

JUSTICE OF THE PEACE EDUCATION TRUST

Consultation Document: The Future of the Justice of the Peace Education Trust

RATIONALE

In recent years questions have been raised regarding the future of the Justice of the Peace Education (the "Trust"). With no purposeful activity in meeting the objects of the Trust since 2015 and minimal growth in the Trust funds, this paper has been prepared for the purposes of formally considering the future of the Trust.

1. INTRODUCTION

The Education Fund was established in 1974 to mark the 50th Anniversary of the Royal Federation of NZ Justices' Associations (RFNZJA). Its prime functions were to educate Justices and make the public aware of Justice of the Peace duties/activities.

The Trust is an entity in itself but stands alongside the Royal Federation. The incumbent President of RFNZJA is the Chair of the Trust and Board members are the Trustees.

From its genesis in 1974 with an initial capital base of just over \$11,000, the Trust funds stand at \$133,737.12 today. With the advent of the Contract for Service negotiated with the Ministry of Justice (MOJ) and implemented in 2008, basic education costs for Justices of the Peace have been covered. This has meant that the Trust's focus in recent years has been on initiatives/projects that are over and above the basic education needs.

2. CONSULTATION AND TIMEFRAMES

The Trustees are empowered by the Deed, to manage the Trust. This includes the decision to dissolve or wind up the Trust. **There is no requirement to consult any other party.**

The current Trustees are committed to consulting with Associations and past Trustees as to the future of the Trust.

The following timelines are proposed:

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| a. August – October: | Consultation with Associations and Past Trustees |
| b. November: | Consultation feedback considered by Trustees. |
| c. March 2020 | Decision announced at RFNZJA Conference, Hawera |

3. BACKGROUND

3.1 The Trust Deed

A. The Deed

- a. Following a decision of the Trustees in 2006 the Deed of Trust was formally amended in 2007 to allow registration under the provisions of the Charitable Trusts Act.
- b. The Trust Deed is accessible to all members on the RFNZJA website.
- c. The Trust Deed reflects the intentions determined in 1974.

B. Trust Objects

The primary objects for which the Trust is established are:

- a. To educate Justices of the Peace throughout New Zealand on all aspects of their functions, responsibilities and role in the community;
- b. To educate the community as to the tasks performed by Justices of the Peace and the activities they undertake;
- c. To provide information and resources to service the educational requirements of individual Justices of the Peace throughout New Zealand;
- d. To award scholarships to Justices of the Peace or others, to further the objectives of the Trust;
- e. To provide grants and resources for education of Justices of the Peace through the RFNZJA(Inc.) or its affiliated Associations;
- f. To provide resources and facilities for research into any matters of relevance to Justices of the Peace or the Law in New Zealand;
- g. To raise money by donations, loans or by any lawful means and by such methods as the Trust considers appropriate for the furtherance of these objectives; and
- h. To make charitable donations of part or all of the capital and income of the Trust to any person or persons and to settle the whole or any part of the capital and income of the Trust on any charitable trust.

3.2 Trust Activity 1974 – 2009

A review of the trust financials shows:

- a. That following an initial flurry of donations in 1974, it took until 1982 to achieve the \$30,000.00 base target suggested by Sir Dennis Blundell.
- b. In 1984, the appeal for donations from the membership ceased.
- c. From 1982 until 2009, there were few donations. However the Trust funds increased in the main from interest and in 2009, the Trust balance was \$107,000.00. Interest rates during this period were very favorable, hence the steady increase, despite the lack of donations.
- d. In November 2008, the Trustees confirmed an earlier decision to retain the capital base to over \$100,000 and also resolved to retain this as an augmented capital sum with interest accruing to a separate interest bearing account.
- e. As a general policy the Trustees have directed that investments should be held short-term and the best rate possible be obtained.

Note: Documentation for the Trust suggest that the Trust was officially formed and separate financial records created in 1987, with an annual balance date 31st

October. Prior to this change in 1987 it appears that Trust funds were held separately within the RFNZJA finances.

3.3 Trust Activity 2010 – 2019

- a. Aside from audit fees, records indicate that the Trust funds during the 2010-2019 period were used as follows:
 - 2010 – 2013 [**\$1,600.00**]: an annual award to the top student in the Open Polytech Judicial Studies Course.
 - 2011 – 2012 [**\$2,600.00**]: Education Trust Award with the purposes of : 1. Encouraging and rewarding the efforts and initiatives of Association educations, and 2. To provide RFNZJA with education resources appropriate for use nationally by all Association education officers.
 - 2014 – 2015 [**\$7,000.00**]: Emerging Leaders Programme (ELP) which was funded by the Trust and the Gallagher Charitable Trust.
 - 2011-2016 [**\$12,279.00**]: RFNZJA Administration Fee and costs. The fee covered the time spent by the Registrar/National Manager on Trust activities. The RFNZJA Board decided to cease the requirement for an administration fee in 2017.
- b. Unplanned donations of **\$3,650.00** were made to the Trust in 2014-2015.
- c. In 2016 the Trustees considered the future of the Trust. Winding-up was considered, but a concerted effort to increase funding by fund raising was proposed. Before approaching external funders it was considered that the Trust needed to demonstrate that there was support from within the Justice of the Peace world. Another attempt was made to increase the Trusts funds with a direct approach to the majority of Association members. Advertisements promoting funding options were also published in each edition of the Justices' Quarterly magazine and Associations were advised accordingly. Despite regular promotion, donations were again limited and only totaled **\$8,290.00** from 2016– 2018.
- d. In 2018 the Trustees approved a new Logo for the Trust to differentiate the Trust from RFNZJA.

3.4 Contract for Service between MoJ and RFNZJA

With the advent of the Contract for Service negotiated with the Ministry of Justice and implemented in 2008, Associations, through Royal Federation receive Government funding to provide induction training for all prospective Justices and some funding to reimburse keeping up to date education in Associations. This includes reimbursement of education development costs, travel and funding for educator/trainer national seminars (both Ministerial and Judicial). Training and education of Issuing Officers and Visiting Justices is also covered under the contract.

Therefore basic education costs are now covered by the Federations contract with the Ministry. The Trust's focus in recent years has been on initiatives over and above the basics not covered by the Ministry funding (refer to 3.3 a. above).

4. ANALYSIS OF THE CURRENT TRUST GOVERNANCE AND FINANCIAL SITUATION

4.1 Governance of the Trust

- The Trust is controlled by the RFNZJA Board. This could be construed as lacking independent oversight of the Trust.
- Seven Trustees could be considered a high number for such a small fund.
- RFNZJA elections in effect are also JPET Trustee elections.
- The current voting power required for the Trust to be wound up is 75%. With seven Trustees, a vote of 5-2 would fail to reach the voting threshold to wind up the Trust. Potentially two Trustees could form a block, or new Trustees may be inclined to take a conservative approach (on average there are 2-3 new Trustees each year)

4.2 The Trust fund is small and easy to manage. However, its size has significant downsides:

- It is too small to be utilised effectively for projects of any significance within the objects of the Trust, without eroding the capital base.
- If it were to be inflation adjusted the original capital of \$40,000 should now be around \$450,000.
- There are inefficiencies that are associated with a small fund i.e. annual filing and lower interest rates.

4.3 Recent experience indicates that growing the capital base takes considerable effort with extremely low response rates. Possible explanations for this situation:

- The Trust is not appealing enough at grass-roots level to attract external funding.
- Other Trusts and funding agencies will not provide funding just to build another Trust's capital base.
- Bequests are long-term and essentially unknown (no known receipts in recent years).
- Lack of understanding by Justices of the existence and objectives of the Trust.
- Lack of knowledge by members of the public about the existence of the Trust.

5. OPTION ANALYSIS

Options for the future of the Trust:

The current Trustees, looking at the future of the Trust have developed a number of options for consideration. There may be others and the Trustees would welcome suggestions.

A. Retain the Trust

1. Retain the Trust in its present form i.e. status quo, or:
2. Retain the Trust in its present form but differentiate from the core education/training provided for in the Contract for Service, or:
3. Retain the Trust but review the Objects (Primary and Secondary) of the Trust Deed.

B. Retain the Trust but alter the Trustee structure

1. Reduce the number of Trustees to three Board representatives, or:
2. Reduce the number of Trustees to three: a Board representative, an independent, and a nationally appointed Justice (non-Board member).
This option would improve transparency with RFNZJA Board members wearing one hat and the JPET Trustees wearing another, or:
3. National election of all trustees, independent of RFNZJA Board elections.

This option would potentially allow for longer term continuity of JPET Trustees.

C. Retain a “Shell Trust” with a residual amount that the Trustees consider is appropriate.

D. Establish a capital expansion plan to grow the Trust funds.

1. External funding providers (Philanthropic Trusts, Community Trusts and Foundations, Licensing Trusts). Generally this would only be an option when there is a specific project that requires an extra injection of capital. Long term this approach is unlikely to grow the capital base of the Trust, and/or:
2. An annual capitation levy via RFNZJA (\$1 per Justice per annum = \$6000+)

E. Dissolve the Trust

1. Dissolve the Trust in accordance with the Deed and distribute the funds accordingly:
 - A single lump payment to RFNZJA. Refer to options 2, and 3, below.
 - A one off payment to all associations based on membership numbers. This would cover approximately 40% of subscriptions for 1 year.
 - Make a donation to another entity (e.g. Borrin Foundation* see appendix B). Initially the intent might be realized, but over time that would fade.
2. Dissolve the Trust and incorporate the funds into general RFNZJA income.
This option provides future RFNZJA Boards with discretion over expenditure in accordance with the RFNZJA Constitution.
3. Dissolve the Trust and hold the funds as a “reserved” donation within RFNZJA financials to be separately invested, managed and tagged for special projects.
This option would mean that future RFNZJA Boards would be “controlled” as to how the funds are expensed, but not hamstrung by the complexity of the Trust rules.

Note: Donors to the Trust from 2017 could be disappointed with the outcome if the Trust was to be dissolved.

This could be managed by having a one-off event/project/asset for the value of 2017 donations made.

6. CONCLUSIONS

- 6.1 There appears to be no requirement to seek the Associations or Justices’ of the Peace approval to wind the Trust up (see Appendix A). The Deed allows the Trustees to do this provided there is a 75% majority to do so. This would require a 6/7 in favor vote. However, current Trustees consider consultation with Associations and previous Trustees would be beneficial to them in making the final decision.
- 6.2 The reality is that the Trust has never operated as it was intended. The initial call for donations was slow as was the call in 2016. The Trust has not been embraced by Justices of the Peace. Income, in the main came from very favorable interest rates in the 1980’s, 1990’s and early 2000’s on the initial funds donated.
- 6.3. The initial intent was that the Trust fund education. However, in 2008 a Contract for Service based on a three-year funding cycle was established with the Ministry of Justice and this includes funding for education.

6.4 Consultation on the future of the Trust, to inform the current Trustees decision making, will include engagement with past and present Trustees, and Associations. The Trustees appreciate there are risks associated with consultation include:

- Past Trustees have no legal sway but they may lean heavily on the emotive value of the work they have put into the Trust in the past.
- Associations may sway towards options that could benefit them financially.
- Individual Justices who have donated to the Trust may be disappointed if the decision is to wind up the Trust.

APPENDIX A & B

Appendix A. Clause 14 of the Trust Deed

14. WINDING UP

By a resolution approved by a majority of 75 percent of the Trustees, the Trustees may resolve to dissolve or to wind up the Trust. Upon dissolution or winding up of the Trust, the Trustees shall to the extent permitted by law, and to the extent possible, pay, apply, transfer or otherwise distribute any surplus assets and funds of the Trust, after payment of all liabilities, towards the charitable purposes of the Trust or such other charitable purposes in New Zealand which are consistent with the purposes of the Trust as determined by the Trustees. To the extent that the steps outlined in the preceding sentence are not permitted by law, or are not possible, the Trustees shall seek a direction from the High Court of New Zealand as to how the surplus assets are to be distributed.

Note: The objects of the Trust are somewhat wider in respect of the use of the funds as opposed to the actions on dissolution or winding up.

Appendix B. *Borrin Foundation

Mission: To support legal research, education and scholarship that contributes to our vision for Aotearoa New Zealand. See: www.borrinfoundation.nz