
Trust deed - Gladstone Foundation

The Honourable Stirling Hinchliffe MP, Minister for Infrastructure and
Planning

The Public Trustee of Queensland

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Trust deed

Dated 11th FEBRUARY 2011

Parties

Settlor **The Honourable Stirling Hinchliffe MP, Minister for Infrastructure and Planning**
of 100 George Street, Brisbane, Queensland 4000

Trustee **The Public Trustee of Queensland**
of 444 Queen Street, Brisbane, Queensland 4000

Background

- A. The Settlor wishes to establish a fund for certain public charitable purposes.
- B. The Settlor 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.

Agreed terms

1 Name

The Trust is to be known as the **Gladstone Foundation**.

2 Definitions

2.1 Defined terms

In this document:

Term	Definition
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.
Act	means the <i>Income Tax Assessment Act 1936</i> or the <i>Income Tax Assessment Act 1997</i> as required, and includes any successor legislation to those Acts.
Associate	has the meaning outlined in section 78A of the Act as if the reference to the 'donor' in that section were a

Term	Definition
	reference to the person who under this deed is referred to in relation to the Associate.
Board of Advice	means the Board of Advice established under clause 13.
Commissioner	means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the Act.
Court	means the Supreme Court of Queensland.
DGR	means deductible gift recipient.
Donor	means the donor of a gift to the Trust.
Gladstone Region	means the area served from time to time by the Gladstone Regional Council or its successor.
Minister	means the Minister responsible from time to time for administering the <i>State Development and Public Works Organisation Act 1971</i> (Qld).
Public Trustee	means the Public Trustee of Queensland.
Settled Sum	means \$10.
Specific Purposes of the Trust	means the purposes established under clause 4.1.
Terms of Reference	means the Terms of Reference prescribed and adopted under clause 13.3(a) and 13.3(b) of this Deed.
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.
Trust Fund	means: <ul style="list-style-type: none"> (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, and includes any part of the Trust Fund.
Uncommercial Transaction	means the provision of a financial or other benefit on terms which: <ul style="list-style-type: none"> (a) would not be reasonable in the circumstances if the benefit were provided on an arm's length basis; or (b) are more favourable to the recipient than if the benefit were provided on an arm's length basis, and which a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances.

2.2 Headings

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

3 Declaration of trust

The Settlor 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 Specific Purposes

The Specific Purposes of the Trust are for the benefit of the Gladstone Region and are in no specific order:

- (a) the relief of poverty;
- (b) the relief of the needs of the aged;
- (c) the relief of sickness or distress;
- (d) the advancement of religion;
- (e) the advancement of education;
- (f) the provision of child care services on a non profit basis; and
- (g) other purposes which are for the benefit of the Gladstone Region.

4.2 Application of income and capital

In accordance with the Specific Purposes of the Trust, 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, if and so far as it determines, all or any part of the income and capital of the Trust Fund, solely for the purposes of:

- (a) providing money, property or benefits to entities whose primary activities are directed towards the advancement of the Specific Purposes of the Trust contained in clause 4.1; or
- (b) providing money, property or benefits by way of direct assistance towards the advancement of the Specific Purposes contained in clause 4.1.

4.3 Distribution of Capital

- (a) The Trustee may, after considering the advice of the Board of Advice, distribute capital of the Trust Fund for the Purposes of the Trust.
- (b) Despite clause 4.3(a), the Trustee may, in its absolute discretion, distribute sufficient funds from the capital of the Trust Fund for the payment of the Trustee's fees and outlays, the costs of the Board of Advice, the costs of the secretariat, and any other costs associated with the administration of the Trust.

4.4 Factors trustee may consider

In exercising its discretions under clause 4.2 and clause 4.3, but subject to the Specific Purposes of the Trust, the Trustee may have regard to:

- (a) any recommendations of the Board of Advice with authority to make such recommendations; and
- (b) the provisions and purposes, so far as they are consistent with the Specific Purposes of the Trust, of any other trust where:
 - (i) 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
 - (ii) the trustee of the other trust has requested the Trustee to recognise the provisions or purposes of the other trust in exercising the Trustee's discretions and powers under this deed, but only to the extent that its objects are consistent with the purposes of this Trust.

4.5 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.

4.6 Trustee may accumulate income

In exercising its discretions under clause 4.2 or clause 4.3, the Trustee may, in any Accounting Period, choose to accumulate and retain so much of the Trust income as it sees fit.

5 Uncommercial transactions

No part of the Trust Fund or the income may be paid or applied, directly or indirectly, by way of an Uncommercial Transaction to or for:

- (a) the Settlor;
- (b) the Trustee;
- (c) a Donor; or
- (d) an Associate of the Settlor, the Trustee or a Donor.

6 Determinations to be recorded

Any determination of the Trustee under clause 4 shall be recorded in:

- (a) a written minute signed by the Trustee or its delegate in the case of the Trustee being the Public Trustee; or

- (b) where the Trustee is a company, in a written minute recording a resolution of a majority of the directors and signed in the manner provided by its constitution.

7 Power to make determination with conditions

The Trustee may make a determination pursuant to clause 4 and associated sub-clauses thereof, conditional upon the particular beneficiary using the income or capital the subject of the determination for a particular purpose, project or activity and the Trustee will not be obliged to distribute the income or the capital the subject of the conditional determination to the beneficiary if the Trustee is not satisfied that the beneficiary will use the income or capital for the specified purpose, project or activity.

8 Trustee

The Trustee may at any time retire and appoint a new trustee.

9 Trustee's powers

9.1 Investment

The Trustee may invest the Trust Fund in any form of investment and may vary an investment at any time as trustees are so authorised by law.

9.2 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 Trust Fund;
- (c) 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;
- (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 for a ruling on any matter, and, in the case of the Trustee being the Public Trustee, includes the making of an application to the court under the *Public Trustee Act 1978*;
- (e) take any action the Trustee thinks fit 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 trusts of this deed, generally:
- (i) perform any administrative act; and
 - (ii) pay or deduct all costs, fees, 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;
- (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 (not being a relative or associate of the Settlor or the Trustee or a relative of the Settlor or the Trustee) 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 business and industry 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) 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;
- (n) manage any real property it holds with all the powers of an absolute owner including, but not limited to, the power to allow any person or entity to occupy the property on the terms and conditions the Trustee thinks fit; and
- (o) do all other things incidental to the exercise of the Trustee's powers under this deed.

9.3 Powers are supplementary

The powers and discretions in clause 9.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

10 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.

11 Indemnity of trustee from trust fund

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

- (a) all costs, fees 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 Trust; or
 - (iii) otherwise in respect of the Trust and all matters incidental to the Trust and in the case of the Trustee being the Public Trustee, including any matters that the Trustee may be entitled to charge under the *Public Trustee Act 1978* as fixed from time to time; 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 11(a) including, but not limited to, the Trustee performing its duties and exercising its powers, rights and discretions under this deed.

12 Books of account and receipts

12.1 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 of all dealings connected with the Trust Fund.

12.2 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 at the end of that Accounting Period.

12.3 Audit

The financial statements may be audited by the Queensland Audit Office and the Trustee appoints the Queensland Audit Office as the auditor for the Gladstone Foundation.

12.4 Receipts

Receipts issued for gifts must state:

- (a) the name of the Trust Fund;

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

13 Board of Advice

13.1 Appointment and Retirement

- (a) The Trustee will establish and appoint a Board of Advice.
- (b) Members of the Board of Advice shall be appointed by the Trustee after taking into account the views of the Minister.
- (c) The Board of Advice will, initially, include the members listed in the Schedule to this document.
- (d) All appointments whether original or in substitution of retiring members or reappointment to the Board of Advice shall be made by the Trustee in its absolute discretion, however, in exercising that discretion, the Trustee will endeavour to maintain the composition of the Board of Advice as set out in clause 13.4.
- (e) The Board of Advice will consist of at least six and not more than ten individuals that the Trustee decides from time to time, provided that for no longer than six months after the establishment of the Trust, the Board of Advice may consist of the initial four members set out in the Schedule who shall be deemed to constitute the Board of Advice for the purposes of the Trust, until additional members are appointed to the Board of Advice.
- (f) The initial members of the Board of Advice who are appointed by the Trustee will be appointed for a term of not more than three years from the date of establishment of the Trust, and may be reappointed for up to two further terms not exceeding two years per term.
- (g) Any additional members appointed by the Trustee within the six month period after establishment of the Trust must be appointed for a term of not more than two years, which shall:
 - (i) in the case of the first additional members, be deemed to commence on the date of establishment of the Trust and shall expire on the day that is two years after the establishment of the Trust; and
 - (ii) in the case of any subsequent members appointed by the Trustee, is to expire every two years after the initial two year period referred to in clause 13.1(g)(i).
- (h) The Trustee may reappoint any additional members of the Board of Advice for up to three consecutive terms expiring in two-yearly intervals of the date of establishment of the Trust.
- (i) If there is any dispute, the Trustee is to determine which of the members are to retire.

13.2 Removal

- (a) The Trustee may remove any member of the Board of Advice without stating a reason for the removal, after taking into account the views of the Minister.
- (b) A member of the Board of Advice will immediately cease to be a member if:

- (i) they become bankrupt;
- (ii) they are declared or are found mentally incapable of performing their duties;
- (iii) by notice in writing to the Trustee, the member resigns;
- (iv) a member dies; or
- (v) without the permission of the Trustee the member fails to attend 50% of the meetings of the Board of Advice in any financial year.

13.3 Terms of reference

- (a) The Board of Advice will operate pursuant to Terms of Reference as prescribed by the Trustee from time to time.
- (b) Upon establishment of the Trust, the Trustee will adopt such Terms of Reference as it thinks fit.
- (c) The Trustee may specify:
 - (i) the manner in which proceedings of the Board of Advice are to be conducted;
 - (ii) the matters which the Board of Advice must have regard to in carrying out its functions; and
 - (iii) any other matters concerning the Board of Advice or its functions that the Trustee decides.

13.4 Composition

- (a) The Trustee, in appointing the members of the Board of Advice, will use his best endeavours to appoint members from the following:
 - (i) the Queensland Government;
 - (ii) the local government of Gladstone Region;
 - (iii) the business sector of the Gladstone Region;
 - (iv) community or philanthropic representatives from the Gladstone Region; and
 - (v) industry donors to the Foundation,with the initial members being those named in the Schedule.
- (b) Subject to clause 13.4(a), the Trustee may appoint members who are not from the groups referred to in clause 13.4(a).
- (c) The Trustee is to appoint a person as chairperson of the Board of Advice.
- (d) The chairperson is to be independent from the membership groups listed in clause 13.4(a).

13.5 Remuneration and expenses

- (a) The Trustee may, for the purposes of administering the Purposes of the Trust, and to provide assistance to the Board of Advice, establish a secretariat, the costs of which may be paid from the Trust Fund.
- (b) Members of the Board of Advice will be entitled to:
 - (i) remuneration for their services; and
 - (ii) reimbursement of expenses reasonably incurred by them in performing their role as a member,
 by the Trustee from the Trust Fund;
- (c) The level of remuneration and expenses for members of the Board of Advice is at the Trustee's discretion provided that the minimum remuneration may be based on standard government rates for Part Time Chairs and Members of Government Boards set by the Queensland Government from time to time.

14 Amending this deed

14.1 By 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, provided that no part of the Trust Fund or the income of the Trust Fund becomes subject to any trusts other than public charitable trusts.

14.2 Consent of Commissioner

Unless the Commissioner of Taxation or a Deputy Commissioner of Taxation has consented to the revocation, addition or variation:

- (a) no part of the Trust Fund or the income of the Trust Fund becomes subject to trusts;
- (b) no amendment is made which authorises the Trustee to invest money of the Trust Fund other than in a manner in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia;
- (c) no amendment is made to this clause 14 so as to permit this deed to be amended in a manner prohibited by clause 14.2(a) or 14.2(b) or this clause 14.2(c); and
- (d) the Trustee notifies the Commissioner of Taxation or a Deputy Commissioner of Taxation of the amendment.

15 Trustee's remuneration

The Trustee may charge and be paid out of any part of the capital or income of the Trust Fund remuneration as if the Public Trustee were the Trustee. Where the Public Trustee is the Trustee the Trustee is entitled to charge:

- (a) pursuant to Section 17 *Public Trustee Act 1978* (Qld) and the Public Trustee's Gazette Notices published from time to time setting the fees of the Public Trustee; and

- (b) as if the Trust was a DGR charitable trust as defined in the *Public Trustee (Fees and Charges Notice) No. 1 2010* which, as at the date of establishment of the Trust, is a fee of 6% (excluding GST) of the income received from the Trust; and
- (c) in addition to the fees in clause 15(b), when the measure of time taken to undertake the activities involved in the administration of the Trust is applied to the Public Trustee's hourly rate (as published in the Public Trustee's Gazette Notice from time to time) is greater than the fees that the Public Trustee would otherwise be allowed to charge under clauses 15(a) and 15(b) for the relevant financial year, then the Trustee shall also be entitled to be reimbursed from the Trust Fund for the shortfall.

16 General

16.1 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.

16.2 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.

16.3 Personal interest of trustee

The Trustee and any person who is a delegate 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 9.1) even though the Trustee, or any person who is a delegate 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.

16.4 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.

16.5 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.

16.6 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.

17 Winding up

17.1 Consistent objects

If, on the winding up of the Trust, any property remains after the satisfaction of all its debts and liabilities, the Trustee must give and transfer the property to or for one or more funds, authorities or institutions which are charitable at law, which operate in the Gladstone Region, and which have objects that are consistent with those of the Trust.

17.2 Application to Court

The Trustee may make an application to the Court for administration of the Fund in the event that the Trustee considers, in its absolute discretion, that it is impossible or impractical to carry out the purposes of the Trust.

18 Governing law

This deed is governed by the laws of Queensland.

19 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.

Schedule

Initial Members of the Board of Advice

Cosmo James (Jim) Petrich - Chair

Kim Mahoney

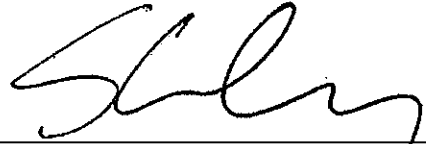
Councillor Gail Sellers

Judith Reynolds

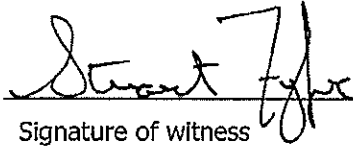
Execution

EXECUTED as a deed in Queensland.

Signed sealed and delivered by The Honourable
Stirling Hinchliffe MP,
Minister for Infrastructure and Planning in the
presence of:



^ Signature of The Honourable Stirling
Hinchliffe MP, Minister for Infrastructure
and Planning



^ Signature of witness

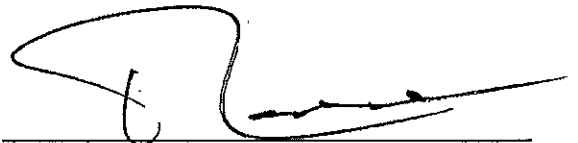
STUART FYFE

^ Name of witness (print)

Signed sealed and delivered
by Peter Damien Carne
The Public Trustee of Queensland in the presence
of:



^ Signature of Witness



^ Signature of Peter Damien Carne, The
Public Trustee of Queensland

STEPHEN JAMES FORSTER

^ Name of Witness (print)

