

Deed of Trust

The Order of Australia Association Foundation

**Consolidated provisions of the deed
incorporating amendments and trustee
as at 1 January 2023**

(updated from version as at 13 July 2006)

THIS DEED OF TRUST is made on 1 January 2023

BETWEEN: **GENERAL SIR PHILLIP HARVEY BENNETT AC, KBE, DSO, KStJ** of 6/65
Musgrave Street, Yarralumla, Australian Capital Territory,

 THE HONOURABLE SIR JAMES AUGUSTINE GOBBO AC, Kt of
Government House, Melbourne, Victoria, State Governor,

 RIGHT HONOURABLE SIR ZELMAN COWEN PC, AK, GCMG, GCVO,
KStJ, Kt of 4 Treasury Place, East Melbourne, Victoria, Former Governor-General,

 THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT AK,
KCMG, Kt, OBE of 18 Peel Parade, Coodanup, Western Australia, Chartered
Accountant and former Premier of Western Australia, and

 SIR ERIC JAMES NEAL AC, Kt, CVO of Government House, Adelaide, South
Australia, State Governor,

(the "Founders");

AND: **THE ORDER OF AUSTRALIA ASSOCIATION FOUNDATION LIMITED**
ACN 106 335 004 (the "Trustee").

RECITALS:

- A. The Founders desire to establish a fund for certain public charitable purposes.
- B. The Founders have paid to the Trustee the sum of \$100 each (the "settled sums") to be held by the Trustee upon the trusts outlined in this deed.
- C. The Trustee has power, among other things, to act as the trustee of this trust.
- D. It is intended that this trust will solicit and receive gifts from the public.

NOW THIS DEED WITNESSES as follows:

1. **Name**

This trust shall be known as The Order of Australia Association Foundation.

2. **Definitions**

2.1 In this deed the following terms where the context so requires or admits shall have the following meanings:

"**accounting period**" means the period from the date of this deed to the next ensuing 30 June and thereafter a period of twelve months ending on 30 June in each year or such other period as the Trustee may determine from time to time;

"**Advisory Committee**" means a committee established pursuant to clause 9;

"**Commissioner**" means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97;

"**deed**" means this deed as originally executed and as it may from time to time be lawfully amended varied or added to;

"**Eligible Charity**" means a fund, authority or institution:

- (a) which is charitable at law; and
- (b) gifts to which are deductible under item 1 of the table in section 30-15 of ITAA 97;

"**ITAA**" means the *Income Tax Assessment Act 1997*;

"**Principal Purpose**" means the purposes outlined in clause 4.1;

"**Responsible Person**" means an individual who:

- (a) performs a significant public function;
- (b) is a member of a professional body having a code of ethics or rules of conduct;
- (c) is officially charged with spiritual functions by a religious institution;
- (d) is a director of a company whose shares are listed on the Australian Stock Exchange;
- (e) has received formal recognition from government for services to the community; or
- (f) is approved as a Responsible Person by the Commissioner;

"**Specified Income**" means income of the Trust other than donations, gifts, government grants, and other voluntary transfers of property to the Trust;

"**Trust**" means the trust established pursuant to this deed;

"**Trustee**" means the person named in this deed as the Trustee and any other trustee or trustees for the time being of this Trust whether original additional or substituted; and

"**Trust Fund**" means the settled sums, all moneys investments and assets from time to time paid or transferred to and accepted by the Trustee as additions to the trust fund, all accretions to the trust fund, all accumulations of income and the moneys investments and property from time to time representing them and any part or parts of them or into which they may be converted.

Miscellaneous matters affecting interpretation

- 2.2 (a) Headings are used for convenience only and are not to be construed as in any way affecting or qualifying the meaning of any of the provisions of this deed.
- (b) Words importing the singular (including defined words) include the plural and vice versa and words importing any gender include all genders.
- (c) A reference to any statute or any provision of a statute means a reference to that statute or provision as amended and re-enacted from time to time and to every statute or provision substituted therefor.

3. Declaration of Trust

The Founders declare that the Trustee will and the Trustee declares that the Trustee will stand possessed of the Trust Fund and the income from the Trust Fund upon the trusts and subject to the powers and provisions contained in this deed.

4. Purposes

- 4.1 The Trustee must stand possessed of the Trust Fund and the income of the Trust Fund derived in each accounting period upon trust to from time to time pay or apply the income and, if and so far as it thinks fit, all or any part of the capital of the Trust Fund for the purpose of providing money, property or benefits to or for such Eligible Charities, or for the establishment of such Eligible Charities, as the Trustee determines from time to time.
- 4.2 Where in respect of an Eligible Charity, section 30-15 of the ITAA 97 provides that gifts to it are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a payment or application of net income or capital must be made in accordance with those conditions.
- 4.3 No part of the Trust Fund or the income may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or other profit distribution, to the Trustee or any of its members or directors. However, this clause 4.3 does not prohibit making a payment permitted by clause 12.
- 4.4 In exercising its discretions from time to time under clause 4.1, the Trustee may, so far as it thinks fit:
- (a) have regard to the recommendations (if any) of an Advisory Committee with authority to make the recommendations; and

- (b) have regard to the provisions and objects, so far as they are consistent with the purpose of this trust, of any other trust (including a trust established by a testamentary instrument) where the capital of that other trust has been transferred to or otherwise vested in the Trustee to hold upon the trusts of this deed and where the Trustee has been requested by the trustee of the other trust to recognise the provisions or objects of the other trust in the exercise of the discretions and powers of the Trustee under this deed.

4.5 Notwithstanding clause 4.1 the Trustee may in any accounting period accumulate and retain as part of the Trust Fund such of the income of the Trust Fund as it thinks fit provided that the proportion of the Specified Income accumulated in any accounting period does not exceed 20% of the Specified Income derived by the Trustee during that period or such other percentage or amount as is from time to time approved by the Commissioner of Taxation or a Deputy Commissioner of Taxation.

4A. Sub-funds

- (a) The Trustee may maintain one or more accounts ("**Sub-funds**") in respect of gifts of money or property from a particular donor or group of donors, money received because of those gifts, and payments or applications from the account.
- (b) The donor or group of donors (or persons nominated by the donor or group of donors) may make requests or indicate preferences, as to the name of the Sub-fund, and as to the application of the gifts or money received from those gifts.
- (c) The Trustee is under no obligation to comply, and the Trustee must not agree or give an assurance that it will comply, with any request or preference.
- (d) Each Sub-fund forms part of the Trust Fund and is not a separate fund.
- (e) The money or property comprised in a Sub-fund must not be separately invested or be separately accounted for in the statutory financial statements of the Trust.
- (f) The Trustee may at any time cease to maintain the Sub-fund and account for the money and investments in the general accounts for the Trust Fund.
- (g) The Trustee may provide reports of the investments and application of the Sub-fund to the donor or group of donors but is not under an obligation to do so.
- (h) The Trustee may formulate rules and policies relating to the maintenance of Sub-funds provided they are not contrary to this Trust Deed or any requirements of the Commissioner of Taxation.

5. Powers

The Trustee may from time to time exercise all or any of the powers and discretions outlined below which so far as they do not restrict the powers and discretions vested in the Trustee by law shall be deemed to be supplementary or additional to those powers and discretions, namely:

- (a) To invest moneys of the Trust Fund in a manner in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia.
- (b) To change any investment for any others or to vary the terms and conditions upon which any investment is held.
- (c) To sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund.
- (d) To borrow or raise or secure the payment of money in such manner as the Trustee may think fit and to secure the same in any way and in particular by the issue of any mortgage charge lien encumbrance debenture or other security fixed or floating over any asset present or future of whatsoever kind and wheresoever situated.
- (e) To take and act upon the opinion of a barrister practising in Australia in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error consequent upon so acting provided that nothing in this provision shall prohibit or impede the Trustee from applying to any court of competent jurisdiction.
- (f) To take such action as the Trustee shall think fit for the adequate protection or insurance of any part or parts of the Trust Fund and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee by this deed.
- (g) To purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of whatsoever kind.
- (h) Subject to the trusts of this deed, generally to perform any administrative act, give effectual receipts and discharges to any person for any moneys or things, pay or deduct all costs charges commissions stamp duties imposts outgoings and expenses of or incidental to the Trust Fund or its management or which the Trustee may think fit to pay or deduct (whether or not the Trustee is under any legal obligation to make any such payment) or in connection with the preparation execution and stamping of this deed, as though the Trust Fund and the income were owned absolutely by the Trustee.

- (i) To attract and encourage donations, gifts, bequests, endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust.
- (j) To employ and pay or provide any benefit for any servant or employee and the Trustee shall not be responsible for the default of any such servant or employee or for any loss occasioned by the employment.
- (k) To engage and pay any agent, contractor, or professional person and the Trustee shall not be responsible for the default of any such agent, contractor or employee or for any loss occasioned by the engagement.
- (l) To sponsor, organise and undertake such fund raising activities as it may think fit and to arrange for the issue of appeals to the public for donations.
- (m) To accept as part of the Trust Fund any gifts donations bequests devises settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and to either retain them in their original form without selling or converting the same into money or to invest or apply or deal with the same in any way in which the Trustee is empowered to invest or apply or deal with the Trust Fund in accordance with this deed.
- (n) To manage any real property held by it with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Charity to occupy any such property on such terms and conditions as the Trustee thinks fit.
- (o) To decline or otherwise refuse to accept as part of the Trust Fund any gift, donation bequest, devise, settlement or other disposition in money, moneys worth or property.
- (p) To mix any moneys forming part of the Trust Fund with moneys held by the Trustee in its personal capacity or as trustee of any other trust subject to keeping proper records to enable the separate identification of the funds so mixed.

6. **Liability for Breaches of Trust**

The Trustee where purporting to act in the exercise of the trusts and powers of this deed and any officer agent or employee of the Trustee purporting to exercise powers under this deed shall not be liable for any loss or liability nor shall be denied indemnity from the Trust Fund in respect of any loss or liability, unless the loss or liability is attributable to the dishonesty of or the wilful commission or omission of any act known by the Trustee (or known by the relevant officer agent or employee of the Trustee) to be a fraudulent breach of trust in bad faith.

7. Indemnity of Trustee from Trust Fund

The Trustee shall be entitled to be indemnified out of the Trust Fund in respect of:

- (a) all costs and expenses incurred by the Trustee relating to the entering into of this deed or any deed amending this deed or relating to the establishment, operation, administration, amendment, termination and winding up of the Trust, or otherwise in respect of the Trust and all matters incidental to the Trust; and
- (b) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to the foregoing) and acts and things done in connection with or consequential upon the foregoing including, without limitation of the generality thereof, the fulfilment, performance and exercise by the Trustee of its duties, obligations, powers rights, authorities and discretions pursuant to this deed.

8. Books of Account

- (a) The Trustee shall 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; and as soon as practicable after the end of each accounting period the Trustee shall prepare or cause to be prepared a financial statement showing the financial position of the Trust Fund at the conclusion of that accounting period. The financial statements must be audited in accordance with the obligations imposed on the Trustee by law.
- (b) Receipts issued for gifts must state:
 - (1) the name of the Trust;
 - (2) the Australian Business Number applicable to the Trust; and
 - (3) the fact that the receipt is for a gift.

9. Advisory Committees

- (a) The Trustee may at any time establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.
- (b) Each Advisory Committee shall consist of a single individual or such number of individuals as the Trustee determines from time to time in respect of that Advisory Committee.

- (c) The functions of each Advisory Committee shall be determined by the Trustee from time to time and subject to any such determinations shall be to provide advice to the Trustee on how payments or applications of income and capital should be made under clause 4.
- (d) The Trustee may from time to time specify the manner in which proceedings of each Advisory Committee are to be conducted, the matters which the Advisory Committee shall have regard to in carrying out its functions, and such other matters with regard to the Advisory Committee or its functions as the Trustee from time to time determines.
- (e) For the avoidance of doubt, it is declared that the Trustee may appoint a single individual to act as an Advisory Committee.

10. **Patrons**

The Trustee may appoint such persons as it sees fit as patrons of the Trust.

11. **Amendments of Trust Deed**

The Trustee may at any time or times in its absolute discretion by deed or deeds revoke add to or vary all or any of the terms and provisions of all or any of the trusts beneficial interests powers and discretions set out or contained in this deed provided that no part of the Trust Fund or the income of the Trust Fund shall become subject to any trusts other than public charitable trusts and provided further that unless the Commissioner of Taxation or a Deputy Commissioner of Taxation of Taxation has consented to the revocation, addition or variation;

- (a) no part of the Trust Fund or the income of the Trust Fund shall become subject to trusts other than trusts for the provision of money, property or benefits to or for Eligible Charities;
- (b) no amendment shall be made to or affecting clause 4.6;
- (c) no amendment shall be made which authorises the Trustee to invest moneys of the Trust Fund other than in a manner in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia; and
- (d) no amendment shall be made to this clause so as to permit the deed to be amended in a manner prohibited by paragraphs (a), (b) or (c).

12. Remuneration of Trustee

- 12.1 The Trustee may charge and be paid out of the capital of the Trust Fund or any part of the capital of the Trust Fund and out of the income of the Trust Fund or of any part of the income of the Trust Fund, such remuneration as the Trustee determines to be fair and reasonable in its absolute discretion provided that the maximum remuneration chargeable by the Trustee in respect of any accounting period must not exceed an amount equal to the maximum commission that would have been chargeable by trustee companies under the Trustee Companies Act of South Australia in respect of that accounting period.
- 12.2 Notwithstanding clause 12.1, where sub-fund capital is transferred to or otherwise vested in the Trustee under clause 4.3 and the donor, testator, or other benefactor and the Trustee agree upon the remuneration of the Trustee in respect of the sub-fund capital or the income thereof and whether before or after the establishment of a management account in respect of that sub-fund capital, the remuneration of the Trustee in respect of that sub-fund shall be as so agreed.

General

13. The receipt of the person purporting to be the treasurer, secretary, or other proper officer for the time being of any recipient of a payment or application of income or capital from the Trust Fund pursuant to this deed shall be a sufficient discharge to the Trustee and the Trustee shall not be bound to see to the application of such payment or application.
14. Subject always to an express provision to the contrary contained in this deed every discretion vested in the Trustee shall be absolute and uncontrolled and every power vested in it shall be exercisable at its absolute and uncontrolled discretion.
15. The Trustee may exercise or concur in exercising all powers and discretions given by this deed or by law (including making any investment authorised under clause 5(a)) notwithstanding that it or any person being a director or shareholder of the Trustee has or may have a direct or personal interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any power or discretion and notwithstanding that the Trustee for the time being is a sole trustee.
16. The Trustee may from time to time provide such secretarial, book-keeping, accounting, or administrative assistance to the Trust or to an Advisory Committee as the Trustee determines and shall be entitled to be paid or reimbursed by the Trust for the costs and expenses of doing so as reasonably determined by the Trustee from time to time.

17. It shall be lawful for the Trustee by power of attorney or otherwise to delegate to any other person or persons any of the discretionary or other powers vested in or given to it and such execution or exercise by attorney or delegation of any of the trusts or powers of this deed shall be valid and effectual and bind all persons interested in the Trust Fund.
18. The Trustee is authorised notwithstanding that it is the sole trustee to receive capital and other moneys and to give valid and effectual receipts therefor for all purposes and for the purposes of any statute including the receipt of any capital moneys which may or may not be deemed to be capital moneys for the purposes of any law relating to settled lands.
19. The Trustee shall have the power to determine whether any moneys are to be considered as capital or income and whether any expenses outgoings or other payment ought to be paid out of capital or income and to determine all questions and matters of doubt arising in the execution of the trusts of this deed and so that every such determination whether made upon a question actually raised or implied in the acts or proceedings of the Trustee shall be conclusive and binding on all persons interested under this deed.

20. **Establishment and operation of Gift Fund**

20.1 **Maintaining Gift Fund**

The Trustee must maintain for the Principal Purpose of the Trust, a fund ("**Gift Fund**"):

- (a) to which gifts of money or property for that purpose are to be made;
- (b) to which any money received by the Trust because of those gifts is to be credited;
and
- (c) that does not receive any other money or property.

20.2 **Limits on use of Gift Fund**

The Trustee must use the following only for the Principal Purpose of the Trust:

- (a) gifts made to the Gift Fund; and
- (b) any money received because of those gifts.

20.3 **Winding up**

- (a) At the first occurrence of:
 - (1) the winding up of the Gift Fund; or

(2) the Trust ceasing to be endorsed as a deductible gift recipient under Division 30-BA of the ITAA 97,

any surplus assets of the Gift Fund must be transferred to one or more Eligible Charities as the Trustee decides.

(b) Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a transfer under this clause 20.3 must be made in accordance with those conditions.

20.4 Bank account

The Trustee must maintain a separate bank account for the Gift Fund.

20.5 Gift Fund forms part of the Trust Fund

To avoid any doubt, it is declared that the Gift Fund forms part of the Trust Fund.

20A. Qualifications of Trustee

(a) The Trustee must be a company or other body corporate, a majority of whose board of directors or other controlling body comprises Responsible Persons.

(b) If at any time the requirement in clause 20A(a) is not met, the Trustee must not exercise any discretion or power until the requirement is met, except:

- (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.

20B. Winding Up

(a) If upon the winding up of the Trust there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall be given and transferred by the Trustee to or for one or more Eligible Charities as the Trustee decides.

(b) Where, in respect of an Eligible Charity, section 30-15 of the ITAA 97 provides that gifts to it are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, the gift and transfer must be made in accordance with those conditions.

21. **Proper Law**

This deed shall be construed and take effect in accordance with the laws applicable to Australian Capital Territory.

EXECUTED as a deed: