

Deed of Trust

Sustainable Gardening Australia Foundation

SGA Sustainable Gardening Australia Inc

ABN 49 895 542 709

Freehills

101 Collins Street Melbourne Victoria 3000 Australia
Telephone +61 3 9288 1234 Facsimile +61 3 9288 1567
www.freehills.com DX 240 Melbourne

SYDNEY MELBOURNE PERTH BRISBANE SINGAPORE
Correspondent Offices HANOI HO CHI MINH CITY JAKARTA KUALA LUMPUR

Reference Lorrelle Mandaru

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This deed of trust

is made on 2004 between the following parties:

1.

(Founder)

2. **SGA Sustainable Gardening Australia Inc**
ABN 49 895 542 709

(Trustee)

Recitals

- A. The Founder wishes to establish a fund for certain public charitable purposes.
- B. The Founder has paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed.
- C. The Trustee has power, among other things, to act as the trustee of the Trust.
- D. It is intended that the Trust will solicit and receive gifts from the public.

This deed witnesses

1 Name

The Trust is to be known as Sustainable Gardening Australia Foundation.

2 Definitions and interpretation

2.1 Definitions

In this deed:

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 from time to time;

Advisory Committee means a committee established under clause 10;

Department means the department whose secretary is responsible under section 30-255 of ITAA 97 for keeping the register of environmental organisations;

Environmental Organisation means an organisation which is:

- (a) on the register of environmental organisations; and
- (b) charitable;

ITAA 97 means the *Income Tax Assessment Act 1997*;

Public Fund has the meaning given in clause 5;

register of environmental organisations means the register kept under section 30-255 of ITAA 97

Settled Sum means \$100;

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 under this deed;

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

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

and includes any part of the Trust Fund.

2.2 Interpretation

In this deed unless the context requires otherwise:

- (a) the singular (including defined terms) includes the plural and the plural includes the singular, and words of any gender include all genders;
- (b) a reference to this deed means this deed as originally executed and as from time to time lawfully amended, varied or added to; and
- (c) a reference to any legislation includes any amendment to that legislation, any consolidation or replacement of that legislation and any subordinate legislation made under it.

2.3 Headings

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

3 Declaration of trust

The Founder and the Trustee declare that the Trustee will hold the Trust Fund and the income from the Trust Fund on the trusts, with the powers and subject to the provisions in this deed.

4 Purposes

4.1 Application of income and capital

- (a) The Trustee must hold the Trust Fund and the income of the Trust Fund derived in each Accounting Period 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, for purposes which are public charitable purposes of the Trust.
- (b) The purposes of the Trust are to:
 - (1) encourage, educate and enable home and professional gardeners to adopt sustainable gardening practices to protect or enhance the natural environment or a significant aspect of it, and
 - (2) provide information or education, or carry on research about, the natural environment or a significant aspect of it.
- (c) No part of the Trust Fund (including the Public Fund) or the income may be paid, transferred or distributed, directly or indirectly, by way of bonus, dividend, or other profit distribution, to the Trustee or any of its members or directors. However, this clause 4.1(c) does not prohibit making a payment permitted by clause 13.

4.2 Factors Trustee may consider

In exercising its discretions under clause 4.1, the Trustee may have regard to:

- (a) any recommendations of an Advisory Committee with authority to make the recommendations; and
- (b) the provisions and objects, so far as they are consistent with the purpose of the Trust, of any other trust (including a trust established by a testamentary instrument) where:
 - (1) the capital of that other trust has been transferred to or otherwise vested in the Trustee to hold on the trusts of this deed; and
 - (2) the trustee of the other trust has requested the Trustee to recognise the provisions or objects of the other trust in exercising the Trustee's discretions and powers under this deed.

4.3 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;
- (c) revoke or amend a policy or rules and formulate others.

4.4 Trustee may accumulate income

Despite clause 4.1, the Trustee may in any Accounting Period accumulate and retain as part of the Trust Fund so much of the receipts of the Trust Fund as it thinks fit, so long as 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 any other percentage or amount that is from time to time approved by the Commissioner of Taxation or a Deputy Commissioner of Taxation.

5 Establishment and operation of the Public Fund

5.1 Public Fund

- (a) The Trustee must maintain a public fund (**Public Fund**) for the principal purposes of the Trust as set out in clause 4.1(a).
- (b) The Public Fund is called the **Sustainable Gardening Australia Foundation Public Fund**.
- (c) The Trustee must accept any rules relating to the Public Fund made by the Treasurer or Assistant-Treasurer of the Commonwealth of Australia or the Commonwealth Minister responsible keeping the register of environmental organisations to ensure that gifts made to the Public Fund will only be used for environmental purposes, and notify the Department of any departure from, or breach of, those rules or this clause, or of any change of name of the Public Fund.

5.2 Use of Public Fund

The Trustee must ensure that:

- (a) the Public Fund receives all gifts of money and property for the principal purposes of the Trust;
- (b) all money (including interest, income or money from the realisation of property) derived from money or property in the Public Fund is paid into the Public Fund;
- (c) the Public Fund does not receive any money or property other than money or property described in clauses 5.2(a) and (b);
- (d) the Public Fund is only used to further the Trust's principal purposes;
- (e) a separate bank account is established and maintained for the Public Fund into which all money in the Public Fund will be paid and that the members of the committee referred to in clause 5.3 are the only signatories to the account;
- (f) the public is invited to make gifts to the Public Fund for the principal purposes of the Trust.

5.3 Public Fund management

- (a) The Public Fund must be administered by a committee of at least three persons.
- (b) The committee must authorise the release of money from the Public Fund, manage the investment of the Public Fund, and authorise the sale of its assets.

- (c) The Trustee may appoint the members of the committee and remove members.
- (d) The majority of the persons administering the Public Fund must be 'responsible persons' as defined by the Department.
- (e) Subject to this clause, the Trustee may specify:
 - (1) the manner in which proceedings of the committee are to be conducted;
 - (2) the matters which the committee must have regard to in carrying out its functions; and
 - (3) any other matters concerning the committee or its functions that the Trustee decides.
- (f) The Trustee must notify the Department of any change to the members of the committee.
- (g) A member of the committee may not participate in discussions on, or vote on, a resolution where the member:
 - (1) has or may have a direct or personal interest or a conflict of fiduciary duty in doing so; or
 - (2) may benefit either directly or indirectly from doing so.That member must declare to the meeting the nature of his or her interest in the resolution.

5.4 Winding up

At the first occurrence of:

- (a) the winding up of the Public Fund; or
- (b) the Public Fund ceasing to be endorsed as a deductible gift recipient under Division 30-BA of ITAA 97,

any surplus assets of the Public Fund shall be transferred by the Trustee to one or more public funds on the register of environmental organisations, gifts to which are deductible under item 1 of the table in section 30-15 of ITAA 97 and which are charitable.

5.5 Receipts

Receipts issued for gifts must state:

- (a) the name of the Trust;
- (b) the fact that the receipt is for a gift;
- (c) the number of the receipt;
- (d) the date the donation was received;
- (e) name of the Public Fund;
- (f) the Australian Business Number of the Public Fund;
- (g) signature of a person authorised to act on behalf of the Public Fund;

- (h) name of the donor; and
- (i) an indication that the Public Fund is listed on the register of environmental organisations.

6 Trustee's powers

6.1 Investment

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.

6.2 Other powers

The Trustee may:

- (a) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges that are required for the purposes of, or capable of being conveniently used in connection with, the Trust's purposes;
- (b) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in that property;
- (c) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
- (d) construct, improve, maintain, develop, work, manage and control real or personal property and enter into contracts and agreements;
- (e) enter into any arrangement with any government or authority that seems conducive to the Trust's purposes, obtain from any government or authority any right, privilege or concession that the Trust thinks it desirable to obtain, and carry out, exercise and comply with any of those arrangements, rights, privileges and concessions;
- (f) spend money and do all other things that it considers desirable to promote the Trust's purposes;
- (g) print and publish newspapers, periodicals, books or leaflets or otherwise publish information in hard copy or by electronic means;
- (h) co-ordinate and arrange conferences, meetings, standing committees and commissions and other forums;
- (i) change an investment for any others or vary the terms and conditions on which an investment is held;
- (j) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;

- (k) borrow or raise or secure the payment of money in any manner the Trustee thinks fit 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;
- (l) 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;
- (m) take any action the Trustee thinks fit for the adequate protection or insurance of any part of the Trust Fund;
- (n) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (o) subject to the trusts of this deed, generally:
 - (1) perform any administrative act; and
 - (2) 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 thinks fit to pay or deduct (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;
- (p) attract and encourage donations, gifts (by will or otherwise), endowments, subscriptions, fees, trust distributions and other forms of financial assistance to or for the benefit of the Trust;
- (q) 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;
- (r) 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;
- (s) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;
- (t) accept as part of the Trust Fund any gifts (by will or otherwise), donations, subscriptions, fees, 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;
- (u) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;

- (v) do all other things incidental to the exercise of the Trustee's powers under this deed.

6.3 Powers are supplementary

The powers and discretions in clause 6.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

6.4 Obligations

- (a) The Trustee must comply with any rules that the Treasurer of the Commonwealth of Australia or Assistant Treasurer and the Minister responsible for the environment make to ensure that gifts made to the Trust will only be used for the environmental purposes listed in clause 4.1.
- (b) The Trust must not act as a mere conduit for the donation of money or property to other organisations, bodies or persons. The Trust must not act as a collection agency for tax deductible donations intended by a donor to be passed on to another organisation or person. All allocations of funds or property will be made by the Trustee in accordance with clause 4.1.
- (c) The Trustee must provide to the Department audited financial statements and the statistical and other information required by the Department within the time-frames specified by the Department and without limiting the generality of the foregoing, must provide statistical information on gifts for the principal purposes of the Trust to the Department within four months of the end of each financial year.
- (d) The Trustee must notify the Department of any change of name of the Trust.

7 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, is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Trust Fund in respect of any loss or liability,

unless the loss or liability is attributable to:

- (c) the dishonesty of the Trustee (or of the relevant officer, agent or employee of the Trustee); or
- (d) the wilful commission or omission of an act known by the Trustee (or by the relevant officer, agent or employee of the Trustee) to be a fraudulent breach of trust in bad faith.

8 Indemnity of Trustee from Trust Fund

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

- (a) all costs and expenses incurred by the Trustee relating to:
 - (1) entering into this deed or any deed amending this deed;
 - (2) establishing, operating, administering, amending, terminating and winding up the Trust; or
 - (3) 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 those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 8(a) including, but not limited to, the Trustee performing its duties and exercising its powers, rights and discretions under this deed.

9 Books of account and receipts

9.1 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 Trust Fund and the Public Fund, and of all dealings connected with the Trust Fund.

9.2 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 Trust Fund, including the Public Fund, at the end of that Accounting Period. The financial statement must be audited in accordance with the obligations imposed on the Trustee by law.

10 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.
- (d) The Trustee may specify:
 - (1) the manner in which proceedings of each Advisory Committee are to be conducted;
 - (2) the matters which the Advisory Committee must have regard to in carrying out its functions; and
 - (3) any other matters concerning the Advisory Committee or its functions that the Trustee decides.

- (e) To avoid any doubt, it is declared that the Trustee may appoint a single individual to act as an Advisory Committee.

11 Patrons

The Trustee may appoint any persons it thinks fit as patrons of the Trust.

12 Amending this deed

The Trustee may by deed revoke, add to or vary any of the terms of any of the trusts, beneficial interests, powers and discretions set out in this deed, so long as:

- (a) no part of the Trust Fund or the income of the Trust Fund becomes subject to any trusts other than public charitable trusts; and
- (b) unless the Commissioner of Taxation or a Deputy Commissioner of Taxation has consented to the revocation, addition or variation:
 - (1) no amendment is made to or affecting clauses 4.1 or 4.4; and
 - (2) no amendment is made to this clause 12 so as to permit this deed to be amended in a manner prohibited by clause 12(b)(1);
 - (3) the Commissioner of Taxation or a Deputy Commissioner of Taxation is notified of the revocation, addition or variation; and
- (c) the Department is notified of any revocation, addition or variation to clauses 1, 4.1, 5, 6.2, 12 or 15.

13 Trustee's remuneration

The Trustee may charge and be paid out of any part of the capital or income of the Trust Fund 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 1984 (Vic) in respect of that Accounting Period.

14 General

14.1 Receipts by others

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

14.2 Trustee's discretion

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.

14.3 Personal interest of Trustee

The Trustee and any person who is a director or member of 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 6.1) even though the Trustee, or any person who is a director or member of the Trustee:

- (a) has or may have a direct or personal interest in the method or result of exercising the power or discretion; or
- (b) may benefit either directly or indirectly from the exercise of any power or discretion,

and even if the Trustee is a sole trustee.

14.4 Delegation of powers

The Trustee may by power of attorney or otherwise delegate to any person any of the discretionary or other powers given to it under this deed. The execution or exercise of any of the trusts or powers of this deed by an attorney or delegate is valid and effectual and binds all persons interested in the Trust Fund.

14.5 Trustee's receipts

The Trustee may receive capital and other money 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.

14.6 Trustee's decisions

The Trustee may decide:

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

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

15 Winding up

At the first occurrence of:

- (a) the winding-up of the Trust; or
- (b) the Trust ceasing to be an Environmental Organisation,

any surplus assets shall be transferred by the Trustee to one or more charitable public funds on the register of environmental organisations, gifts to which are deductible under item 1 of the table in section 30-15 of ITAA 97.

16 Governing law

This deed is governed by the laws of Victoria.

Executed as a deed:

Signed sealed and delivered by

in the presence of:

Witness

Name (please print)

The common seal of
SGA Sustainable Gardening Australia Inc

is fixed to this document
in the presence of:

Committee member

Name (please print)

Committee member

Name (please print)