

# Trust Deed

Joseph William Gottstein Memorial Trust  
Fund

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# 1 Definitions

In this Deed:

**ACNC** means the Australian Charities and Not-for-Profits Commission.

**ACNC Act** means the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) and for the avoidance of doubt includes any 'governance standards' prescribed under any related regulations.

**Accounting Period** means the accounting period referred to within the meaning of "Financial Year" in this clause 1.2.

**Advisory Council** means a council established under clause 9.

**Advisory Councillor** means a member of the Advisory Council appointed by the Trustees under clause 9.

**Approved Recipient** means an individual that is:

- (a) seeking to commence a career with or to further his or her career in the Australian Forestry Industry or related industries; and
- (b) selected by the Trustees in furtherance of the Trust Purpose and Objects.

**Associate** has the meaning given by section 318 of the *Income Tax Assessment Act 1936* (Cth).

**Australian Forestry Industry** means the Australian forest and wood products industry being the industry concerned with growing, harvesting, processing, importing, exporting and marketing wood, wood fibre and products made from wood or wood fibre.

**Charitable Institution** means a charitable institution in Australia which:

- (a) is endorsed by the Commissioner of Taxation as exempt from income tax under Subdivision 50-B of the Tax Act; and
- (b) is an Australian entity as defined in section 995-1(1) of the Tax Act.

**Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the Tax Act.

**Corporations Act** means the *Corporation Act 2001* (Cth).

**Donor** means the donor of a Gift to the Trust.

**Financial Year** means the period of 12 months' beginning on 1 January and ending on 31 December in each year or such other period reflecting a substituted accounting period or other alternate reporting period as agreed by the Commissioner.

**Gift** means a gift (of money or other property) made to the Trust by any person.

**Government Authority** means the Federal Government of the Commonwealth of Australia, the Government of any State or Territory thereof, the Government of any other country or political subdivision thereof and any minister, department, office, commission, instrumentality, agency, board, authority or organisation of any of the foregoing or any delegate or person deriving authority from any of the foregoing.

**Objects** means the Principal Object and Specific Objects.

**Original Deed** means the trust deed dated 21 September 1971 made between Edvard Aarstad Alstergren, Thomas Cullity and Robert William Roy Muncey as Founders and Denis Michael Cullity, Walter Custav Kauman, William Thomas Knight, David Andrew Wilkinson and Robert William Page as Founding Trustees, as amended from time to time.

**Officer** means a director, a member of a committee of management or any other controlling body of the Trustee.

**Principal Object** means the objects of the Trust described in clause 2.3 of this Deed.

**Relevant Law** means:

- (a) an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the part);
- (b) regulations under such an Act (including such a part of an Act); and
- (c) any other statute, regulation or law applicable.

**Responsible Person** means an individual who:

- (a) is not disqualified from managing a corporation, within the meaning of the Corporations Act; and
- (b) has not been disqualified by the ACNC at any time during the previous year from being a responsible person of a registered charity.

**Specific Objects** means the specific objects of the Trust described in clause 2.4 of this Deed.

**Tax** includes all income tax, withholding tax, stamp, financial institutions, registration and other duties, bank accounts debits tax, GST or other goods and services tax and other taxes, levies, imposts, deductions and charges whatsoever (including in respect of any duty imposed on receipts or liabilities of financial institutions any amounts paid in respect thereof to another financial institution) together with interest on them and penalties with respect to them (if any) and charges, fees or other amounts made on or in respect of them.

**TAA 1953** means the *Tax Administration Act 1953* (Cth).

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

**Trust** means the Trust established under the Original Deed subject to such variations as are authorised.

**Trustees** means the persons named in this Deed as the Trustees and any other trustee for the time being of the Trust.

**Trust Fund** means the fund established pursuant to the Original Deed and:

- (a) all money, investments and assets paid or transferred to and accepted by the Trustees as additions to the Trust Fund including all Gifts;
- (b) all income of the Trust Fund including income earned or to which it is entitled;
- (c) all accretions to the Trust Fund;

- (d) all accumulations of income;
- (e) all money, investments and property from time to time representing the above or into which they are converted,

and includes any part of the Trust Fund.

**Trust Purpose** means the specific purpose of the Trust described in clause 2.2 of this Deed.

## 1.2 Interpretation

In this Deed unless the context requires otherwise:

- (a) a reference to Trustee includes all Trustees, in the event that more than one Trustee is appointed in accordance with clause 5;
- (b) the singular (including defined terms) includes the plural and the plural includes the singular, and words of any gender include all genders;
- (c) a reference to this Deed means this Deed as originally executed and as from time to time lawfully amended;
- (d) a reference to any legislation or legislative instrument or a provision of any legislation or legislative instrument, includes any amendment to that legislation or legislative instrument or provision, any consolidation or replacement of that legislation or legislative instrument or provision, and any subordinate legislation or legislative instrument made under that legislation or legislative instrument; and
- (e) a reference to a donation includes a Gift.

## 1.3 Headings

Headings are used for convenience only and do not affect the interpretation of this Deed.

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# 2 Objects

## 2.1 Trustees to further Trust Purpose and Objects

The Trustees must direct their effort towards furthering the Trust Purpose and Objects in managing and conducting the affairs of the Trust.

## 2.2 Trust Purpose

- (a) The Trust was established and continues for the sole purpose of providing financial support, property or benefits to perpetuate the memory of Joseph William Gottstein, an eminent Australian research scientist who devoted his life's work to the advancement of the forest products industry in Australia ("**Trust Purpose**").
- (b) Activities conducted in furtherance of the Objects is a sufficient discharge by the Trustees of the Trust Purpose.

## 2.3 Principal Object

The Trustees must apply the Trust Fund exclusively for public charitable purposes and in accordance with the Principal Object of promoting the development, competitiveness and sustainability of the Australian Forestry Industry.

## 2.4 Specific Objects

The Trust has the following Specific Objects:

- (a) to promote the development and advancement of the Australian Forestry Industry;
- (b) to increase the economic, environmental and social benefits to members of the Australian Forestry Industry and to the community in general by promoting and supporting the constant improvement in the production, processing, storage, transport, marketing or distribution of the products of the Australian Forestry Industry;
- (c) to support and promote the high standard of qualification, education and ethical practice among those engaged in the Australian Forestry Industry;
- (d) to promote the publication and dissemination of publications and other scholarly articles and reports (in any form) that the Trustees consider necessary or desirable to promote the Objects;
- (e) to promote and provide educational courses relating to the Australian Forestry Industry in general and, in particular, relating to:
  - (1) sustainable use and sustainable management of natural resources by the Australian Forestry Industry;
  - (2) wood science technology and new techniques used in the Australian Forestry Industry to cope with the changing quality of raw materials and market demands in the Australian Forestry Industry;
  - (3) Australian forest management, the economics of wood production and other forest services;
  - (4) research and development and innovation activities in relation to the Australian Forestry Industry;
- (f) to promote the effective use of resources and skills in the Australian Forestry Industry;
- (g) the creation and maintenance of a national education trust to provide financial assistance to Approved Recipients to acquire knowledge and develop new skills, which will promote directly and indirectly the advancement of Australian Forestry Industry;
- (h) to conduct or assist in the conduct of, such appeals, campaigns, lectures, workshops, conferences and programs as the Trustees may think desirable to further the Objects;
- (i) to undertake or fund marketing and promotional activities in relation to the Australian Forestry Industry and its products which promote the development and advancement of the Australian Forestry Industry;
- (j) to establish and maintain relationships with all types of entities (including government authorities) that may have related interests to the Trust;
- (k) to establish, assist and support other entities to further achieve the Objects; and
- (l) to do all other things which may be incidental or ancillary to the attainment of the Objects including to solicit donations, gifts, bequests and other forms of financial assistance to, or for the benefit of, the Objects, including by conducting fundraising initiatives.

## **2.5 Application of capital and income**

All capital and income of the Trust Fund must be applied for the Objects referred to in this clause 2.

## **2.6 Trustees to consider recommendations of Advisory Council**

In carrying out the Trust Purpose and Specific Objects, the Trustees may have regard to any recommendations of an Advisory Council (if established in accordance with this Deed).

## **2.7 Policies and rules**

For the purpose of paying or applying the Trust Fund, the Trustees may:

- (a) formulate policies;
- (b) make rules in connection with a policy; and
- (c) revoke or amend a policy or rule and formulate others.

## **2.8 Not for profit**

No monies or assets in the Trust Fund will be distributed to the Trustees, a Donor to the Trust or (in the event that a Trustee is a company) to the members or office bearers of the Trustee, except as reimbursement of out-of-pocket expenses incurred on behalf of the Trust Fund or proper remuneration for administrative services determined on an arm's length basis.

## **2.9 In Australia**

The Trust was established and continues to be operated in Australia.

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# **3 Application of Trust Fund**

## **3.1 Uncommercial transactions**

The Trustees must not enter into any transaction that is uncommercial when entered into, unless the transaction is in the course of furtherance of the Trust Purpose and the Objects.

## **3.2 Uncommercial transactions more favourable to the Trust**

Notwithstanding clause 3.1, the Trustees may enter into an uncommercial transaction if it is on terms more favourable to the Trust than would otherwise be expected under an arm's length transaction.

## **3.3 Meaning of uncommercial transaction**

For the purposes of clause 3.1, a transaction that is uncommercial is the provision of a financial or other benefit:

- (a) to an Associate of the Trust or a Trustee;
- (b) on terms which would not be reasonable in the circumstances if the benefit were provided on an arm's length basis; or
- (c) on terms which are more favourable to the recipient of the financial or other benefit than to the Trust,

and which a reasonable person in the position of the Trustees would not have entered into having regard to the relevant circumstances.

## **3.4 Application of Trust Fund**

The Trustees shall not be bound to apply all of the income of the Trust Fund in the year of its receipt. If in the opinion of the Trustees it is not desirable to apply any part of the income of the Trust Fund for the purposes of the Trust in the

accounting period in which it is received, the Trustees may, subject to the Tax Act or any guidelines issued by the Commissioner or with the prior approval of the Commissioner, pending its application pursuant to clause 2 invest such part of the income in accordance with the provisions of this Deed relating to the investment of the Trust Fund or pay the same into a bank account.

### **3.5 Trustees may apply capital and income**

- (a) The Trustees may:
  - (1) apply the income of the Trust Fund, generated in any Financial Year for the Trust Purpose;
  - (2) apply the capital of the Trust Fund in any Financial Year for the Trust Purpose;
  - (3) apply the income or the capital of the Trust Fund to acquire assets that will produce income in the future; or
  - (4) accumulate the income of the Trust Fund for later distribution.
- (b) For the avoidance of doubt, the Trustees may apply part or all of the income or capital of the Trust Fund in the manner set out in clause 3.5(a).

### **3.6 Benefits to Trustees or Associates**

- (a) Subject to clause 3.7 and notwithstanding anything contained in this Deed, whether expressed or implied to the contrary, the Trustees shall not:
  - (1) apply, pay, transfer or distribute, directly or indirectly, by way of bonus, fee or otherwise any part of the Trust Fund or the income of the Trust Fund for or towards the benefit of the Trustees.
  - (2) loan any part of the Trust Fund or the income of the Trust Fund to any Associate of the Trustees, whether at interest or not, or make any similar such arrangement; or
  - (3) accept property where there is an agreement to allow the Trustees or any Associate of the Trustees to use or access the property.
- (b) If a Trustee is a corporation, clause 3.6(a)(1) also applies in respect of the Trustees' members and directors and any Associate of the Trustee or its members and directors.

### **3.7 Payments in good faith**

Nothing contained in this Deed prevents the payment, in good faith, of remuneration to any officers or servants of the Trustees in return for any services actually rendered to the Trust or for goods supplied in the ordinary course of business.

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## **4 Gift Account**

### **4.1 Maintaining a Gift Account**

The Trustees must maintain a management account ("**Gift Account**"):

- (a) to identify and record Gifts made by any person to the Trust of any

amount or value;

- (b) to identify and record any money received by the Trust because of those Gifts; and
- (c) that does not identify and record any other money or property.

#### **4.2 Limits on use of Gift Account**

The Trustees must use the Gift Account only to achieve the Trust Purpose and the Objects.

#### **4.3 Gift Account forms part of the Trust Fund**

To avoid any doubt, the Gift Account forms part of the Trust Fund.

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## **5 Trustees**

### **5.1 Qualifications**

Each Trustee must be:

- (a) a corporation to which paragraph 51(xx) of the *Commonwealth of Australia Constitution Act* applies;
- (b) a body corporate that is incorporated in Australia; or
- (c) four or more individual persons (but not exceeding eight).

### **5.2 Responsible Persons**

- (a) In the event that the Trustee is a corporation in accordance with clauses 5.1(a) or 5.1(b), the corporation's board of directors, and any other controlling body, must comprise at least three persons, the majority of which are Responsible Persons that are concerned with or take part in the Australian Forestry Industry.
- (b) In the event that the Trustees comprise four or more persons in accordance with clause 5.1(c) the majority of those persons must be Responsible Persons that are concerned with, or take part in, the Australian Forestry Industry.

### **5.3 Qualifications not met**

- (a) If the requirements in clauses 5.1 or 5.2 are at any time not met the Trustees must not exercise any discretion or power until the requirements are met, other than:
  - (1) for the purpose of exercising a statutory power to appoint a new or additional Trustee;
  - (2) to protect the Trust Fund; or
  - (3) in the case of urgency.
- (b) For the avoidance of doubt, if the requirements in clauses 5.1 or 5.2 are at any time not met and if the Trustees do not have or are unable to exercise a statutory power to appoint a new or additional Trustee as outlined in 5.3(a) the Trustees may by writing appoint a new or additional Trustee.

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## **6 Trustee's powers**



## 6.1 Investment

The Trustees must invest money of the Trust Fund in accordance with this Deed and only in a way in which trustees are permitted to invest under the laws of Australia or of any state or territory of Australia.

## 6.2 Winding up or dissolution of the Trust

The Trustees may, at any time, by resolution of the Trustees at a duly called and held meeting of the Trustees at which all Trustees are present or have given the right of proxy and where 75% of the Trustees vote in favour of such resolution, determine to dissolve and wind up the Trust.

## 6.3 Other powers

In addition to the powers conferred on the Trustees by law or which are otherwise conferred on them by this Deed, the Trustees have, subject always to clause 6.1, the following powers and discretions:

- (a) **(distribution of funds)** to apply the Trust Fund in accordance with the Objects, as the Trustees thinks fit;
- (b) **(unpaid and unapplied income)** to accumulate any unpaid or unapplied income of the Trust Fund by investing it and the resulting income and by holding the accumulations in addition to and on the same trusts and conditions that are applicable to capital but not so as to excessively accumulate investment income such that the Trust Fund is not being applied for its purpose in accordance with the Relevant Law;
- (c) **(securities)** to exercise all rights and privileges and perform all duties pertaining to any bonds, shares, stock or debentures forming part of the Trust Fund with liberty to assent to any arrangements modifying those rights, privileges or duties;
- (d) **(schemes and arrangements)** to agree to a scheme or arrangement for the reconstruction of or the increase or reduction of the capital of any company and for that purpose to:
  - (1) deposit, surrender and exchange shares or stock or the title to them; and
  - (2) pay any calls or contributions or other necessary expenses in connection with shares, stock or the title to them;
- (e) **(real property)** if at any time the Trust Fund comprises real property or any interest in real property:
  - (1) to manage, use and let it or any part of it;
  - (2) to erect, demolish, rebuild and repair buildings and erections;
  - (3) to carry out improvements of any nature;
  - (4) to make allowances to and arrangement with tenants;
  - (5) to grant or acquire easements or other rights, to partition or subdivide or join in the partition or subdivision of it; or
  - (6) generally to deal with that property or interest or to join in dealing with it as if beneficially entitled to it without being responsible for loss;
- (f) **(retaining donated property)** to retain property donated to the Trust Fund without considering the question of sale, calling in or conversion for

as long as the Trustees thinks fit;

- (g) **(enforcing contracts)** to commence and carry out legal proceedings of any kind and in any court to enforce a contract entered into by the Trustees and to recover damages for breach of that contract;
- (h) **(enforcing property rights)** to cancel, terminate or accept surrenders of leases, to commence and carry out legal proceedings of any kind and in any court to remove tenants and recover possession of any part of a property, to sue for and recover rent and damages for breach of a lease, to sue and prosecute trespassers or other persons for damage to any part of the property and to settle, abandon, compromise and release these legal actions when expedient;
- (i) **(maintaining property)** to repair, renovate, decorate and maintain personal property or land including fittings, fixtures, furniture, equipment and grounds and outhouses;
- (j) **(appointing agents)** to employ, engage or appoint a secretary, manager, solicitor, accountant or agent or any other person, including a director or member of a Trustee or any firm or company in which that director or member is a partner or director, to transact any business required to be done, including the receipt or payment of money and the acquisition of property of any kind on behalf of the Trustees, and the Trustees may decide the amount of the remuneration and expenses to be paid to this person;
- (k) **(acquiring investments)** to acquire any investment to form part of the Trust Fund on terms that require the investment to be paid for by more than one instalment or that the instalments or the residue of purchase money bear interest as the Trustees thinks fit;
- (l) **(raising money)** to raise money which the Trustees think expedient for any purpose in relation to the execution of the trusts and powers conferred on the Trustees by this Deed, with or without security or by mortgaging or charging with or without power of sale any part of the Trust Fund;
- (m) **(merging funds)** to merge or mix the Trust Fund or any part of it with any other trust fund, trust money or trust property or to join with any other trustee or person to form a common or merged fund to be invested in any investment permitted by this Deed whether or not the common or merged fund is under the control of or stands in the name of the Trustees;
- (n) **(paying costs)** to pay out of the capital or income of the Trust Fund the direct expenses that may be incurred in relation to the trusts of this Trust Deed including all administration expenses;
- (o) **(accepting or refusing gifts)** to invite persons to make Gifts to the Trust Fund and to refuse any Gift where the Trustees reasonably consider that it would be onerous or uneconomic to maintain;
- (p) **(fundraising activities)** to conduct activities for the raising of funds from the public, pay reasonable expenses of conducting those activities, and to apply the net proceeds for the purpose;
- (q) **(obtaining legal advice)** to take and act on the opinion of any barrister or solicitor practising in the Supreme Court of any Australian State or Territory whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts of this Deed without being liable to any one in respect of any act done or not done by it in accordance with that opinion, but this clause does not oblige the Trustees to act in accordance with any such opinion nor prohibit the

Trustees from applying to any court as they think fit;

- (r) **(obtaining other advice)** to act upon the opinion or advice or information obtained from any financial adviser, accountant, valuer, surveyor, broker, auctioneer or other expert or professional person and so that the Trustees are not responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance with the advice;
- (s) **(managing and developing property)** to do any act or thing which in the opinion of the Trustees is necessary for the proper and efficient management and development of any property forming part of the Trust Fund;
- (t) **(insurance)** to insure any or all of the property of the Trust Fund and acts or omissions of the Trustees as trustees on such terms and conditions and for such amounts as the Trustees think fit;
- (u) **(bank accounts)** to open any account or facility with any banker, building society, credit union or other authorized deposit taking institution;
- (v) **(appointing agents)** to carry out any of the above powers by or through an agent and to appoint and authorise the agent to carry out all or any of the above powers; and
- (w) to do all other things incidental to the exercise of the Trustees' powers under this Deed.

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## **7 Appointment and removal of Trustees**

### **7.1 Term**

Trustees shall hold office until they die or resign or are removed pursuant to the provisions of this clause 7.

### **7.2 Retirement**

Any of the Trustees may retire on giving at least one month notice in writing of their intention to retire to the other Trustees.

### **7.3 Appointment and removal**

- (a) Where the Trustees of the Trust are individuals, then the Trustees may, at any time, by resolution of the Trustees at a duly convened meeting of the Trustees at which all Trustees are present or have given the right of proxy and where 75% of the Trustees vote in favour of such resolution:
  - (1) remove any Trustees; and / or
  - (2) appoint a new Trustee or new Trustees in place of any Trustee so removed from office or in place of any Trustee who ceases to hold office as a Trustee or in addition to the existing Trustees up to the limit imposed by clause 5.1.
- (b) Where a company is the sole Trustee of the Trust, then the Trustee may, at any time, by resolution of the Trustee at a duly called and held meeting of the board of directors of the Trustee at which all directors of the Trustee are present or have given the right of proxy and where 75% of the directors of the Trustee vote in favour of such resolution, appoint a new Trustee or new Trustees in its place or in addition to itself up to the limit imposed by clause 5.1.
- (c) If at any time there is no Trustee and there is no person in existence able

or willing to make an appointment pursuant to this clause 7, the Attorney-General for the time being of the State of Victoria, or other responsible officer of the Crown charged with the supervision of charities in Victoria, may appoint the Trustees of the Trust.

#### **7.4 Successor Trustees to be bound by this Deed**

Any successor Trustee must execute a deed with the existing Trustees by which it covenants to be bound by this Deed as if it had been originally party to it.

#### **7.5 Release of outgoing Trustee**

When an outgoing Trustee retires, that Trustee is released from all obligations in relation to the Trust Fund arising after the time it retires or is removed. The outgoing Trustee must execute and deliver any documents and do every other thing which is necessary or desirable to effect the appointment of the successor Trustee.

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## **8 Proceedings of Trustees**

### **8.1 Meetings of Trustees**

- (a) The Trustees shall meet at least once in each calendar year and shall hold such further meetings as may, from time to time, seem necessary or desirable.
- (b) The meetings of the Trustees shall be held in such place or by using any electronic means, telephone, or by any other method as may, from time to time, be determined by the Trustees.
- (c) Any Trustee may, at any time, call a meeting of the Trustees.
- (d) At any meeting of the Trustees, three of the Trustees, present in person, shall form a quorum.
- (e) Decisions of the Trustees need not be unanimous but shall be by a majority of those Trustees present and voting at any meeting.
- (f) Once in each calendar year, at a meeting of the Trustees, a chairperson shall be appointed and in the case of an equality of votes the chairperson shall have a second vote.
- (g) Any resolution of the Trustees may at any time be rescinded or varied.
- (h) The Trustees shall record minutes of the proceedings of each meeting and if such minutes are confirmed they shall be signed by the chairperson of the meeting at which they are confirmed.
- (i) A resolution in writing (or other electronic form) signed by all of the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly called and held. Any resolution passed in accordance with this clause 8.1(i) may consist of identical copies of the document recording the resolution and accompanying information, each signed by one or more Trustees.
- (j) The Trustees must cause all Trustees to be given at least 10 days' notice of any meeting of the Trustees by post, any electronic means, telephone, or by any other method deemed appropriate by the Trustees from time to time.
- (k) In the event that a company is the sole Trustee of the Trust, then the procedures and rules contained in paragraphs (a) to (j) above shall be observed by the company and shall be applicable to meetings of its board of directors, or other governing body, as though the directors were

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## **9 Advisory Councils**

- (a) The Trustees may in their discretion establish Advisory Councils and appoint and remove, or make provision for the appointment and removal of, members of Advisory Councils.
- (b) Any Advisory Council may consist of a single individual or the number of individuals that the Trustees decide.
- (c) The functions of any Advisory Council will be decided by the Trustees and, subject to the Trustees' decision, will be to advise the Trustees on how payments or applications of income and capital should be made under clause 6.
- (d) The Trustees may specify:
  - (1) the manner in which proceedings of any Advisory Council are to be conducted;
  - (2) the matters which an Advisory Council must have regard to in carrying out its functions; and
  - (3) any other matters concerning an Advisory Councillor's functions that the Trustees decide.

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## **10 Compliance**

- (a) Notwithstanding any other provision of this Deed, the Trust and Trustees must comply with all relevant Australian laws, including the Relevant Law and all legally binding directions given to it by the Commissioner.
- (b) To the extent of any inconsistency between the relevant Australian laws, including the Relevant Law and all legally binding directions given to it by the Commissioner and this Deed, the relevant Australian laws will take precedence and this Deed will be interpreted in a manner which ensures compliance with them.
- (c) The Trustees must ensure that any distributions of the Trust Fund do not put at risk the validity of the Trust Fund under any State or Territory law.

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## **11 Trust indemnity and Limited Recourse**

### **11.1 Trustee's indemnity and lien**

Subject to clause 11.2, the Trustees are indemnified against all liabilities incurred by the Trustees through any act or omission in the exercise or bona fide intended or purported exercise of the powers, duties and discretions under this Deed and has a lien on the Trust Fund for that indemnity.

### **11.2 Dishonesty and breach of Trust not indemnified**

Except where due to one or more of the Trustees' own dishonesty, gross negligence, recklessness or wilfully or knowingly being a party to a breach of trust, the Trustees are not liable for any:

- (a) act or default done or omitted to be done in the exercise or bona fide intended or purported exercise of those powers, duties and discretions;
- (b) loss or expenses incurred by the Trust Fund through the insufficiency of any security in or on which any of the money of the Trust Fund are

invested;

- (c) loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom money or securities are deposited; or
- (d) other loss, damage or misfortune whatever.

### **11.3 Limitation on Trustee's Liability**

Notwithstanding any other provision of this document, a liability incurred by the Trustees arising under or in connection with this Deed is limited to and can be enforced against the Trustees only to the extent to which it can be satisfied out of the Trust Fund of which the Trustees are actually indemnified for the liability. This limitation of the Trustees' liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustees in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

### **11.4 Claims against Trustee**

A party (other than the Trustees) may not sue the Trustees in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver, or a liquidator, an administrator or any similar person to the Trustees or prove in any liquidation, administration or arrangements of or affecting the Trustees.

### **11.5 Acts or omissions**

- (a) No act or omission of the Trustees (including any related failure to satisfy their obligations or breach of representation or warranty under this Deed) will be considered fraud, negligence or wilful default for the purpose of clause 11.1 if and to the extent to which the act or omission was caused or contributed to by any failure by a party (including, without limitation, any failure by a party to give a direction to the Trustees) or any other person to fulfil its obligations or by any other act or omission of a party or any other person, regardless of whether or not the act or omission is purported to be done on behalf of the Trustees.
- (b) No attorney, agent, delegate, service provider, receiver or receiver and manager appointed in accordance with this Deed (provided they are appointed by the Trustees in good faith), has authority to act on behalf of the Trustees in a way that exposes the Trustees to any personal liability, and no act or omission of any such person will be considered fraud, negligence or wilful default of the Trustees for the purpose of clause 11.1.
- (c) The Trustees are not obliged to do anything or refrain from doing anything under or in connection with this Deed or any other agreement from time to time between it and any other person (including enter into any transaction or incur any liability) unless the Trustees' liability is limited in the same manner as set out in this clause 11.
- (d) The provisions of this clause 11.5:
  - (1) are paramount and apply regardless of any other provision of this deed or any other instrument, even a provision which seeks to apply regardless of any other provision;
  - (2) survive and endure beyond any termination of this Deed for any reason; and
  - (3) are not severable from this Deed.

### **11.6 Exoneration**

Neither a Trustee nor any of its directors, Officers, employees, agents, attorneys (as applicable) will be taken to be fraudulent, negligent or in wilful default for the

purpose of clause 11:

- (a) because any person other than the Trustee does not comply with its obligations under a document;
- (b) because of the financial condition of any person other than the Trustee;
- (c) because any statement, representation or warranty of any person other than the Trustee in a document is incorrect or misleading;
- (d) because of the lack of effectiveness, genuineness, validity, enforceability, admissibility in evidence or sufficiency of a document; or
- (e) for acting, or not acting, in good faith in reliance on:
  - (1) any communication or document that the Trustee believes to be genuine and correct and to have been signed or sent by the appropriate person; or
  - (2) any opinion or advice of any legal, accounting, taxation or other professional advisers used by it.

### **11.7 Trustee Capacity**

In this Deed, except where expressly provided to the contrary:

- (a) a reference to a Trustee or the Trustees is a reference to the Trustee or Trustees (as applicable) in their capacity as trustees of the Trust only, and in no other capacity. Subject to clause 11.8(c), the Trustees are not liable to any person in any capacity other than as trustee of the Trust; and
- (b) a reference to the undertaking, assets, business, money or any other thing of or in relation to the Trustees is a reference to such undertaking, assets, business, money or other thing of or in relation to the Trustees only in their capacity as trustees of the Trust, and in no other capacity.

### **11.8 Paramount**

The provisions of this clause 11:

- (a) are paramount and apply regardless of any other provision of this Deed or any other instrument, even a provision which seeks to apply regardless of any other provision;
- (b) survive and endure beyond any termination of this Deed for any reason;
- (c) are not severable from this Deed or any other instrument; and
- (d) do not limit or adversely affect the powers of the Trustees, any receiver or attorney in respect of the Trust Fund.

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## **12 Financial Records of the Trust**

### **12.1 Trust to keep accounts**

- (a) The Trustees must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust Fund and of all dealings connected with the Trust Fund in accordance with the ACNC Act or any other Relevant Law, including:
  - (1) a complete and accurate record of all receipts and expenditures and other entries on account of the Trust Fund to reasonably explain the results of the operations of the Trust Fund for each

Financial Year; and

- (2) the names and addresses of all persons (other than the Trustee) having custody of all or any part of the assets of the Trust Fund.
- (b) As soon as practicable after the end of each Financial Year the Trustees must prepare or cause to be prepared a financial statement showing the financial position of the Trust Fund at the end of that Financial Year and a statement of financial performance for that Financial Year in accordance with the accounting standards as well as any other report required in accordance with the ACNC Act.
- (c) The financial statements and other reports prepared under clause 12.1(b) must be prepared before the Trust Fund is required to give that financial statement or report to the ACNC or any other Government Authority for the relevant Financial Year.

## **12.2 Audit**

The Trustees may:

- (a) where required to do so by any Relevant Law;
- (b) where necessary to do so for the Trust to receive concessional taxation treatment; or
- (c) for any other reason,

appoint an auditor to prepare an auditor's report on the financial statements or reports prepared in accordance with clause 12.1.

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## **13 Amendment of this Deed**

### **13.1 Amendment power**

The Trustees may, subject to this clause 13, at any time by supplemental deed revoke, amend or vary this Deed in such manner as the Trustees think fit.

### **13.2 Limits of amendment power**

The Trustees may not amend or vary this Deed where that amendment or variation will result in:

- (a) part of the Trust becoming subject to any trusts other than trusts for public charitable purposes;
- (b) unless the Commissioner has consented to the amendment or variation:
  - (1) any part of the Trust Fund or the income thereof being applied for, in or towards the benefit of any of the persons, companies, trusts or settlements specified in clause 3.6;
  - (2) an amendment to or affecting the operation of clause 3.4;
  - (3) an amendment which authorises the Trustees to invest money of the Trust Fund other than in a manner in which trustees are permitted to invest under the laws of Australia or any state or territory of Australia; and
  - (4) an amendment to this clause 13 so as to permit this Deed to be amended in a manner prohibited by clauses 13.2(b)(1) to 13.2(b)(3) (inclusive).



### **13.3 Variation of Trust**

- (a) If a variation or addition to this Deed is made pursuant to clause 13.1 any person may rely upon a certificate from the Trustees, or, if the Trustee is a corporation, a certificate from a director or duly authorised officer of the Trustee describing the variation or addition and the certificate shall be deemed to be conclusive evidence of the variation or addition.

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## **14 Trustees' remuneration and expenses**

The Trustees may apply the income or capital of the Trust Fund to:

- (a) pay fair and reasonable remuneration for the services of the Trustees in administering the Trust; and
- (b) reimburse the Trustees for reasonable expenses incurred as trustee of the Trust.

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## **15 General**

### **15.1 Receipts by others**

The receipt of the person purporting to be the treasurer, secretary or other proper Officer of any recipient of a payment or application of income or capital from the Trust Fund is a sufficient discharge to the Trustees and the Trustees need not see to the application of the payment or application.

### **15.2 Trustees' discretions and powers**

Except where expressly provided otherwise in this Deed, every discretion given to the Trustees is absolute and uncontrolled and every power given to the Trustees is exercisable at their absolute and uncontrolled discretion.

### **15.3 Personal interest of Trustees**

Subject to the requirements of the Relevant Law, the Trustees and, where the Trustee is a corporate trustee, any person who is a member of the board or other controlling committee of the Trustee or a member of the Trustee, may exercise or concur in exercising all powers and discretions given by this Deed or by law even though the Trustee or that person has or may have a direct or personal interest or a conflict of fiduciary duty in the method or result of exercising the power or discretion (and even though the Trustee may be a sole corporate trustee).

### **15.4 Delegation of powers**

- (a) The Trustees may, at any time, delegate any of their duties or powers to a corporate trustee or to any subcommittee consisting of such persons as the Trustees may think fit.
- (b) Where a Trustee is a corporation to which paragraph 51(xx) of the *Commonwealth of Australia Constitution Act* applies or a body corporate that is incorporated in Australia, the Trustee may, at any time, delegate any of its duties or powers to a corporate trustee or to any subcommittee consisting of such persons as the Trustee may think fit.
- (c) The Trustees may at any time appoint or make provision for the appointment of any persons who in the opinion of the Trustees are likely to be of assistance to it in the administration of the Trust to advise the Trustees from time to time on what basis, in what manner and to whom the income of the Trust or any part thereof shall be paid and on such other matters as the Trustees may think fit.

- (d) In relation to clause 15.4(c), the Trustees may pay reasonable remuneration to the person or persons appointed.

## **15.5 Trustees' decisions**

The Trustees may decide:

- (a) whether any money is to be considered as capital or income;
- (b) whether any expense, outgoing or other payment ought to be paid out of capital or income; and
- (c) all questions and matters of doubt arising in the execution of the trusts of this Deed.

Every decision on these matters, whether made on a question actually raised or implied in the acts or proceedings of the Trustees, is conclusive and binds all persons interested under this Deed.

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## **16 Winding up of the Trust Fund**

### **16.1 Winding up or dissolution**

- (a) If on the winding up or dissolution of the Trust Fund there remains after satisfaction of all its debts and liabilities any property, the property must be given or transferred to one or more Charitable Institutions which:
  - (1) is maintained for charitable purpose(s) similar to, or inclusive of, the Trust Purpose;
  - (2) prohibits the distribution of its income and property among its beneficiaries or members to an extent that is at least as great as is imposed on the Trust Fund; and
  - (3) is to be determined by the Trustees, in accordance with clause 8.1, at or before the time of dissolution or, failing such a determination, by a court of law.

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## **17 Governing law**

This Deed is governed by the laws of Victoria.