

SANDRA CHRISTINE BATES

AND

ENSEMBLE FOUNDATION LIMITED

ENSEMBLE THEATRE FOUNDATION

© *Allen Allen & Hemsley*
Sydney
REF: MXR 1119344

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TRUST DEED

DEED dated 10 May 1996, between:

- 1. SANDRA CHRISTINE BATES of [REDACTED] (the "Settlor"); and
- 2. ENSEMBLE FOUNDATION LIMITED (ACN 073 788 128) a company limited by guarantee incorporated in New South Wales and having its registered office in the State of New South Wales at 78 McDougall Street, Kirribilli (the "Trustee").

RECITALS

- A. The Settlor is desirous of establishing a charitable trust to be known as the **ENSEMBLE THEATRE FOUNDATION**.
- B. The Settlor has paid before the execution of this Deed to the Trustee the Settled Sum to be held upon trust (with certain other property) by the Trustee for the charitable purposes specified in this Deed.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed and in the Rules where the context permits:

Authorised Investments means:

- (a) any investment from time to time authorised by the law of the State for the investment of trust funds;
- (b) the acquisition of an interest in land of any tenure improved or unimproved;
- (c) shares of any company;
- (d) units or sub-units of any fixed or flexible unit trust which is established or managed by any corporation and of which a trustee corporation or an insurance corporation is trustee;
- (e) the erection of buildings or the making of improvements on freehold or leasehold land;
- (f) deposits at call or for a term with any body corporate, bank or permanent building society;
- (g) securities of any kind (including without limitation, debentures, debenture stock or notes whether secured or unsecured) of or issued by any body corporate or any government or any governmental, statutory or municipal authority;
- (h) the purchase of bills of exchange accepted or endorsed by any bank.

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Board of Advisers means the body of persons which may be appointed from time to time in accordance with, and whose procedure is regulated in the manner provided, in the Rules.

Charitable means charitable in accordance with the laws of the State as existing from time to time.

Commonwealth means the Commonwealth of Australia.

Programme means any plan, scheme, undertaking, enterprise or arrangement of a Charitable nature undertaken by the Trustee or by any person or group of persons whether or not the Trustee is one of such group or has any direction or control over such person or group of persons.

Rules means the Rules and Regulations governing the Ensemble Theatre Foundation annexed to this Deed and executed by the Trustee for identification.

Settled Sum means \$10.

State means the State of New South Wales.

Trust means the trusts for Trust Purposes declared in and constituted by this Deed.

Trust Property means:

- (a) the Settled Sum;
- (b) all moneys, investments and property whether real or personal subsequently from time to time paid or transferred to and accepted by, or otherwise coming into the hands of, the Trustee as additions to the Settled Sum and any part or parts thereof; and
- (c) the investments and property and any part or parts thereof into which the Trust Property referred to in paragraphs (a) and (b) above and any part or parts thereof have from time to time been converted either directly or following one or more previous conversions;
- (d) all moneys, investments and property representing any accretions to the Trust Property referred to in paragraphs (a), (b) and (c) above whether by way of income or corpus accretions and including any accretions relating to any previous accretions (including accretions to accretions).

Trust Purposes means the initiation, establishment, support, encouragement and expansion of Programmes in the Commonwealth for any one or more of the following purposes:

- (a) to acquire or otherwise secure the use of a building in Sydney for use as a theatre for the performance of dramatic and musical works (including without limitation, by acquiring shares in a company owning or leasing such a theatre);
- (b) to present, and to promote and encourage the presentation of, dramatic and musical works and any other art of the theatre in Australia;
- (c) to promote and assist the training and development of the skills of producers, directors, actors, technicians, singers and other theatrical personnel in Australia;
- (d) to promote and assist the development of Australian playwrights and plays (including without limitation, play reading, workshops and out of town tours);

- (e) to advance the education of students of drama, literature, music and any other art of the theatre in Australia,

PROVIDED THAT each of the above purposes is to be read and construed as limited to such objects within that description as are Charitable.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The word *person* shall include a corporation, unincorporated association or other entity.
- (b) The word *corporation* shall have the meaning ascribed to it in the Corporations Law.
- (c) The word *officer* shall have the meaning ascribed to it, in relation to a corporation, in the Corporations Law.
- (d) References to statutes and acts shall refer to the statute as amended, consolidated or replaced by other statutes from time to time and all orders, ordinances, regulations, rules and by-laws made under or pursuant to them.
- (e) Words importing the singular or plural number shall include the plural and singular number respectively.
- (f) Words importing any gender shall include the other genders.
- (g) References to a *registered or exempted charity* mean a charity registered, not required to be registered or exempted from registration under the laws of the State.

2. DECLARATION OF TRUST

The Trustee declares that it shall hold the Trust Property upon trust for the Trust Purposes and upon the terms and conditions of this Deed and in accordance with the Rules.

3. THE BOARD OF ADVISERS

3.1 The Trustee may from time to time, as and when it considers it appropriate, establish or disband the Board of Advisers.

3.2 The Board of Advisers shall be responsible for:

- (a) providing advice to the Trustee regarding particular Programmes designed to advance the Trust Purposes;
- (b) providing advice to the Trustee as to the augmenting and investment of the Trust Property; and
- (c) such other matters as might by the Trustee be delegated to and accepted by the Board of Advisers,

but notwithstanding these matters, the management and control of the Trust shall be vested in the Trustee.

4. POWERS OF THE TRUSTEE

4.1 In addition to the powers conferred upon it by law the Trustee may:

- (a) invest the Trust Property in Authorised Investments;
- (b) sell, realise, transpose, alter or vary any of the investments made by the Trustee or which form part of the Trust Property;
- (c) manage, maintain and repair Trust Property;
- (d) insure Trust Property against those risks and in those amounts which the Trustee thinks appropriate and effect other insurances in relation to the Trust Property which the Trustees think appropriate;
- (e) pay all expenses and outgoings (including taxes) in respect of the Trust Property or incurred by the Trustees in the performance of their duties or exercise of their powers;
- (f) lease Trust Property at a rent and for a term, and with or without an option to the lessee to renew or to purchase, and generally on whatever terms the Trustee thinks fit;
- (g) add to the Trust Property any part of the income to the Trustee arising from the implementation of Trust Purposes;
- (h) sell the Trust Property or any part or parts thereof for cash or on credit or partly for cash and partly on credit (either with or without taking a mortgage or other security to secure payment of any part of the purchase price) and at such price and on such terms and conditions as the Trustee may in its discretion think fit;
- (i) borrow and raise money (including by the drawing and discounting of bills of exchange) for the Trust Purposes and to secure the repayment of the money borrowed or raised and any interest payable on it by mortgage or charge over all or any part of the Trust Property and no lender shall be concerned to enquire as to whether the necessity for the borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;
- (j) solicit and receive as additions to the Trust Property gifts and benefactions of any kind whether inter vivos or testamentary;
- (k) sue or take or to refrain from suing or taking any action to enforce any debt or other claim relating to the Trust Property;
- (l) instead of acting personally, employ and pay any other person to transact any business or to do any act of whatever nature in relation to the Trust Property including the receipt and payment of money;
- (m) appoint from time to time (and revoke any such appointment) one or more corporations severally as agent or nominee of the Trustee, but subject in all respects to the control and direction of the Trustee, to hold, deal with, manage and dispose of any moneys or investments included in the Trust Property;

(n) pay, transfer or apply the Trust Property or any part thereof to or for the benefit of any other trust, being a registered or exempted charity, for Trust Purposes or charitable purposes similar to the Trust Purposes whether or not the Trustee is a trustee of that other trust, or to any corporation the principal objects of which are the Trust Purposes or charitable objects similar to the Trust Purposes and the memorandum of association of which prohibits the distribution of any of its income or property to its members;

(o) indemnify (and it does hereby indemnify), to the maximum extent permitted by law:

(i) the Trustee;

(ii) the officers of the Trustee from time to time;

(iii) each member of the Board of Advisers from time to time

out of the Trust Property or any part thereof, against any expenses or liabilities incurred in or arising from the performance or exercise of their respective duties, responsibilities and powers under or arising from this Deed or the Rules.

4.2 Subject to Clause 4.1(o), Clause 4.3 and Clause 5, the income and property of the Trust shall be applied solely towards the advancement of the Trust Purposes and no portion of it shall be paid or transferred, directly or indirectly, to any member or officer of the Trustee or any member of the Board of Advisers.

4.3 Notwithstanding Clause 4.2, the Trustee shall have power to pay in good faith:

(a) reasonable and proper remuneration to any member, officer, employee or agent of the Trustee for any services actually rendered to the Trustee in furthering the Trust Purposes;

(b) a reasonable and proper rent for premises let or demised by any member of the Trustee to the Trustee for use in furthering the Trust Purposes;

(c) monies to any person for out of pocket expenses reasonably incurred by such person in acting in furthering the Trust Purposes; or

(d) monies to any person, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer in connection with furthering the Trust Purposes.

4.4 The Trustee in the exercise of the powers and discretions vested in it shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of such powers or discretions from time to time and at any time or may refrain from exercising all or any of such powers or discretions from time to time or at all.

5. INDEMNITY

The Trustee, the officers of the Trustee from time to time and each member of the Board of Advisers from time to time shall not be liable for, and shall be entitled to be indemnified out of the Trust Property for any claim against any of them in respect of:

(a) any loss not directly attributable to their respective dishonesty, or gross or wilful neglect, or wilful breach of trust;

- (b) the neglect or default of any solicitor, banker, accountant or other agent employed in good faith by the Trustee.

6. THIRD PARTIES

Neither the Registrar General nor any other Government Department, instrumentality or officer nor any person dealing in good faith with the Trustee whether as vendor, purchaser, mortgagee, or otherwise shall in any way be concerned to enquire or see whether the occasion for performing or exercising any of the trusts or any power conferred on the Trustee by this Deed has arisen or whether any condition has been fulfilled or authority given or as to the purpose of the Trustee in performing or exercising any of those trusts or powers.

7. TERMINATION OF THE TRUST

In the event that the Trust is extinguished, determined, set aside or fails, for any reason whatsoever, then so much of the Trust Property as remains after the satisfaction of all its debts shall be paid, transferred or applied by the Trustee to or for the benefit of any other trust, being a registered or exempted charity, for Trust Purposes or purposes similar to the Trust Purposes (whether or not the Trustee is a trustee of that other trust) which is a fund, authority or institution which is registered on the Register of Cultural Organisations kept under Section 78AA of the Income Tax Assessment Act 1936 (Cwth). If it is not reasonably possible for the Trustee so to pay, transfer or apply such Trust Property, the Trustee shall pay, transfer or apply such Trust Property to any public fund established exclusively for the purpose of providing money, property or benefits to or for any one or more of the funds, authorities or institutions referred to in subsections 78(4) or (5) of the Income Tax Assessment Act 1936 (Cth).

8. AMENDMENTS

- 8.1 Subject to Clause 8.2, this Deed and the Rules may from time to time be amended by a Deed executed by the Trustee, but no amendment of this Deed or the Rules shall be made if as a result:

- (a) the Trust Purposes would be altered in any way;
- (b) the Trust would cease to be a charitable trust or would for any reason fail; or
- (c) if the Trust is at that time registered on the Register of Cultural Organisations kept under Section 78AA of the Income Tax Assessment Act 1936 (Cwth), the Trust would cease to be a fund, authority or institution which qualified for registration on that Register.

- 8.2 No amendment of this Deed or the Rules shall be effective unless it has been, if required by the Charitable Fundraising Act 1991 (NSW) or similar legislation, previously submitted to and approved by the relevant Minister or other relevant authority.

9. NAME

The Trust shall be styled and known as the "Ensemble Theatre Foundation".

10. GOVERNING LAW

This Deed shall be governed by the law of the State.

EXECUTED as a Deed in Sydney on the date first written above

SIGNED SEALED AND DELIVERED by)
SANDRA CHRISTINE BATES)
in the presence of:)

[Redacted]

[Redacted]

Witness

Signature

MICHAEL ROSS

SANDRA BATES

Print name

Print name

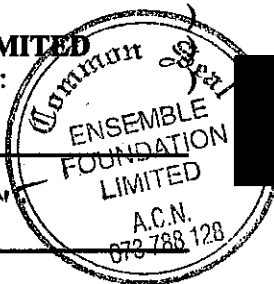
THE COMMON SEAL of
ENSEMBLE FOUNDATION LIMITED
was done by:

[Redacted]

[Redacted]

Signature

D. A. DEAN MONT



WENDY PEAZOCK

Print name

Print name

DIRECTOR.

SECRETARY

Office held

Office held

RULES AND REGULATIONS GOVERNING THE ENSEMBLE THEATRE FOUNDATION

1. DEFINITIONS

Those words and expressions to which particular meanings are ascribed in the Deed dated ¹⁰ May 1996 between Sandra Christine Bates and Ensemble Foundation Limited to which these Rules and Regulations are annexed (the "Trust Deed") shall have those same meanings where used in these Rules and Regulations.

2. BOARD OF ADVISERS

The Board of Advisers shall consist of not less than three nor more than twelve Advisers whose appointment and tenure of office shall be in accordance with the following provisions:

- (1) Each Director of the Trustee shall be a member of the Board of Advisers and shall have the right to appoint a nominee to serve in his place from time to time.
- (2) The Trustee shall have the right to appoint Advisers provided that no more than three Advisers shall be appointed by the Trustee, and for the purposes of calculating the number of Advisers appointed by the Trustee, Advisers appointed pursuant to Rule 2(1) shall not be regarded as appointed by the Trustee.
- (3) Subject to Rules 2(1) and 2(2), Advisers shall be appointed by the Board of Advisers.
- (4) Each Adviser appointed in accordance with the provisions of this Rule shall, subject to these Rules, serve a term of two years from the date of appointment, at the end of which period the Adviser shall retire from office but shall be eligible for reappointment by the Trustee or the Board of Advisers.
- (5) Any Adviser may resign from office prior to the expiration of his two year term by giving to the Trustee written notice of resignation.
- (6) Any appointed Adviser may be removed from office prior to the expiration of his term by notice in writing from the body which appointed him.
- (7) The office of an Adviser shall ipso facto be vacated for any one or more of the same reasons that the office of a member of the Board of Directors of the Trustee would become vacant.
- (8) The office of an Adviser vacated under Rule 2(7) may be filled by appointment by the body which appointed that particular Adviser. An Adviser appointed to fill the office of an Adviser vacated under Rule 2(7), shall hold office only for the balance of the term for which the Adviser being replaced was appointed, after which period the Adviser appointed shall retire from office but shall be eligible for reappointment.
- (9) The office of a retiring Adviser shall be filled by appointment by the body which appointed that Adviser.
- (10) In no circumstances shall any Adviser be appointed or removed by the Board of Advisers without the prior written approval of the Trustee.

3. SECRETARY TO THE TRUST

The Board of Directors of the Trustee shall appoint a Secretary to the Trust whose duties shall be those which are imposed upon him or her from time to time by the Trustee.

4. MEETINGS OF THE BOARD OF ADVISERS

- (1) The Board of Advisers may meet for the despatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit.
- (2) The Secretary to the Trust shall, or if that office has not been filled or is vacant, then any Adviser shall, upon the request of at least three Advisers, convene a meeting of the Board of Advisers.
- (3) At the first meeting of the Board of Advisers in each calendar year, the Advisers shall elect from among their number a Chairman who shall hold his office until the first meeting of the Board of Advisers in the next succeeding calendar year provided that if the Chairman ceases for any reason to hold his office as Adviser or resigns his office of Chairman before completing his term as Chairman the office of Chairman shall fall vacant and the Board of Advisers may appoint one of the Advisers to fill the vacancy and the Adviser so appointed shall hold the office of Chairman for the balance of the term for which the Chairman being replaced was appointed.
- (4) The Chairman shall chair all meetings of the Board of Advisers provided that if the Chairman is not present or if the office is vacant, then those Advisers present at a meeting of the Board may choose one of their number to chair the meeting.
- (5) Questions arising at any meeting of the Board of Advisers shall be decided by a majority of votes and a decision by a majority of those Advisers present shall for all purposes be deemed to be a decision of the Board of Advisers. In the case of an equality of votes, the Chairman of the meeting shall have a second or casting vote.
- (6) The quorum necessary for the transaction of the business of the Board of Advisers shall be at least three Advisers.

5. TRUSTEE COMMITTEES

- (1) From time to time the Trustee may delegate any of its powers to one or more committees (a "Trustee Committee") consisting of such persons as it thinks fit. A Trustee Committee shall, in the exercise of the powers delegated to it, conform to and comply with any regulations imposed on it by the Trustee.
- (2) The Trustee shall appoint from the members of any Trustee Committee a convenor who shall act as chairman of that committee. If at any meeting the convenor is not present within ten minutes after the time appointed for holding the meeting, those members present may choose one of their number to chair the meeting.
- (3) A Trustee Committee shall meet at the direction of the convenor or the Trustee, and adjourn as it thinks fit. Questions arising at any meeting of the Trustee Committee shall be determined by a majority of votes of the members present and in the case of an equality of votes the chairman shall have a second or casting vote.
- (4) The Trustee may revoke the delegation of any of its powers to a Trustee Committee, alter the persons that comprise a Trustee Committee or dissolve a Trustee Committee as and when it considers that action appropriate.

6. ADVISORY COMMITTEES

- (1) From time to time the Board of Advisers may appoint committees (an "Advisory Committee") of such persons resident in the Commonwealth as the Board of Advisers thinks fit to advise and inform the Board of Advisers of such aspects of the social, cultural and economic life of the Commonwealth and the Programmes available within it as the Board of Advisers shall consider necessary to enable it to properly discharge its responsibilities under the Trust Deed. An Advisory Committee shall, in the exercise of the powers delegated to it, conform to and comply with any regulations imposed upon it by the Board of Advisers.
- (2) An Advisory Committee shall meet at the direction of the Board of Advisers.
- (3) The Board of Advisers may, as and when it considers it appropriate, alter the persons that comprise an Advisory Committee or dissolve an Advisory Committee.

7. MINUTES

The Board of Advisers, all Trustee Committees and all Advisory Committees shall cause minutes to be kept of all persons present at any of their respective meetings and of all proceedings at any such meetings. Such minutes shall be verified by the signature of the chairman of the meeting at which the proceedings were held or the signature of the chairman of the next succeeding meeting.

8. NOTICES

At least seven days' notice of meetings shall be given to Advisers and members of Trustee Committees and Advisory Committees and may be given either personally or by pre-paid letter addressed to the recipient at the address supplied by the recipient to the Trustee for such purposes. Such notice shall detail the business of the meeting. A shorter period of notice can be consented to by all persons entitled to be present at the relevant meeting.

9. ANNUAL REPORTS, ACCOUNTS AND AUDIT

- (1) The Trustee shall cause proper books of account and other records to be kept in relation to the Trust and Trust Property.
- (2) The Trustee shall cause the financial affairs of the Trust to be audited by a registered company auditor who is not an Adviser at least once in each calendar year and at intervals of not more than twelve calendar months.
- (3) Each calendar year the Trustee shall issue and send to such persons as the Trustee thinks fit:
 - (a) a report of the affairs and activities related to the Trust;
 - (b) an audited balance sheet setting out the assets and liabilities of the Trust as at a date not earlier than six calendar months before the issuing of the balance sheet; and
 - (c) an income and expenditure account for a period commencing,
 - (i) in the case of the first income and expenditure account, on the date of the Trust Deed and,

- (ii) in the case of subsequent income and expenditure accounts, on the day following the date to which the preceding income and expenditure account was made up

and ending on the day being the date as at which the balance sheet referred to above for that same year is made up.

10. THE PUBLIC FUND

- (1) Prior to the Trustee raising donations from members of the public, the Trustee shall open or arrange the opening of a bank account within the Commonwealth to be designated the Trust's "public fund", being a public fund of the type required by Section 78AA of the Income Tax Assessment Act 1936 (Cwth) (the "Public Fund").
- (2) The Trustee shall invite members of the public to make donations to the Public Fund.
- (3) The Public Fund is to be in addition to any other bank account opened for the Trust by the Trustee.
- (4) The Trustee shall pay or credit to the Public Fund:
 - (a) all monetary gifts and donations received by the Trust;
 - (b) all interest earned on the monies in the Public Fund; and
 - (c) all monies derived from property given to the Trust,which monies shall be used solely for the advancement of the Trust Purposes.
- (5) No other monies shall be paid or credited to the Public Fund.
- (6) The Trustee shall form a Trustee Committee to administer and operate the Public Fund. The Trustee Committee shall comprise 2 or more persons (who will, if the Board of Advisers has been established, be Advisers) who satisfy the criteria from time to time adopted by the Commonwealth Department of Communications and the Arts or other relevant department or authority for persons who operate a Section 78AA public fund.

11. ACTION BY THE TRUSTEE

The Trustee, being a company incorporated in the State, shall act pursuant to the Trust Deed and these Rules through its Board of Directors acting in accordance with the Articles of Association of the Trustee.

12. CERTIFICATES

A certificate, signed by the Secretary of the Trustee, that a resolution has been passed by the Trustee, the Board of Advisers, or any Trustee Committee or Advisory Committee, shall be conclusive evidence as against any person dealing with any of those bodies that the resolution has been duly passed at a properly convened meeting of the relevant body.

These are the Rules and Regulations governing the Ensemble Theatre Foundation referred to in the Trust Deed which have been executed by the Trustee for identification.

THE COMMON SEAL of
ENSEMBLE FOUNDATION LIMITED
was du

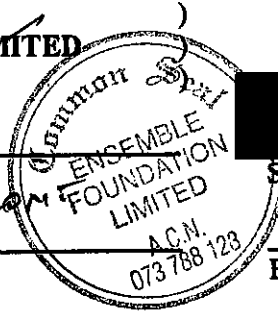
Signature

B.A. Deamon

Print name

DIRECTOR

Office held



Signature

WENDY PATCOCK

Print name

SECRETARY

Office held