

Ki te pae tawhiti

More Information

Vote 1 (Trust Deed) and Vote 2 (Independent Centres)

The following information has been compiled to ensure centres are able to make fully informed decisions throughout this process. The Board know that the information presented, and the implications of this, will be concerning for centres. However, the Board wish to be as transparent as possible throughout this process and therefore present this information in good faith, to ensure centres are fully informed of the likely consequences of all options.

There are two votes proposed. Vote 1 will be on the new Trust Deed. If the Trust Deed is accepted, there will be Vote 2 for centres to decide whether they will remain with Playcentre Aotearoa or become an independent centre.

Vote 1: The new Trust Deed

For the Trust Deed to pass at the Special General Meeting (SGM) we need 80% of Centres **and** 80% of Rōpū Māori to vote 'yes' prior to, or during, the SGM on 24 September 2022. If either of these parts do not reach 80% agreement, the Trust Deed will not pass.

14.1 The Kaupapa Ture/Constitution may only be altered by the agreement of at least 80% of Playcentres, and at least 80% of Rōpū Māori

What happens if there is a 'No' vote and the Trust Deed doesn't pass?

- Under the current constitution, the Trustees do not have the authority to act and therefore cannot make the decisions required. To have authority to act the constitution should explicitly state this and ours does not. There is a hierarchy of legislation and Trust/Trustee legislation trumps our constitution. One of the purposes of the new Trust Deed is to bring us in line with current legislation.
- This plan depends on the success of the Ministry of Education (MoE) funding co-design process, and the co-design process is dependent on our ability to address our known governance and operational issues. Though the MoE have not explicitly stated that we must adopt a new Trust Deed, they have expressed this will give them the confidence they need. Timing is imperative as we currently have a favourable political environment and Government budget timelines.
- If MoE continues to have concerns regarding the viability of Playcentre Aotearoa, we should not expect a positive outcome to the co-design process.
- We will also be unable to provide the assurances required to our regulators and funders – Tertiary Education Commission (TEC), New Zealand Qualifications Authority (NZQA), Education Review Office (ERO) and MoE.

Playcentre Aotearoa's Charitable Purpose

As Trustees, we are legally required to ensure that the organisation not only remains solvent but also acts to meet its charitable purposes. Playcentre Aotearoa's charitable purpose (from the current Constitution) is to:

- 2.1. The objects of Playcentre Aotearoa are charitable and will be the advancement of education within Aotearoa New Zealand and shall be to:*
 - 2.1.1. promote and encourage the development of Playcentre activities throughout Aotearoa New Zealand;*
 - 2.1.2. support learning through play;*
 - 2.1.3. foster adult education and bicultural development;*
 - 2.1.4. offer adult education and courses that enhance the understanding of the education and care of young children*
 - 2.1.5. ensure adult participation and responsibility in the cooperative running of Playcentres;*
 - 2.1.6. embody Te Tiriti o Waitangi based partnership within Playcentre Aotearoa;*
 - 2.1.7. assist families to provide quality play experiences for all children in an inclusive environment which acknowledges and incorporates the dual heritage of Aotearoa New Zealand;*
 - 2.1.8. organise the training, approval and employment of suitable persons to support play sessions;*
 - 2.1.9. nurture sustainable services and practices at all levels of Playcentre Aotearoa;*
 - 2.1.10. raise public awareness of Playcentres;*
 - 2.1.11. assist and foster innovation and research in the fields of early childhood education, adult education and young children; and*
 - 2.1.12. generally do each and every act necessary and proper to achieve the objects of Playcentre Aotearoa.*

Playcentre Aotearoa's charitable purpose remains broadly the same in the new Trust Deed.

A 'No' vote, doesn't mean things will stay the same at a local centre level

What will likely happen immediately:

- The trustees are legally required to preserve the capital of the Trust. This means that we will immediately need to balance the budget. In practical terms we will have to remove \$2 million out of the 2021/22 operations budget. This may mean a reduction to the services that Playcentre Aotearoa can provide for your centre or an increase in levy (or a combination of these).
- Advising our regulators and funders (MoE, NZQA, TEC and ERO) of our situation. This would most likely mean they would at least investigate us further and some may take immediate action given they have already rated us as financially unsustainable.
- As the Attorney General has oversight of incorporated charitable trusts, the Board will need to notify them. It is unclear what action they would take but this may include the consideration of the appointment of a Statutory Manager.

What other options have been explored?

1. Devolve/Change

a. Back to Association style - Not considered viable.

- a. We amalgamated because many associations and centres were not sustainable (both from a financial and workload perspective). The complexity of the regulatory environment and financial pressures on both Playcentre and whānau across the motu have increased since amalgamation.
- b. Workload on volunteers and costs will increase due to lack of efficiencies able to be attained by one national organisation.
- c. There is an unclear pathway to achieving our strategic plan and goals.

b. Into Playgroups - Not considered viable.

- a. Each centre would have to survive using its own resources.
- b. One of the primary drivers for amalgamation was that centres and associations were struggling on existing funding levels. Changing licensed centres to playgroup status would remove some of the regulatory burden, but would also result in a very significant cut to funding. This would mean that more of the work would have to be done by volunteers.
- c. The playgroup funding would also likely mean there would be no national operations/support, as there would not be enough income to finance this. It would be much more difficult for centres to join together and act collectively.

- c. Into an Incorporated Society – Not considered viable.
 - a. New legislation is being enacted, which brings the responsibilities of officers of incorporated societies more in line with those of company directors. This is a significant change and increase in risk for anyone holding those roles.
 - b. The Board consider that an incorporated society legal structure is not appropriate for our organisation. There are several complex governance issues which would need to be resolved before any change to an incorporated society could progress, including:
 - a. Membership – who would be the ‘members’ of Playcentre Aotearoa?
 - b. Membership in constant flux – incorporated society status more suited to organisations with a stable membership. As membership of centres changes so frequently significant governance issues could arise.
 - c. Governance in partnership/two-house model – how can this be secured under the new legislation?
 - c. There is a high risk of delaying action if Playcentre chooses this path because of many issues which will have to be resolved through our decision-making pathways before the change could progress (some mentioned above). This is time we do not have because of our financial situation (budget deficit, property workload, decreasing reserves, etc.).
2. Try again with the Trust Deed – only an option if the vote was very close.

Vote 2: What does it mean for a Centre to be ‘Independent’?

All the responsibilities, liabilities and the authority to act will sit with the local centre. They will need to establish suitable structures to manage them and discharge all their statutory and legal duties.

It will be up to each centre that wishes to be independent to take their own advice as the first stage in assuming their responsibilities and liabilities.

As a start though, centres will need to consider their legal status and develop and adopt a suitable structure as most currently do not have a legal status.

The following is a summary of Playcentre Aotearoa’s current responsibilities:

- Employment/HR
 - Recruitment and retention of staff with supporting documentation
 - All aspects of employment legislation requirements
 - Managing employment contracts, H&S requirements, annual appraisals, remuneration strategy and any employment related matters such as vaccine mandates
 - Ensuring staff engagement into H&S strategy along with training and development

- Staff record management
- Training and development
- Licencing Requirements
 - Negotiating funding rates and education requirements for licenced sessions
 - Managing data and filing returns
 - All related reporting
 - Inspection report compliance from various regulators
- Finances
 - Securing revenue from multiple sources
 - Reviews with regulators and funders
 - Systems and processes necessary to report to regulators and funders
 - Managing finances in accordance with accounting standards
 - Managing best practice processes for separation of control and bank account access
 - Fraud management
 - Bank reconciliations
 - GST registration and returns
 - AML/CFT requirements and proof of identification
 - Production of annual financial statements, annual audit process and filing of annual returns
 - Asset management
 - Making grant applications and filing accountability reports
 - Negotiation of leases and financial arrangements
 - Insurance including tangible and intangible assets, liability and D&O cover
 - Securing and maintaining suitable buildings
- Governance
 - Demonstrating the awareness and understanding of all relevant legislation and keeping up to date with it
 - Establishing and maintaining a suitable organisation structure including suitable governing documents
 - All statutory reporting and annual returns such as Charities Service and Registrar of Incorporated Societies
 - Meeting fiduciary requirements under all relevant legislation
 - Holding and documenting meetings in accordance with constitutional documents
 - Appointment of a Privacy Officer for compliance with the Privacy Act
 - Taking legal advice as necessary
 - Having a suitable complaints process

The independent centre will no longer be part of Playcentre Aotearoa, but may retain the use of the name “Playcentre” via a branding agreement, if they so wish.

What are the details of the Brand Management Agreement?

The principles are:

- Agreement structured to minimise risk to the Playcentre Aotearoa
- This means that Playcentre Aotearoa will not offer any services to independent centres as these would create overlapping duties (organisations that work together may share health and safety duties. The brand agreement will be structured to minimise any such shared/overlapping duties).
- The level of compliance monitoring may create overlapping duties
- Compliance monitoring of the use of the brand is not likely to create overlapping duties but compliance monitoring of standards is likely to do so
- Fees will most likely be a percentage of revenue but not profit generating
- If the independent centre is in a building/on land currently leased by Playcentre Aotearoa then the centre would need to negotiate a lease with the landlord. If the centre is in a building/on land owned by Playcentre Aotearoa then a lease arrangement would be required.

What about funding?

Initial conversations with MoE have indicated that if a Playcentre is not willing to be under the authority of the Trustee Board of Playcentre Aotearoa then they will not be entitled to Playcentre funding.

Instead, they will need to apply to MoE for licencing and funding as an independent operator under the ECE handbook provisions and agree the basis of that with MoE.