

Trust Deed for the Dry July Foundation



This is a consolidated version of the Trust Deed as amended by Supplemental Deeds dated 3 April 2009 and 28 April 2009

Blake Dawson

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Sydney NSW 2000
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Reference

02 2002 8597

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TRUST DEED FOR THE DRY JULY FOUNDATION

DATE

PARTIES

Phil Grove of Unit 1302, 88 – 98 King Street, Randwick NSW 2031 (**Founder**); and

Dry July Limited ACN 135 429 346 of Unit 1302, 88 – 98 King Street, Randwick NSW 2031 (**Trustee**).

RECITALS

- A. The Founder wishes to establish a foundation for certain charitable purposes.
- B. The Founder has paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed.
- C. The Founder contemplates from time to time further gifts will be made to the Foundation.
- D. The Founder may make gifts to the Foundation and otherwise support the Foundation.
- E. Other persons wishing to support the Foundation may make gifts to, and otherwise support, the Foundation.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this Deed unless the contrary intention appears:

- (a) **Accounting Period** means the period from the date of this deed to the following 30 June and then each period of 12 months ending on 30 June in each year, or any other period that the Trustee decides.
- (b) **Advisory Committee** means a committee established under clause 8.
- (c) **Board** means the directors of the Trustee.
- (d) **Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the Tax Act.
- (e) **Donor** means the donor of a gift to the Foundation.
- (f) **Eligible DGR** means a fund, authority or institution gifts to which are deductible under item 1 of the table in section 30-15 of the Tax Act and which was established for public charitable purposes.
- (g) **Foundation** includes:
 - (i) the Settled Sum;
 - (ii) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Gift Fund;

- (iii) all accretions to the Gift Fund;
 - (iv) all other money, investments and assets paid or transferred to and accepted by the Trustee;
 - (v) all accumulations of income;
 - (vi) the money, investments and property from time to time representing the above or into which they are converted;
 - (vii) any part of the Gift Fund; and
 - (viii) the charitable purposes and means of achieving those charitable purposes established by this Trust Deed.
- (h) **Gift Fund** means the gift fund established under clause 3.2 of this Trust Deed pursuant to section 30-125 of the Tax Act.
- (i) **Income** includes any income accrued on any investment or property at the date it becomes subject to the trusts of this Trust Deed.
- (j) **Responsible Persons** means individuals who, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole, including but not limited to:
- (i) individuals who are awarded public honours;
 - (ii) directors of large public corporations;
 - (iii) church authorities;
 - (iv) school principals;
 - (v) judges;
 - (vi) clergy;
 - (vii) solicitors;
 - (viii) doctors;
 - (ix) other professional people;
 - (x) individuals who hold or have held publicly elected offices;
 - (xi) town clerks; and
 - (xii) past and present office holders of charitable organisations other than the Foundation.
- (k) **Settled Sum** means \$10.
- (l) **Tax Act** means the *Income Tax Assessment Act 1997 (Cth)*.
- (m) **Trust Deed** means this Deed as altered or varied by any variations or alterations lawfully made to this Trust Deed.
- (n) **Trustee** means a person acting in the capacity as trustee of the Foundation from time to time.

1.2 General

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) The word **related body corporate** has the same meanings as in the Corporations Act.

2. NAME

The name of the Foundation is "Dry July Foundation".

3. GIFT FUND

3.1 Purpose

The Foundation is established solely for providing money, property or benefits to, or establishing, Eligible DGRs and for the principal purpose of establishing and maintaining the Gift Fund referred to in clause 3.2 and enabling the Founder and other members of the public to make donations to the Foundation.

3.2 Gift Fund

The Gift Fund shall be governed by the following terms:

- (a) The Gift Fund shall comprise:
 - (i) all gifts made to the Trustee;
 - (ii) all contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event; and
 - (iii) all income derived or arising from the Gift Fund or the assets for the time being representing the Gift Fund.
- (b) Subject to clause 3.2(c):
 - (i) the Trustee shall not apply the Gift Fund otherwise than for the purpose of providing money, property or benefits to, or for establishing, Eligible DGRs; and
 - (ii) a gift or contribution will not form part of the Gift Fund if the donor requires the Trustee to hold and apply the gift or contribution and any resulting income:
 - (A) in accordance with requests from the donor;
 - (B) on the basis or conditions outlined by the donor; or
 - (C) subject to arrangements with the donor.
- (c) Clause 3.2(b) does not prevent:
 - (i) the Trustee applying the Gift Fund for the purposes of defraying the payment of any expense of the Trustee reasonably incurred, or to be incurred in the operation of the Foundation; or
 - (ii) the Trustee applying the Gift Fund pursuant to clause 10.
- (d) The Trustee must keep a separate bank account styled "Dry July Foundation" and all monies which constitute or form part of the Gift Fund from time to time shall be paid to the credit of such bank account.
- (e) At the first occurrence of:
 - (i) the winding up of the Gift Fund; or
 - (ii) the Gift Fund ceasing to be endorsed as a deductible gift recipient under the Tax Act

any surplus assets of the Gift Fund must be transferred to Eligible DGRs as the Trustee decides.
- (f) Where gifts to an Eligible DGR are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the Tax Act are satisfied, a transfer under this clause must be made in accordance with those conditions.
- (g) Any money, property and any other benefit or asset of the Trustee which does not form part of the Gift Fund shall be applied by the Trustee solely for:
 - (i) making donations to Eligible DGRs; and
 - (ii) defraying any expenses of the Trustee incurred, or to be incurred in relation to the administration of the Foundation, and, in relation to the

acquisition of any assets acquired or to be acquired in connection with the Foundation.

3.3 Income and expenditure account

- (a) Investment returns from the Gift Fund form part of the Gift Fund and must be allocated by the Trustee to the Gift Fund as required in clause 3.2(a)(iii).

4. PURPOSE OF THE FOUNDATION

The Trustee acknowledges that the Foundation is established for public charitable purposes.

5. TRUSTEE'S POWERS

5.1 Investment

The Trustee must invest money of the Foundation only in a way in which trustees are permitted to invest under the laws of Australia or of any state or territory of Australia.

5.2 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 Foundation;
- (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 Foundation;
- (f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind; and
- (g) subject to the trusts 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 Foundation 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 Foundation and the income of the Foundation;

- (iii) 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 Foundation;
- (iv) 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;
- (v) 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;
- (vi) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;
- (vii) accept as part of the Foundation any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Foundation 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 Foundation under this deed;
- (viii) decline or otherwise refuse to accept as part of the Foundation any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;
- (ix) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible DGR to occupy the property on the terms and conditions the Trustee thinks fit; and
- (x) do all other things incidental to the exercise of the Trustee's powers under this deed.

5.3 Powers are supplementary

The powers and discretions in clause 5.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

6. LIABILITY FOR BREACHES OF TRUST

6.1 Trustee

The Trustee, where purporting to act in the exercise of the trusts of this deed or exercise powers or discretions under this deed is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Foundation in respect of any loss or liability, unless the loss or liability is attributable to:
 - (i) the dishonesty of the Trustee; or
 - (ii) the wilful commission or omission of an act known by the Trustee to be a fraudulent breach of trust in bad faith.

6.2 Officers, agents or employees

Any officer, agent or employee of the Trustee purporting to exercise powers or discretions under this deed is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Foundation in respect of any loss or liability, unless the loss or liability is attributable to:
 - (i) the dishonesty of that officer, agent or employee of the Trustee; or
 - (ii) the wilful commission or omission of an act known by that officer, agent or employee of the Trustee to be a fraudulent breach of trust in bad faith.

6.3 Indemnity of Trustee from Foundation

The Trustee is entitled to be indemnified out of the Foundation in respect of:

- (a) all costs and expenses incurred by the Trustee relating to:
 - (i) entering into this deed or any deed amending this deed;
 - (ii) establishing, operating, administering, amending, terminating and winding up the Foundation; or
 - (iii) all matters incidental to the Foundation; and
- (b) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 6.3(a) including, but not limited to, the Trustee performing its duties and exercising its powers and discretions under this deed.

7. ACCOUNTS AND RECEIPTS

7.1 Trustee to keep accounts

The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Foundation and of all dealings connected with the Foundation.

7.2 Financial statements

As soon as practicable after the end of each Accounting Period the Trustee must prepare or cause to be prepared a financial statement showing the financial position of the Foundation at the end of that Accounting Period.

7.3 Audit

The financial statement must be audited by a person registered, or taken to be registered as an auditor under Part 9.2 of the *Corporations Act 2001*.

7.4 Receipts

Receipts issued for gifts must state:

- (a) the name of the Foundation;

- (b) the Australian Business Number applicable to the Foundation; and
- (c) the fact that the receipt is for a gift.

8. ADVISORY COMMITTEES

- (a) The Trustee may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.
- (b) Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.
- (c) The functions of each Advisory Committee will be decided by the Trustee and, subject to the Trustee's decision, will be to advise the Trustee on how payments or applications of income and capital should be made.
- (d) The Trustee may specify:
 - (i) the manner in which proceedings of each Advisory Committee are to be conducted;
 - (ii) the matters which the Advisory Committee must have regard to in carrying out its functions; and
 - (iii) any other matters concerning the Advisory Committee or its functions that the Trustee decides.

9. PATRONS

The Trustee may appoint any person as a patron of the Foundation.

10. TRUSTEE'S REMUNERATION

The Trustee may charge and be paid out of any part of the capital or income of the Foundation the remuneration that the Trustee considers to be fair and reasonable. However, the maximum remuneration chargeable by the Trustee in respect of any Accounting Period must not exceed an amount equal to the maximum commission chargeable by trustee companies under the *Trustee Companies Act 1964 (NSW)* in respect of that Accounting Period.

11. GENERAL

11.1 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 Foundation is a sufficient discharge to the Trustee and the Trustee need not see to the application of the payment or application.

11.2 Trustee's discretions and powers

Except where there is an express contrary provision in this deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.

11.3 Delegation of powers

The Trustee may by power of attorney or otherwise delegate to the Board of the Trustee or any group of at least 3 persons nominated by the Board of the Trustee any of the discretions or powers given to it under this deed. The exercise of any of the discretions or powers of this deed by an attorney or delegate is valid and effectual and binds all persons interested under this deed.

11.4 Trustee's receipts

The Trustee may receive money and other property and give valid receipts for all purposes including:

- (a) those of any statute; and
- (b) the receipt of any capital money which may or may not be deemed to be capital money for the purposes of any law relating to settled land,

and even if the Trustee is a sole trustee.

11.5 Trustee's decisions

- (a) The Trustee may decide:
 - (i) whether any money is to be considered as capital or income;
 - (ii) whether any expense, outgoing or other payment ought to be paid out of capital or income; and
 - (iii) all questions and matters of doubt arising in the execution of the trusts of this deed.
- (b) Every decision on these matters, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, is conclusive and binds all persons interested under this deed.

12. WINDING UP

At the earliest of the winding up or termination of the Foundation, and the revocation of the Foundation's endorsement under Subdivision 30 of the Tax Act, any surplus:

- (a) gifts of money or property for the principal purpose of the Foundation;
- (b) contributions described in items 7 and 8 of section 30-15 of the Tax Act in relation to a fund-raising event held for that purpose; and
- (c) money received by the Foundation because of such gifts or contributions,
must be transferred, by special resolution of the Trustee of the Foundation, to an Eligible DGR.

Where gifts to an Eligible DGR are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the Tax Act are satisfied, a

payment or application of income or capital under this clause must be made in accordance with those conditions.

13. GOVERNING LAW

This deed is governed by the laws of New South Wales.

14. AMENDMENTS

The Trustee may by deed revoke, add to or vary any of the provisions of this deed, provided that:

- (a) no part of the Foundation or the income of the Foundation becomes subject to any trusts other than public charitable trusts; and
- (b) unless the Commissioner consents to the revocation, addition or variation:
 - (i) no amendment is made which authorises the Trustee to invest money of the Foundation 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;
 - (ii) no amendment is made to this clause 14 so as to permit this deed to be amended in a manner otherwise prohibited by this clause 14; and
- (c) the Trustee notifies the Commissioner of the amendment.

15. REPLACEMENT OF TRUSTEE

The Founder may by instrument in writing at any time and from time to time:

- (a) remove the Trustee;
- (b) appoint a new Trustee;

provided that:

- (i) The Founder may not appoint itself as Trustee; and
- (ii) if at any time there is no one entitled to exercise the power conferred by this clause 15, the statutory and other rights of removing and appointing trustees may be exercised by:
 - (A) the Trustee for the time being;
 - (B) the legal personal representatives of the Trustee; or
 - (C) (if the Trustee is a corporation) the liquidator of the last surviving Trustee.

16. QUALIFICATIONS OF TRUSTEE

- (a) The Trustee must be:
 - (i) Three or more persons, a majority of whom are Responsible Persons, or

- (ii) A company or other body corporate a majority of whose board of directors or other controlling body consists of Responsible Persons.
- (b) If the requirement in clause 16(a) is at any time not met and if the Trustee must not exercise any discretion or power until the requirement is met or except:
 - (i) For the purpose of exercising a statutory power to appoint a new or additional Trustee;
 - (ii) To protect the Trust Fund; or
 - (iii) In case of urgency.
- (c) If the requirement in clause 16(a) is at any time not met and if the Trustee does not have or is unable to exercise a statutory power of appointing a new or additional trustee as outlined in clause 16(b)(i), the Trustee may by writing appoint a new or additional Trustee.

17. OPERATION ON A NON PROFIT BASIS

Moneys, assets and income of the Foundation must not be distributed to the Trustee members of the Board, officers, agents, employees or members of the Trustee or any other controlling body of the Trustee or members of any managing committee or Advisory Committee except as reimbursement for out-of-pocket expenses incurred on behalf of the Foundation or proper remuneration for administrative services.

EXECUTED as a deed

SIGNED, SEALED and DELIVERED by
Phil Grove in the presence of:

[SIGNED]

Signature of party

[SIGNED]

Signature of witness

[JACLYN JEFFERY]

Name

SIGNED SEALED AND DELIVERED by
Dry July Limited:

[SIGNED]

Signature of director

[SIGNED]

Signature of director/secretary

[BRETT MACDONALD]

Name

[JACLYN JEFFERY]

Name