



Hall & Wilcox
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Deed of Trust
The Cool Australia Trust

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The Cool Australia Trust

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The Cool Australia Trust

Date

14 May 2009

Parties

(Settlor)

Cool Australia Limited ACN 135 201 222

Recitals

- A The Settlor desires to establish and maintain a trust called the Cool Australia Trust (**Trust**) which will maintain a public fund called the Cool Australia Fund (**Fund**) to be held by the Trustee for the purpose of supporting the environmental objects and purposes Trust.
- B The Fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account.
- C The Fund will not receive any other money or property into its account and it will comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.
- D The Settlor desires that the Fund will be truly public in nature and therefore the Trustee will use its best endeavours to invite and attract further contributions to the Fund from the general community for the specific purpose of supporting the environmental objects and purposes of the Trust on the terms and conditions set out in this Deed.
- E The Trustee is prepared to accept donations and administer a public fund established in accordance with the Settlor's intention as stated above.
- F The Settlor has on or before the execution of this Deed paid to the Trustee the Settled Sum with the intent that the Settle Sum will be held by the Trustee for the purposes and objects of the Trust.

Counterpart Declaration Of Trust
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Doc ID 2455938, 19 May 2009
SRO Victoria Out, UMLD

The parties agree

1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context otherwise requires:

Accounts means the financial accounts required to be prepared under clause 5.8

Commencement Date means the date of this deed.

Deed means this deed.

Department means the Department of the Environment, Water, Heritage and the Arts of the Commonwealth of Australia or such Department as replaces that Department.

Fund means the Cool Australia Fund created under clause 5 of this deed.

Guidelines means the guidelines for entry onto the Register produced by the Department from time to time.

Management Committee means the committee required to be set up under clause 5.7 of this Deed.

Purposes and Objects of the Trust means the purposes and objects of the Trust as set out at clause 4 of this Deed.

Register means the Register of Environmental Organisations.

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 and 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 Securities Exchange;
- (e) has received formal recognition from government for services to the community;
- (f) is approved as a responsible person by the Commissioner; or
- (g) is a responsible person within the meaning of the Guidelines.

Settled Sum means \$10.00.

Trust means the Cool Australia Trust.

Trust Fund means:

- (a) the Settled Sum;
- (b) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the trust fund;
- (c) all accretions to the trust fund;
- (d) all accumulations of income; and

- (e) the money, investments and property from time to time representing the above or into which they are converted,

but does not include any amount donated, gifted or otherwise credited to the Fund.

Trustee means the party described as the Trustee or any substitute or replacement trustee for the time being of the Trust.

Year means:

- (a) The period from the Commencement date until 30 June 2009; or
- (b) The period commencing on each successive 1 July and concluding on 30 June in the following year.

1936 Act means the *Income Tax Assessment Act 1936*.

1997 Act means the *Income Tax Assessment Act 1997*.

1.2 Interpretation

In this deed, headings are inserted for convenience only and do not affect the interpretation of this agreement and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example' or 'such as' or similar expressions;
- (e) a reference to a document or instrument, including this agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (f) a party includes the party's successors and permitted transferees and assigns and if party is an individual, includes executors and personal legal representatives;
- (g) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not), a government and a government authority or agency;
- (h) a reference to this deed means this deed as originally executed and as from time to time lawfully amended; and

- (i) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation.

2 Declaration of Trust

The Settlor and the Trustee declare that the Trustee will, from the Commencement Date, stand possessed of the Trust Fund and of the income of the Trust Fund on the trusts and with the powers and subject to the provisions, in this deed.

3 Purposes

3.1 Application of income and capital

The Trustee must hold the Trust Fund and the income of the Trust Fund derived in each Year on trust to 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, solely for the Purposes and Objects of the Trust.

3.2 Policies and rules

For the purpose of paying or applying the income or capital, the Trustee may:

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

3.3 Trustee may accumulate

Despite clause 3.1, the Trustee may, in any Year accumulate and retain income necessary to maintain the capital of the Trust Fund and any further income as the Trustee considers necessary for the furtherance of the Purposes and Objects of the Trust.

4 Purposes and objects of the Trust

The purposes and objects of the Trust are to protect and enhance the natural environment and provide information and education about the natural environment in any manner or by any means, including but not limited to:

- (a) educating the community about environmental issues and environmentally sustainable practices and lifestyle choices;
- (b) providing information on matters concerning the natural environment through the internet in a form and in language that is understandable and easily accessible by the general public;
- (c) providing fora for the exchange of ideas and information about the environment between the scientific community, schools, business and the general public;

- (d) providing fora for organisations and individuals to promote and publicise activities that have the object or purpose of protecting or enhancing the natural environment;
- (e) raising awareness of environmental issues among young people by engaging with primary, secondary and tertiary educational institutions and providing information and education about the environment;
- (f) developing further programs and initiatives that will effectively and efficiently provide the general community with information and education about the natural environment.
- (g) supporting organisations which have similar objects to the Trust (including, without limitation, to provide funding to those organisations); and
- (h) doing any other thing ancillary to, and not inconsistent with, the above.

5 The Cool Australia Fund

5.1 Establishing and maintaining a public fund

The trustee hereby established and will maintain a public fund called the Cool Australia Fund.

5.2 Informing the Department

The Trustee must inform the Department as soon as possible if the Fund:

- (a) changes its name or the name of the Fund; or
- (b) there is any change to the membership of the Management Committee; or
- (c) there has been any departure from the model rules for public funds set out in the Guidelines.

5.3 Winding-up

In case of the winding-up of the Fund, any surplus assets are to be transferred to another fund that is on the Register and that has similar purposes and objects to the Fund.

5.4 Declaration of Trust

Any donations to the Fund are to be held by the Trustee in accordance with the provisions of this Deed and subject to the control of the Management Committee.

5.5 Object of the Fund

The object of the Fund is to support the Purposes and Objects of the Trust.

5.6 Rules of the Fund

- (a) Members of the public are to be invited to make gifts of money or property to the Fund for the Purposes and Objects of the Trust.
- (b) Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Fund.
- (c) The release of monies from the Fund and the management of, and sale of, public fund assets must be authorised by the Management Committee.
- (d) Members of the Management Committee permanently located in Australia must be the only signatories on the Fund's bank account.
- (e) A separate bank account is to be opened to deposit money donated to the Fund, including accrued interest, and gifts to the Fund are to be kept separate from other funds of the organisation.
- (f) Receipts are to be issued in the name of the Fund and proper accounting records and procedures are to be kept and used for the Fund.
- (g) The Fund will be operated on a not-for-profit basis.
- (h) The Fund will be administered by the Trustee subject to the control of the Management Committee.

5.7 The Management Committee

- (a) The Management Committee for the Fund will be made up of no less than three (3) persons.
- (b) A majority of the members of the Management Committee must be Responsible Persons.
- (c) The Trustee will advise the Department of any changes to the membership of the Management Committee within a reasonable time following the making of the changes.
- (d) The procedures for conduct of meetings of the Management Committee will be the same as those that govern meetings of the Trustee.
- (e) The Management Committee will give such directions to the Trustee as are necessary to properly administer the Fund.

5.8 Accounts

The Trustee must keep or cause to be kept accounts in accordance with generally accepted accounting principles of all receipts, payments, assets and liabilities relating to the Trust and Fund and of all other matters necessary for showing a true state of affairs and condition of the Trust and the Fund.

5.9 Annual Accounts

The Trustee must as soon as practicable after the last day of each Year prepare or cause to be prepared a statement of income and expenditure in respect of that Year and a balance sheet disclosing the assets and liabilities of the Trust and Fund as at the last day of the year.

5.10 Audit

The Trustee must have the Accounts of the Trust and Fund audited within 12 weeks after the end of each Year by the Auditor.

5.11 Auditor

- (a) The Trustee must appoint an Auditor.
- (b) The Auditor:
 - (i) must be approved by the Management Committee;
 - (ii) must be a registered company auditor carrying on practice in Victoria; and
 - (iii) must not be a Trustee or a member of the Management Committee or be closely related to a trustee or a member of the Management Committee.

5.12 Auditor's Report

The Auditor must report in writing to the Trustee and provide a copy to the Management Committee as to whether:

- (a) the accounts have been properly drawn up so as to give a true and fair view of the income and expenditure of the Fund for the Year and the state of affairs of the Fund as at the end of the Year;
- (b) proper provision has been made in the accounts of the Fund for bad and doubtful debts;
- (c) the accounting records have in the opinion, of the Auditor, been properly kept;
- (d) the Auditor has obtained all information and explanations regarding the Fund required to conduct the audit in a complete and thorough manner; and
- (e) there are any defects or irregularities in the accounts.

The Auditor must give the reasons for any adverse comments made in the Audit by the Auditor.

5.13 Auditor's Term of Office

The Auditor will continue in office until he or she resigns or is removed by the Trustee at the request of the Management Committee. The Trustee, with the approval of the Management Committee, must appoint another qualified auditor to act as Auditor in the place of any

auditor so removed and such new Auditor must have signified his or her willingness to act as Auditor prior to such appointment.

5.14 Trustee not entitled to Fees

Subject to this Deed the Trustee is not entitled to any fee or remuneration in respect of the performance of its office as Trustee of the Fund.

5.15 Trustee's expenses

The Trustee is entitled to be reimbursed out of the Fund in respect of costs and expenses properly incurred by it in the administration of the Fund.

6. Liability of the Trustee

6.1 Transfers of property

The receipt in writing of the Trustee for any money or other real or personal property paid or transferred to the Trustee effectively discharges the person or authority paying or transferring the same and from being concerned to see to the application of that money or property.

6.2 Payments to proper officer

In applying the capital or income of the Fund in accordance with this Deed the Trustee may make payment to a person which in the Trustee's opinion is the proper officer for the receipt of such money and is not responsible to see to the application of the money so paid.

6.3 Liability for loss

The Trustee is not liable for any loss or damage caused in connection with the Fund unless incurred as the result of the misconduct, fraudulence, dishonesty, wilful breach of duty or wilful neglect of the Trustee.

6.4 Obligation to investigate

Nothing in this Deed imposes any obligation upon the Trustee to investigate the accounts or management control of any person in which any of the assets forming part of the Fund may be invested nor is the Trustee under any obligation to bring any action, suit or proceedings or in any other manner to seek to interfere with the constitution, management or control of any such entity.

7 General powers of Trustee

7.1 Powers to be exercised for the Purposes and Objects of the Trust

The Trustee shall not be entitled to exercise any power other than for the Purposes and Objects of the Trust and in accordance with the direction of the Management Committee.

7.2 Investment

Subject to clause 8.2, the Trustee must invest money of the Trust Fund only in a way in which trustees are permitted to invest under the laws of Australia or of any state or territory of Australia.

7.3 Other powers

The Trustee may:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (c) borrow or raise or secure the payment of money and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;
- (d) take and act on 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 resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;
- (e) take any action for the adequate protection or insurance of any part of the Trust Fund;
- (f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (g) subject to the terms of this Deed, generally:
 - (i) perform any administrative act; and
 - (ii) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this deed, as though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;
- (h) attract and encourage donations, gifts (by will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;
- (i) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;

- (j) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (k) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;
- (l) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;
- (m) do all other things incidental to the exercise of the Trustee's powers under this deed.

7.4 Powers are supplementary

The powers and discretions in clause 7.3 are to be treated as supplementary or additional to the powers vested in trustees by law.

8 Patrons

The Trustee may appoint any person it thinks fit as patron of the Trust.

9 Variation of this deed

9.1 Amendments to Deed

Subject to the following clauses, the Trustee may vary or modify all or any of the provisions of this Deed.

9.2 Certain amendments of no effect

No variation or modification of this Deed is of any force or effect if its effect is:

- (a) to change the objects of the Fund, or
- (b) to change the rules of the Fund unless prior approval has been obtained from the Department of the Environment and Heritage, or
- (c) to disentitle the deductibility under the 1936 Act or 1997 Act of donations made to the Fund, or
- (d) to confer benefit on the Trustee which is not permitted by this Deed.

10 Winding up of the Trust

The Trustee may wind up the Trust. Upon such winding up the Trustee must apply and distribute the surplus capital of the Trust together with all accrued income in accordance with

the requirements of the 1997 Act and 1936 Act and the Guidelines to the Register of Environmental Organisations.

11 Governing law

This Deed is governed by the law in force in the State of Victoria.

12 Ministerial compliance

The Trustee must comply with any rules made by the Treasurer and the Minister responsible for the environment to ensure that the gifts to the Fund are used only for the Purposes and Objects of the Trust.

13 Not-for-profit

The income and property of the Trust will be used and applied solely in promotion of its purposes and objects and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to the trustees or to the members of the Management Committee.

14 Conduit policy

Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the Trust and not be influenced by the preference of the donor.

15 Statistical information

- (a) Statistical information requested by the Department on donations to the Fund will be provided within four months of the end of the financial year.
- (b) An audited financial statement for the Trust and the Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of public fund monies and the management of public fund assets.

EXECUTED as a deed

The Cool Australia Trust

Signing page

SIGNED SEALED AND DELIVERED by)
in the)
presence of :

Signature of witness

Signature of

Name of witness *(please print)*

EXECUTED by **COOL AUSTRALIA**)
LIMITED ACN 135 201 222 in accordance)
with the *Corporations Act 2001* by being)
signed by:)

Signature of sole member

Name of sole member *(please print)*