothing more than supporting the arts, the Foundation intends the gifting of funds to be an excellent reward for the patrons and a means of honouring them as experts at directing funds to support the arts.

More information: http://www.thearts.co.nz/award_for_patronage.php

6 **Harriet Friedlander Residency**

Supported by the Arts Foundation, the Harriet Friedlander Residency sends an artist to New York for as long as \$80,000 will last them. Harriet Friedlander was a dedicated supporter of the arts. She also loved New York. She believed that any young artist exposed to the city would learn and grow in unimaginable ways.

More information; http://www.thearts.co.nz/the_harriet_friedlander_residency.php

7 **Marti Friedlander Photographic Award**

Supported by the Arts Foundation, the Marti Friedlander Photographic Award was launched in 2007. The Award is presented every two years to an established photographer with a record of excellence and potential to continue working at high levels. The Award includes a \$25,000 donation for the photographer to help further their career.

More information:

http://www.thearts.co.nz/the_marti_friedlander_photographic_award.php

Advantages of using the Arts Foundation to benefit the arts

1 Serving the Community

The Arts Foundation serves the community by meeting the need for a national approach to support for the arts. Gifts from generous donors help meet today's needs but also provide for future needs as the community changes. The Arts Foundation welcomes and administers gifts of all sizes and types from individuals, corporations, trusts and foundations and other charitable organisations.

2 Direct benefit to the arts

Distributions from all funds administered by the Arts Foundation in its endowment fund benefit artists or arts projects that have the potential to achieve the highest standards of artistic expression.

3 Permanence

As the Arts Foundation is a permanent endowment, donors can be assured their gifts or legacies will be safeguarded and their wishes observed for all time.

4 Simplicity

The Arts Foundation helps simplify the process of providing private financial assistance to the arts. All that is necessary is a gift to the Arts Foundation for the purposes of its general endowment, which is the permanent fund, established to support the Foundation's core programme of support for the arts.

5 Flexibility

Gifts need not only go to the general endowment fund. By prior arrangement, gifts of \$500,000 or more can be directed to a "donor-specified" sub-trust, to be invested for specific purposes in the arts. Payment can be arranged over a period. These are called specified sub-trusts. If a donor prefers to gift funds to support the arts in a particular geographical area, a specified sub-trust can also be established for this.

For example, it would be possible for a specified sub-trust to be set up to benefit the arts in Southland or North Shore City, or to benefit a particular discipline such as dance, theatre or the visual arts.

Gifts can also be made to supplement the funds in existing specified sub-trusts.

6 Tax Deductibility

The Arts Foundation is a charitable trust registered under the Charitable Trusts Act 1957 and is recognised by the Inland Revenue Department as being charitable for tax purposes. Under current law, all gifts to the Foundation are tax deductible in accordance with the Income Tax Act. Similarly, all income earned by the Arts Foundation is not currently subject to income tax.

The Foundation is registered with the Charities Commission. It's registration number is: CC24256

7 Tax effective donations

Law changes to the tax rules on charitable giving in 2008 have removed both the \$1,890 rebate threshold on donations made by individuals and the 5% deduction limit on charitable donations made by companies and Maori authorities. The company deduction for charitable donations has been extended to include unlisted companies with five or fewer shareholders.

The changes are intended to provide greater incentives for individuals, companies and Maori authorities to donate more to charities and other non-profit organisations, which, in turn, will benefit charities and the communities they serve. The changes will align the New Zealand tax relief provisions for charitable donations with those offered in other OECD countries such as Australia, Ireland and the United Kingdom.

Impact of the changes:

Individuals

- Donors are able to claim a 33%% tax rebate for donations up to their annual net income.

Company deduction for charitable donations

- Companies are entitled to a deduction for donations made to charitable organisations, limited only by the amount of the company's net income.
- The company deduction has been extended to unlisted close companies (companies with five or fewer shareholders).

Maori authority deduction for charitable donations

- Maori organisations are able to claim a tax deduction for cash donations to charitable organisations, limited only by the amount of their net income.

8 Other forms of tax effective giving:

Loan of Capital

Donors may also choose to lend capital or income accruing assets to the Foundation; in this instance there is no tax payable by the lender on the income generated by the loan.

USA Donors

Donors paying tax in the USA should contact the Foundation before making a donation, as it may be possible to arrange a rebate in the US.

9 Public Accountability

Audited annual accounts are produced and all grants are publicly disclosed by the Trustees.

10 Effective Leadership

The Trustees comprise notable New Zealanders with track records of support for the arts.

Trust Board members are elected by the College of Governors consisting of outstanding leaders and achievers in a wide range of arts and cultural interests.

11 Funds professionally managed

The trustees have appointed Forsyth Barr to manage the investments in the endowment fund, subject to the overall direction of the trustees and strict agreed guidelines.

12 Existing Trusts

It is possible for existing trusts and foundations to be transferred to the Arts Foundation either as a settlement on the general endowment fund or as a specified sub-trust. Arrangements can be made for continuing involvement of the existing trustees of those organisations with the administration of the sub-trust.

13 Corporate Benefits

Increasingly, corporations are establishing charitable trusts. It is possible to use the framework of the Arts Foundation to simplify the administration of such support for the arts. A specified sub-trust can be established, using a specified name and with specified objectives. Arts Foundation staff can assist in establishing cost effective procedures for awarding grants and administering events functions.

How to make a gift or bequest to the Arts Foundation

1 **Donors** should forward a cheque made payable to the Arts Foundation of New Zealand to the address specified on page 2. A quick telephone call to one of the staff will help clarify any questions you may have. Donation is also possible via the Foundation's website at www.thearts.co.nz.

2 General Purpose

The trustees are particularly keen to encourage donors to make gifts to the endowment fund for its general purposes as this leaves them flexibility to apply the funds for the various Arts Foundation programmes.

3 Specified Purpose

However for anyone desiring to gift or leave \$500,000 or more for a specified purpose or area, the best way is to contact the Arts Foundation staff to discuss first whether the proposal is practicable and the best way to word it. The Arts Foundation may refer you to its solicitors, Kensington Swan, in Wellington to discuss (free of charge to the donor) how the sub-trust can be set up and how the necessary documentation can be agreed upon.

4 Advice

The Arts Foundation is happy to advise on the form and wording of any gift or bequest. Examples of possible wordings for wills are attached as Appendix 1.

5 Sub Trust

A draft deed of sub-trust is also annexed as Appendix 2 as well as a draft resolution of the Arts Foundation trustees. This is an indication of the type of document that may be suitable for a specified sub-trust.

6 Discuss in advance

It is important that the precise terms of any specified sub-trust are discussed and agreed in advance with the Arts Foundation and its legal advisers, to ensure it will be workable.

7 Deed of Gift

To avoid changing of making a new will, a donor can sign a Deed of Gift or promising note relating to cash (or other assets) payable on the death of the donor.

8 Reserving a Life Interest

A gift of cash or other assets can be subject to a life interest in favour of the donor, which can also be expected to pass to a family member upon the death of the donor.

9 Assistance

Remember, the Arts Foundation is willing to arrange for the documentation to be prepared in draft form for you to discuss with your advisors.

Appendix 1: Suggested Will clauses

Some suggested clauses for Wills.

Bequest to the Arts Foundation General Endowment Fund (General Purposes)

I GIVE free of all duties the sum of \$ _____ **[or the remainder of my estate]** to the Trustees of the Arts Foundation of New Zealand to be held in its endowment fund for its general purposes AND I DECLARE that the receipt of the Executive Director or other authorised officer of the Arts Foundation shall be a full and sufficient discharge to my trustees.

Bequest creating a sub-trust (\$500,000 or over) of the Arts Foundation

I GIVE free of all duties the sum of \$ _____ **[or the remainder of my estate]** to the Trustees of the Arts Foundation of New Zealand to be held in a sub-trust to be known as the _____ to be used or applied by the Foundation Trustees both as to capital and/or income for **[charitable purpose to be discussed and agreed in advance with the Arts Foundation]** in such manner and in such amounts as the Foundation Trustees shall in their discretion from time to time determine AND I DECLARE that the receipt of the Executive Director or other authorised officer of the Arts Foundation shall be a full and sufficient discharge to my trustees without their needing to see to the application of this gift.

Bequest to existing specified sub-trust (any amount)

I GIVE free of all duties the sum of \$ _____ **[or the remainder of my estate]** to the Trustees of the Arts Foundation of New Zealand to be held by them in the sub-trust of the Arts Foundation entitled [] which sub-trust is designated principally for the purposes of [] and I DECLARE that the receipt of the Executive Director or other authorised officer of the Arts Foundation shall be a full and sufficient discharge to my Trustees without their needing to see to the application of this gift.

Residue to Foundation as Substitutionary Beneficiary

If the above Trusts shall fail I GIVE my residuary estate **[or the sum of \$ _____]** to the Trustees of the Arts Foundation of New Zealand for its general purposes and I DECLARE that the receipt of the Executive Director or other authorised officer of the Arts Foundation shall be a full and sufficient discharge to my Trustees without their needing to see to the application of this gift.

Appendix 2: Draft resolution of Arts Foundation trustees and Deed creating donor specified sub-trust

Resolution of Trustees of the Arts Foundation of New Zealand dated []

Considerations

- A The Trustees have been advised by [] of [], [] (“the Donor”) that he/she wishes to donate to the Arts Foundation the sum [assets] set out in Schedule 1 to the Deed of Sub-Trust attached to this resolution (“the Deed of Sub-Trust”) (“the Sub-Trust Fund”) to be held by the Trustees as a separate sub-trust of the Arts Foundation (“the Sub-Trust”) for the specific purposes set out in Schedule 2 to the Deed of Sub-Trust.
- B Clause 7.1(b) of the Trust Deed provides that the Trustees shall have the power to set up and create sub-trusts for any object or purpose authorised by the Trust Deed and to maintain separate accounts within the Trust Fund for those sub-trusts.
- C The Trustees are of the view that the specific purposes of the Sub-Trust specified by the Donor are consistent with the purposes of the Arts Foundation and it is an appropriate exercise of their powers as Trustees to accept the Sub-Trust Fund as the corpus of a new sub-trust and to execute the Deed of Sub-Trust.
- D The Trustees have agreed to accept the wish of the Donor that the Sub-Trust be called the “[]”.

Resolutions

- 1 The Trustees resolve to create the Sub-Trust by way of deed poll in respect of the Sub-Trust Funds to be gifted by the Donor to the Arts Foundation and to hold the Sub-Trust Funds on the terms of the Sub-Trust set out in the Deed of Sub-Trust.
- 2 The Trustees resolve to enter into the Deed of Sub-Trust.

Signed by the Trustees:

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

The Arts Foundation of New Zealand

[Names of Arts Foundation Trustees]

Deed of Sub-Trust

Deed Poll

Deed Poll dated

200

Parties

1 **[Names of Arts Foundation Trustees]** (“the Trustees”)

Recitals

- A The Trustees are the trustees of the Arts Foundation of New Zealand constituted by a Deed of Trust dated 4 September 1998 (“the Trust Deed”) and registered under the Charitable Trusts Act 1957 (“the Arts Foundation”).
- B The Trustees have been advised by [] of [], [] (“the Donor”) that he/she wishes to donate the property listed in Schedule 1 (“the Gifted Property”) to the Trustees on the condition that the Trustees shall form a sub-trust of the Arts Foundation to be called the [] (“the Sub-Trust”) for the purposes specified in Schedule 2.
- C The Trustees have power under clause 7.1(b) of the Trust Deed to set up and create sub-trusts for any object or purpose authorised by the Trust Deed and the Trustees are satisfied that the purposes set out in Schedule 2 are so authorised.
- D The Trustees shall continue to act as Trustees of the Sub-Trust which is intended to continue to form part of and be administered pursuant to the general trusts of the Arts Foundation except insofar as they are modified by this Deed Poll.
- E The Trustees have further resolved that the Donor and up to [2] of his/her nominees shall be entitled to act as advisory trustees in respect of the Sub-Trust.

Operative Part

NOW THIS DEED POLL WITNESSES AND IT IS COVENANTED AND DECLARED that the Trustees shall following execution of this Deed Poll receive, accept and stand possessed of the Gifted Property together with such other property as the Trustees may subsequently purchase or receive or otherwise acquire (together called “the Sub-Trust Fund”) upon the several trusts, powers and authorities following, that is to say:

- 1 The Trustees shall hold the Sub-Trust Fund upon the trusts and for the specific purposes set out in Schedule 2 to this Deed Poll and otherwise on the trusts set out in the Trust Deed.
- 2 The Sub-Trust shall be called “the []”.
- 3 During the subsistence of the Sub-Trust the administrative and other powers and provisions declared and contained in the Trust Deed shall continue to apply to this

Sub-Trust, but so far only as the same are consistent with the beneficial provisions contained in this Deed Poll.

- 4 During his/her lifetime the Donor shall be entitled to act as an advisory trustee to the Trustees in relation to the Sub-Trust and may appoint by notice in writing to the Trustees up to a further two additional people to act as advisory trustees. Advisory trustees shall be entitled to attend meetings of the Trustees on the business of the Sub-Trust and to be heard at such meetings, to be informed of decisions affecting the Sub-Trust and to receive the accounts of the Sub-Trust, but shall have no voting rights.

Execution

Signed by the said
in the presence of:

Witness _____
Name _____
Occupation _____
Address _____

Signed by the said
in the presence of:

Witness _____
Name _____
Occupation _____
Address _____

Signed by the said
in the presence of:

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Occupation _____
Address _____

Signed by the said
in the presence of:

Witness _____
Name _____
Occupation _____
Address _____

**Schedule 1 to the Deed of Sub-Trust:
The Sub-Trust Fund**

(amount or assets gifted by the donor)

**Schedule 2 to the Deed of Sub-Trust:
Purposes and Objects of the Sub-Trust**

**(purposes and objects specified by the donor
and agreed with the Foundation's trustees)**