



Southern Cross Health Trust Trust Deed

THIS DEED made the 29th day of September 1977

BETWEEN

JOHN BROWNLOW HORROCKS of Auckland, Solicitor,

DONALD BRUCE CARNACHAN of Auckland, Chartered Accountant and

LEWIS HAY IRVINE WATSON of Auckland, Company Director (hereinafter referred to as “the Donors”) of the one part

AND JOHN BROWNLOW HORROCKS of Auckland, Solicitor

DONALD BRUCE CARNACHAN of Auckland, Chartered Accountant and

LEWIS HAY IRVINE WATSON of Auckland, Company Director (hereinafter referred to jointly as “the Board” or “the Trustees” and severally as “a Trustee”) of the other part

WHEREAS the Donors are desirous of establishing a charitable trust for the purpose of assisting in the provisions of medical facilities services and research in New Zealand to supplement the schemes at present provided by the Government of New Zealand

AND WHEREAS the Donors have contemporaneously herewith paid to the Trustees the respective sums set out in the First Schedule hereto upon their names to be held on the trusts herein set forth

NOW THIS DEED WITNESSETH as follows:

1. THE Board shall stand possessed of the said sum of \$30.00 and all other moneys and investments which may hereafter be transferred to it or held by it and the income therefrom and all investments made therefrom (which moneys are hereinafter referred to as “the Trust Fund”) upon the charitable trusts hereinafter set forth.
2. THE Board shall forthwith upon execution of this Deed apply for incorporation under Part II of the Charitable Trusts Act 1957 as a Board under the name “Southern Cross Hospital Trust” and shall apply to the Commissioner of Inland Revenue to be declared a charitable purpose under Section 58 of the Income Tax Act 1976.
3. THE Trust funds shall be held by the Board for the charitable objects set forth in the Second Schedule hereto.
4. THE management of the Trust Fund and the operation of the Board shall be governed by the rules set forth in the Third Schedule hereto.

5. THE Trustee shall forthwith upon incorporation of the Board pay and transfer the Trust Fund to the Board for the objects set out in the Second Schedule hereto.
6. THE Trust Fund shall be used only for charitable purposes within New Zealand.
7. ON any winding up of the Board the Trust Fund shall be applied only towards charitable purposes carried on within New Zealand by an organisation registered under the Charities Act 2005 and/or which the High Court of New Zealand considers to be the same as or similar to the objects for which the Board has been established.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written.

**The First Schedule Hereinbefore Referred To
List of Initial Donors**

DONOR	AMOUNT DONATED
John Brownlow Horrocks of Auckland, Solicitor	\$10.00
Donald Bruce Carnachan of Auckland, Chartered Accountant	\$10.00
Lewis Hay Irvine Watson of Auckland, Company Director	\$10.00

The Second Schedule Hereinbefore Referred To Objects of Southern Cross Health Trust

- (a) TO purchase or construct maintain run buy and sell and administer hospitals, clinics, sanatoria, convalescent homes and other institutions for the treatment of persons suffering from illness malady injury disease or infirmity in which they may remain for such period and on such terms and conditions as the Board may prescribe, or in which they may be advised or treated as outpatients and to admit treat and care for any such persons male or female of any religious denomination. Whenever in the opinion of the Board, the same is possible, having regard to the finances of the Board and all other relevant factors, the Board may render the forgoing services and any other service provided or intended to be provided by the Board under this Deed without charge or at a nominal charge.
- (b) TO provide furnishings equipment books medicine food and other necessary or expedient services to any hospital or to any person suffering from illness whether for a charge or at a reduced or at no charge.
- (c) TO employ medical, surgical and pharmaceutical officers, nurses, attendants, domestic and other staff for the purposes aforesaid, and to provide and supply all such medical surgical and pharmaceutical appliances and things and all such provisions and necessaries as may be required for the purposes aforesaid or any of them.
- (d) TO use any hospital for the training of medical students and nurses and specialists in treatment and to co-operate with any Government Department, Hospital or organisation in this respect.
- (e) TO construct, alter, pull down and re-erect improve and generally provide any buildings or erections required for the institution or the general purposes of the Board or the powers and objects of the Board.
- (f) TO provide the same with light, water, drainage, electricity and all other amenities thought desirable.
- (g) TO construct residences and homes for the staff.
- (h) TO construct residences, homes tenements or other accommodation for the sick and to make such arrangements for the payment for or letting of same as may be desirable or agreed upon between any person or persons and the Board and to arrange for such services attention and care for the occupants thereof as may be considered desirable and necessary.

- (i) TO purchase or otherwise acquire land or any estate of interest therein and to sell the same.
- (j) TO let or lease any land or buildings upon such terms and for such period as the Board may in its discretion determine.
- (k) TO raise money for any of the purposes of this Trust by mortgage debenture or any form of security or acknowledgment of debt whatsoever whether or not the same creates any charge upon the property of the Board or not and whether or not the same are for a fixed term or perpetual and otherwise upon such terms or conditions as the Board may in its absolute discretion deem fit, including the right to vote at meetings of debenture holders or security or acknowledgement of debt holders.
- (l) TO accept subscriptions and donations and give subscriptions and donations to any person or persons having objects similar to those of the Board.
- (m) TO act as Trustees of moneys and property of any and every kind granted donated or settled upon the Board in furtherance of all or any of its objects and to accept transfers from any existing trustees or body of any real and personal property subject to any trusts under which the same may now be held and to act as trustees and administer superannuation funds and insurance schemes to provide retirement or superannuation allowances settled upon the Board.
- (n) TO loan money or donations to any person or organisation and company if in the opinion of the Board the same will further the aims for which the Board has been established and to guarantee the payment of moneys or the performance of contract by any such person organisation or company.
- (o) TO open and operate cheque savings and other accounts with any Bank and to deposit the funds of the Board with such Bank either at call or on term deposit.
- (p) TO invest the funds and assets of the Board which are not immediately required to carry out the objects of the Board in any form of investment for the time being authorised by the law of New Zealand for the investment of trust funds or in freehold or leasehold property. To draw make accept endorse discount execute and issue promissory notes bills of exchange bills of lading warrants debentures and other negotiable or transferable instruments.
- (q) TO sell or dispose of the undertaking of the Board or any part thereof for such consideration as the Board may think fit and in particular for shares debentures or securities of any Company having objects altogether or in part similar to those of this Board.

- (r) TO adopt such means of making known the activities and objects of the Board.
- (s) TO obtain any provisional order or Act of parliament for enabling the Board to carry any of its objects into effect or for effecting any modification of the Board's constitution or for any other purpose which may seem expedient and to oppose any proceedings or applications which may seem calculated directly or indirectly or prejudice the Board's interests.
- (t) TO sell improve manage develop exchange lease mortgage enfranchise dispose of turn to account or otherwise deal with all or any part of the property and rights of the Board.
- (u) TO develop and turn to account any land acquired by the Board or in which it is interested and in particular by laying out and preparing the same for building purposes constructing altering pulling down decorating maintaining fitting up and improving buildings and by planting paving draining farming cultivating and letting on building lease or building agreement and by advancing money to and entering into contracts and arrangements of all kinds with builders and others.
- (v) IF thought fit to obtain any Act of parliament dissolving the Board and re-incorporating its members as a new Board for any of the objects specified in this memorandum or for effecting any other necessary modification in the Board's constitution.
- (w) TO subscribe or apply for and take or acquire by purchase or otherwise and hold shares in or otherwise become a member of any company or association the operation of which may seem to the Board directly or indirectly to benefit the objects of this Board and which shall have for any of its objects the protection or advancement of the interests of any person or corporation engaged or interested in any profession or calling and to apply the funds of this Board in subscribing to the funds of any such company or association.
- (x) TO pay all or any of the expenses incurred in and in connection with the incorporation and establishment of this Board.
- (y) TO appoint managers agents and attorneys in the Dominion of New Zealand or in any part of the world for all or any of the purposes of the Board and to remunerate such agents for their services by salary or commission or partly by one mode and partly by the other mode and to act as agents or managers or to accept the agency for any person firm or corporation on such terms as the Board may think proper.
- (z) TO do all or any of the above things as principals agents contractors trustees or otherwise and by or through agents trustees or otherwise and either alone or in conjunction with others.

- (aa) TO do all such other things as in the opinion of the Board may be incidental or conducive to the attainment of any of the foregoing objects or the exercise of any of the foregoing powers.
- (bb) THE income and property of the Board howsoever derived shall be applied solely towards the promotion of the objects of the Board as set forth in this Schedule.
- (cc) THE objects set forth in any clause or sub-clause of this appendix shall not except where the context expressly requires be in any wise limited or restricted by reference to or any inference from the terms of any other clause or sub-clause. None of such clauses or sub-clauses or the objects therein specified or the powers thereby conferred should be deemed subsidiary or ancillary to any other clause, sub-clause or object but the Board shall have full powers to exercise all or any of the objects and powers set out in this appendix independently of any other of such objects and powers.
- (dd) THE Board may carry out any of the objects hereinbefore set out either alone or in conjunction with any other person organization or company PROVIDED ALWAYS that in any dealing with a person organization or company that is not itself a charitable purpose the Board shall charge a full market consideration for all services provided by it so that no organisation that is not charitable in nature shall obtain any benefit from the Board.

The Third Schedule Hereinbefore Referred to Rules of Southern Cross Health Trust

1. CONSTITUTION OF THE BOARD

- (a) The Board shall consist of no more than nine members nor less than two members who shall hold office pursuant to the provisions hereof:
- (b) The initial Trustees shall be:
 - John Brownlow Horrocks of Auckland, Solicitor
 - Donald Bruce Carnachan of Auckland, Chartered Accountant
 - Lewis Hay Irvine Watson of Auckland, Company Director.
- (c) A majority of the Trustees constituting the Board at the time shall have the power, by resolution, to:
 - (i) Appoint any person or persons to be Trustees of the Trust;
 - (ii) Remove any Trustee, whether or not appointed by them.
- (d) A Trustee shall cease to hold office upon the happening of any of the following events:
 - (i) he shall resign office or have his appointment revoked by his appointer or;
 - (ii) he shall become bankrupt or insolvent or;
 - (iii) he shall become of unsound mind or;
 - (iv) he shall be convicted of an indictable offence or;
 - (v) he shall be absent from New Zealand for a period of twelve months without obtaining leave of absence from the other Trustees or;
 - (vi) he shall die or;
 - (vii) in the opinion of all other Trustees so expressed by formal resolution he is for any reason unfit to carry out his duties as a Trustee.
- (e) At all times registered medical practitioners shall not comprise a majority of members of the Board PROVIDED ALWAYS if at any time the provisions of

this paragraph shall not be complied with the Board shall be entitled to act only under Paragraph (c) above to appoint a member or members to comply with the provisions of this paragraph.

2. POWERS AND OBLIGATIONS OF THE BOARD

- (a) The Board shall have vested in it the management of the Trust Fund and shall manage these to fulfil the aims for which the Board has been established.
- (b) The Board shall have the power to delegate its functions or portions thereof to committees of Trustees.
- (c) The Board shall have the power to employ a Manager or Secretary and such other officers as the Board considers necessary to carry out the administrative work of the Board.
- (d) The Board shall have power from time to time to appoint one or more persons to the following honorary offices:
 - (i) The office of patron (intended for some persons of note whose patronage the Board considers to be beneficial to the Board).
 - (ii) The office of vice-president (intended for persons or corporations who have rendered signal services or who have made significant financial contributions to the Board and to serve as a token of the Board's appreciation).
- (e) To prepare an Annual Report of the activities of the Board during the preceding year with an audited balance sheet and income and expenditure statement and to make the same available to all persons who shall request the same.
- (f) The Board shall provide and shall keep in safe custody a Seal which shall only be used by authority of the Board or of a committee thereof authorised by the Board in that behalf and every instrument to which the Seal is affixed shall be signed by two Trustees. The Seal shall be in the form of a circle with the words "Southern Cross Health Trust" around the periphery thereof and in the centre the words "The Seal of".
- (g) The Board shall cause proper books of accounts to be kept in which shall be kept full and true and complete accounts of the affairs and transactions of the Board. The books of account shall be kept at the Board's office or at such other place or places as the Board thinks fit and shall always be open to inspection by any Trustee.

- (h) The quorum necessary for the transaction of business by the Board shall be two.
- (i) The Board may from time to time elect one of the Trustees to be Chairman of the Board and from time to time elect to replace an existing chairman. The chairman shall preside at all the meetings of the Board. In the absence of the chairman at a meeting the members of the Board present may elect one of their Trustees present to be chairman for the meeting. The chairman shall have a deliberative vote but no casting vote.
- (j) The Board shall always have an auditor who shall be a Chartered Accountant who is not a member of the Board and who is appointed annually by the Board. The auditor shall audit the Board's books of account and shall certify the annual accounts and statement of income and expenditure of the Board as being true and correct.
- (k) A resolution in writing signed by all Trustees shall be as valid and effectual as if it had been passed at a meeting of Trustees duly convened. Any such resolution may consist of several documents in like form each signed by one or more Trustee.
- (l) All proceedings of the Board and its committees shall be recorded in the form of Minutes entered in a proper Minute Book.
- (m) A Trustee or, if requested by a Trustee to do so, the Secretary, may convene a meeting of the Board by giving notice in accordance with this clause. Not less than 2 days' notice of a meeting of the Board must be sent to every Trustee, and the notice must include the date, time and place of the meeting and the matters to be discussed. The giving of a notice of meeting is waived if all Trustees entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Trustees entitled to receive notice of the meeting agree to the waiver.

2.1 FEES TO TRUSTEES AND MEMBERS OF THE BOARD

Any person who is a Trustee and member of the Board:

- (a) May be paid and may receive a fair and reasonable fee for attendances at meetings and other actual attendances or services rendered by such person concerning or incidental to the objects and activities of the Trust PROVIDED that any such fee shall be no greater than that which would be payable if the person were not a Trustee but had been so engaged for such attendances and services at normal and usual market rates therefore;

- (b) May be paid interest at market rates on any moneys lent to the Trust;
- (c) In respect of any payment made pursuant to subclause (a) and (b) above any taxation payment or withholding tax or deduction required by law shall be made, paid and accounted for as by law required;
- (d) No repayment shall be made under (a) or (b) if the effect thereof would be that the charitable status of the Trust is lost, and if any payment having such effect is made any such payment so made (or any part thereof) shall be repayable upon demand.
- (e) For the avoidance of doubt:
 - (i) any income, benefit, or advantage must be used to advance the charitable purposes of the Trust;
 - (ii) no Trustee, officer or servant of the Trust, or anyone associated with a Trustee, officer or servant is allowed to take part in, or influence any decision made by the Board in respect of payments to, or on behalf of, the Trustee, officer, servant or associated person of any income, benefit, or advantage;
 - (iii) any payments made to any Trustee, officer or servant of the Trust, or person associated with a Trustee, officer or servant of the Trust, must be for goods or services that advance the charitable purpose and must be reasonable and relative to payments that would be made between unrelated parties.

2.2 INDEMNITIES

- (a) Any:
 - (i) current or future Trustee of the Trust;
 - (ii) current or future employee of the Trust;
 - (iii) current or future director or employee of any company in which the Trust is a shareholder and any subsidiary or related company of such company; or
 - (iv) person performing activities, or acting as agent, for the Trust

may be indemnified out of the Trust Funds for such matters, and on such terms and conditions, as the Board may from time to time deem fit.

- (b) Any such indemnity given pursuant to Rule 2.2(a) of the Rules shall be in addition to, and not in substitution for or derogation from, any statutory or other right of indemnity available to the persons referred to in Rule 2.2(a).

3. ALTERATIONS TO RULES

- (a) Notice stating the general tenor or any proposed alteration or additions to the Rules shall be given to each Trustee.
- (b) The meeting may amend any such proposals.
- (c) No resolution of any meeting shall effect any alteration or addition to the Rules unless it be carried by a majority of at least two-thirds of the Trustees present at such meeting and entitled to vote.
- (d) The Rules may not be in any way altered, revoked or replaced in a manner which would negate the charitable purposes of the Trust or result in the Trust no longer being charitable according to the laws of New Zealand.