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Legal Documents

Discretionary Family Trust Deed for The Anderson Family Trust

Discretionary Family Trust Deed

The Anderson Family Trust

Between: Anderson and Sons Pty Ltd ACN: 223 990 885 of 23 Mitchell Parade Sydney New South Wales 2000 Australia
("Trustee") and
Martha Thompson of 22 Smith Terrace Glebe New South Wales 2330 Australia
("Settlor")

Declaration of Trust:

- A. The Settlor declares and establishes the trust by paying the Settled Sum to the Trustee for the benefit of the objects and beneficiaries of the trust (the Trustee acknowledges receipt of the Settled Sum).
- B. The Trustee is aware that if the trust acquires real estate then a caveat should be lodged over the real estate stating that the Trustee only holds the real estate as trustee for the trust.

1. Interpretation

(1) Dictionary

"**Accounting Period**" a period of 12 months ending on 30 June in each year. The period starting on the date of this Deed and ending on 30 June next is an Accounting Period. The period ending on the Vesting Day is an Accounting Period

"**Appointor**" Michael Thomas Anderson of 29 Butler Avenue Menai New South Wales 2336 Australia or the persons for the time being holding the office of Appointor and upon the death, winding up or insolvency of the last Appointor if no other appointment has been made then Simone Kathryn Anderson of 29 Butler Avenue Menai New South Wales 2339 Australia

"**Beneficiary**" any of the General Beneficiaries

"**Charity**" means:

- (a) any body, corporation or unincorporated association being a church, religious institution, charity or benevolent institution and gift deductible bodies and any charitable purpose
- (b) the Trustee or any trustee (in its capacity as such) of any trust or settlement established for charitable or benevolent purposes
- (c) any charitable trust, society, authority, institution, church, religious order, person, entity which at the

time of distribution of the income of the trust is exempt from income tax or at the time a tax deduction would be available for a monetary gift to that entity or person.

"**child**" or "**children**" includes adopted and step children

"**Deed**" this deed

"**Eligible Trust**" any trust or settlement under which a Beneficiary has any interest

"**Eligible Corporation**" any corporation at least one share in which is beneficially owned or held by a Beneficiary (including the trustee of any Eligible Trust)

"**Excluded Class**" means:

- (a) the Settlor (and every person claiming through the Settlor) ("excluded person")
- (b) every corporation, the trustee of any trust and the trustee of any settlement in which an excluded person has an actual (or contingent) beneficial interest. (But only while such interest continues); and
- (c) any other person, corporation and trust as declared by the Trustee to be a member of the Excluded Class. However:
 - (i) a person is not a member of the Excluded Class if that person's name is expressly included as a member of the class of General Beneficiaries or Specified Beneficiaries
 - (ii) the Trustee may, at any time, declare that any person is a member of the Excluded Class - even though the person may be a Beneficiary. The Excluded Class is modified from the date of making the declaration. The declaration has no effect on any distribution and benefit previously made to the person

"**General Beneficiaries**" means:

- (a) the Specified Beneficiaries, Appointor, Guardian, Trustee and the Related Parties of those persons as at the date of this Deed. Further, where any of these persons is a company then the shareholders (including those holding legal title and those holding a beneficial interest) and directors of that company as at the date of this Deed
- (b) the brothers and sisters, spouses, defactos, widows, widowers, grandparents, parents, parents-in-law, children, step children, adopted children, grandchildren, uncles, aunts, nephews and nieces of all of the:
 - persons mentioned in the above clause (a)

and the brothers and sisters, spouses, defactos, widows, widowers, grandparents, parents, parents-in-law, children, grandchildren, uncles, aunts, nephews and nieces of those brothers and sisters, spouses, defactos, widows, widowers, grandparents, parents, parents-in-law, children, grandchildren, uncles, aunts, nephews and nieces and forebears and all lineal issue of each of those persons

- (c) such persons related to those persons in the above clauses (a) and (b) by blood, marriage, defacto and ex-spousal relationship

(d) the estates or personal representatives of those persons in the above clauses (a), (b) and (c)

(e) any of the following entities whether formed in Australia or elsewhere namely:

(i) the trustee (in its capacity as such) of any Eligible Trust

(ii) any Eligible Corporation

(iii) any other legal person at least one share or other interest in which is beneficially owned or held by any Beneficiary (including the trustee of an Eligible Trust and an Eligible Corporation)

(iv) any Charity

(f) any other person, nominated by the Trustee (with the Guardian's consent), However, every member of the Excluded Class is excluded from the class of General Beneficiaries notwithstanding that that person is otherwise qualified to be included in the class of General Beneficiaries

"Guardian" Michael Thomas Anderson of 29 Butler Avenue Menai New South Wales 2336 Australia or the persons for the time being holding the office of Guardian and upon the death, winding up or insolvency of the last Guardian if no other appointment has been made then Simone Kathryn Anderson of 29 Butler Avenue Menai New South Wales 2339 Australia

"Income" includes (1) items that are income according to ordinary concepts (2) items assessable within the meaning of the *Tax Act*; and (3) net capital gain under the provisions of the *Tax Act* (notwithstanding that the amount is capital)

"Net Income" means, unless the Trustee otherwise states, the amount of any receipt by the Trustee of Income or other money, shares, debentures or securities or of any other property that is included in the amount calculated as the net income for the Accounting Period under Section 95(1) of the *Tax Act*

"Pay" includes deliver, transfer, convey, assign

"Related Parties" includes any Trustee in any capacity (including as Trustee of the Trust Fund, any other trusts, in a personal capacity and singularly), as a shareholder, director, member, partner or beneficiary of such company or partnership or trust. It also includes a wife, husband, child or relative by blood or otherwise of any Trustee or a person who has some personal relationship and direct or personal interest with the Trustee.

"Settled Sum" means \$10.00

"Specified Beneficiaries" means The children of Mr Michael Anderson and Mrs Simone Anderson and if dead the estate of the Specified Beneficiary

"Tax Act" means the *Income Tax Assessment Act* 1936 and 1997 as applicable

"Trustee" means the Trustee and any other trustee or trustees for the time being of the Trust Fund under this Deed

"Trust Fund" means the Settled Sum and all other monies, investments and property paid or transferred to and accepted by the Trustee as additions to the Trust Fund

"Trust Period" means the period starting on the date of this Deed and terminating on the Vesting Day

"Vesting Day" means 80 years minus one day from the date of this Deed or such earlier date stated by the Trustee

(2) Interpretation

In this Deed (unless the context otherwise requires):

- (a) the Specified Beneficiaries and the General Beneficiaries include persons, corporations, trusts, settlements and other legal entities as stated from time to time by the Trustee
- (b) the singular includes the plural and vice versa and any gender
- (c) reference to any person includes an individual, firm, body corporate, association (whether incorporated or not) and authority and agency (whether governmental, semi-governmental or local)
- (d) reference to any statutory enactment means as amended, modified and re-enacted
- (e) headings in this Deed are for convenience only
- (f) references to a contingent interest are deemed to include any possibility or expectancy.

2. What does the Trustee do with the Income each year?

The Trustee may at any time before the end of any Accounting Period for the Net Income:

- (a) subject to Clause 13, pay, apply or set aside the Net Income to any of the Beneficiaries
- (b) accumulate the Net Income
- (c) set aside a sum that in the Trustee's opinion is sufficient to meet the obligations of the Trustee for income tax and other government taxes and charges:
 - (i) if the sum so set aside is inadequate to meet the tax the Trustee may (without prejudice to any other rights given to it) use the Net Income for any subsequent Accounting Period or may recover the amount of the inadequacy from any money in its hands
 - (ii) any excess tax may be credited to the relevant Beneficiary. However, nothing obliges the Trustee to so set aside any such sum

3. How does the Trustee deal with income?

(1) The following apply to decisions made under Clause 2:

- (a) accumulating Net Income is conditional upon any law in force and is (except as provided in the next paragraph) irrevocable
- (b) if at the end of any Accounting Period the amounts decided exceed the Net Income for the Accounting

Period then the excess is deducted from the Trustee's accumulations. If any deficiency still remains then the Trustee is deemed to apply the capital to cover the deficiency

(c) a decision is effected:

- (i) by placing the amount to the credit of the Beneficiary in the books of the Trust Fund
- (ii) by drawing a cheque for the credit or benefit of the Beneficiary
- (iii) by making the credit for the benefit of the Beneficiary in whatever manner and to whatever person on behalf of the Beneficiary as the Trustee thinks fit; or
- (iv) by the Trustee stating that part of the Net Income or the net income as defined by Section 95 of the *Tax Act* be paid, applied or set aside to or for the Beneficiary or otherwise dealt with for the benefit of the Beneficiary

(d) the Trustee may:

- (i) treat any profit, gain or receipt which is assessable Income for the purposes of the *Tax Act* as Net Income or any part of the Net Income
- (ii) treat any expenditure, payment or loss which is an allowable deduction for the purposes of the *Tax Act* as expenditure against the Net Income or any part of the Net Income

(e) subject to Clause 13, the Trustee has an absolute discretion in the making of any decision and is not required to give any reasons

(f) in making any decision to pay, apply or set aside any amount (including an amount of a particular nature or character or from a particular source) the Trustee may exclude any Beneficiary and may determine to pay apply or set aside whatever amount to or for or divide the same between one or more of the Beneficiaries in whatever proportions and in whatever manner the Trustee thinks fit

(g) the Trustee may give a determination orally or in writing with or without a witness. A statement by the Trustee is sufficient evidence that the determination was made.

(2) Any Net Income that the Trustee accumulates is capital of the Trust Fund. However, the Trustee may apply such Net Income as if it were Net Income of the Trust Fund.

(3) The Trustee holds the Net Income for each Accounting Period that is not the subject of a determination in trust for the Specified Beneficiaries in equal shares. The Trustee may accept that any Beneficiary (including General and Specified) may disclaim for each exercise of the discretion. The fact that a Beneficiary has accepted benefits previously does not bar a disclaimer for later exercises of discretion. The disclaimer is effective on a retrospective basis.

(4) The above amount set aside ceases to form part of the Trust Fund. The Trustee holds such amount on a separate trust. However, the Trustee, pending payment to the beneficiary, may invest or deal with the fund.

(5) If in any Accounting Period there is a net loss then:

- (a) the Trustee offsets the loss against the net profit of the next Accounting Period; and
- (b) then against the net profit of the successive future Accounting Periods until the loss is absorbed.

(6) The Trustee may:

(a) distinguish between **Income** of a particular nature or character or from a particular source (whether referred to in the *Tax Act* or not) and deal with **Income** of a particular nature or from a particular source in one manner and **Income** of any other nature or character or from any other source in a different manner and subject to Clause 13, classify and create a separate account for any type of **Net Income**. This includes any:

- capital gains
- any dividend **Income** (of all natures)
- income having an allowance for depreciation (inclusive of depreciation of buildings and plant and equipment)
- income from Superannuation investments or annuities
- income from deceased estates and trusts (including testamentary trusts) whether trading, investment or otherwise
- franked dividends (including the amount referred to in section 160AQT(1) of the *Tax Act*, flow-on franking amount and the potential rebate amount)
- credit trading income
- interest
- primary production income
- income from personal exertion
- rents
- royalties
- foreign source income
- property income
- income and pay as you go income

or whatever other categories as the Trustee deems appropriate. Upon receiving that type of **Net Income** the Trustee may pay the monies into a separate account.

(b) identify and segregate the **Income** for any accounting purposes and for the purposes of distributing the whole or a part of the **Net Income** of the trust allocated to such classes to one or more beneficiaries or for the purposes of accumulation of such **Net Income**.

(c) expressly distinguish between and apply the determined **Net Income** to any of the separate accounts and:

- (i) distribute **Income** of any of the separate accounts to any of the Beneficiaries
- (ii) exclude any of the Beneficiaries from distribution of any **Income** of any of the separate accounts
- (iii) in determining the amount of the **Net Income** to be distributed, apportion and deduct as the Trustee sees fit costs and expenses incurred by the Trustee

(d) (without limiting the above powers) in addition separately account for deductions made in an Accounting Period of Income from prescribed payments made to the Trustee. This is so that a part of the Net Income of the Trust (that is wholly or partly attributable to prescribed payments) may be included as assessable income of a beneficiary under section 97 of the *Tax Act*. Further, this is so that the Trustee may be assessed under section 98 of the *Tax Act* and so that, for the purposes of section 221YHF(3) of the *Tax Act*, the beneficiary may be entitled to the credits referred to in section 221YHF(3).

(7) Any amount paid is of the same type in the hands of the Beneficiary as it was in the hands of the Trustee at the time of payment into the separate accounts.

(8) The Trustee has the absolute discretion to determine the particular type of the Net Income or account against which the losses and outgoings incurred in deriving the Net Income paid into the separate account or capital loss calculated as allowed under the *Tax Act* are set off.

4. When does this Trust have to end by law?

The Trust vests by the Vesting Day.

5. Who gets the assets in this trust on the Vesting Day?

(1) From the Vesting Day the Trustee holds the Trust Fund and the Income in trust for such of the Beneficiaries in such proportions as the Trustee states (with the Guardian's consent) before the Vesting Day. However:

- (a) if no Guardian is in office the Trustee has no such power of appointment
- (b) any revocable appointment made with the consent of the Guardian is revocable by the Guardian
- (c) any revocable appointment is revocable only until 5 pm on the day preceding the Vesting Day

(2) If the Trust Fund is not disposed of under Clause 5(1) then the Specified Beneficiaries take as tenants in common in equal shares. If any of the Specified Beneficiaries' are dead then their heirs take as tenants in common what the dead Specified Beneficiary would have taken.

(3) If the Trust Fund is not disposed according to Clauses 5(1) or 5(2), then the Trustee holds the Trust Fund in trust for the nearest relative of the Appointor living at the Vesting Day.

6. What power is there to put more assets into the trust?

All assets given to the Trustee for the Trust are treated as if the asset was given to the Trustee at the time of the signing of this Deed.

7. Does it matter that the Settlor may help others?

All benefits given to a Beneficiary under this Deed are in addition to (and not in substitution for) any help given by the Settlor for such Beneficiary.

8. What can the Trustee do?

The Trustee may, in its absolute discretion:

- (1) subject to Clause 13, before the Vesting Day transfer any part of the Trust Fund (but not out of any monies referred to in Clause 8(4)) to any Beneficiary
- (2) subject to Clause 13, before the Vesting Day lend any sum to a Beneficiary (either with or without security) and upon such terms as to repayment and with or without interest as the Trustee thinks fit
- (3) in the exercise of any power contained in Clauses 8(1) and (2) pay any monies to any parent or guardian of the Beneficiary without being bound to see how the money is spent
- (4) invest any amount held by the Trustee (as a separate trust fund under Clause 3) and any income on this amount on behalf of the Beneficiary in any of the investments authorised by this Deed for the investment of the Trust Fund and while any such person is under any legal disability resort to such amount and the Income and pay the same for the benefit of the person entitled under Clauses 8(1), (2) and (3)
- (5) allow any Beneficiary to have custody of any of the Trust Fund on such terms the Trustee states. However, the Trustee is not liable for loss of any of the Trust Fund
- (6) pay capital and Income to the credit of the Beneficiary (whether a minor or not) or to the credit of any person to be held for the Beneficiary without being responsible for any loss

9. What powers does the Trustee have?

In addition to the powers given to the Trustee by this Deed, law and statute the Trustee has the following powers:

- (1) to retain any part of the Trust Fund in the condition that it is received
- (2) to dispose of any part of the Trust Fund in any manner at any consideration and on any terms
- (3) to exercise voting powers attached to any shares, stock, debenture or other securities and exercise the votes to make the Trustee a director
- (4) to exchange property for other property of any nature, for any consideration and on any conditions
- (5) to compromise and settle for any consideration, upon any terms. The compromises and settlements are binding on all the Beneficiaries and others who in the future acquire any interest under this Deed
- (6) to surrender any securities for any consideration and on any terms as the Trustee approves to any company reducing its capital. The Trustee may receive such consideration in the form of cash securities or other assets
- (7) to consent to any reorganisation or reconstruction of any company and to consent to any reduction of capital or other dealing with such securities
- (8) to invest the Trust Fund in any investments whether or not such investments are authorised by law for the investment of trust funds:
 - (a) in the purchase of shares in any company public or private (wherever incorporated) securities, policies

of assurance or other investments or property, whatever and wherever situated, including the purchase or taking on lease for such period and upon any terms

(b) on loan whether secured or unsecured and either with or without interest to any person

(c) the Trustee has the same unrestricted power of investing, selling and transposing investments as if the Trustee were entitled beneficially to the Trust Fund

(9) to determine whether any sums received or disbursed are on account of capital or Income or partly on account of one and partly on account of the other and in what proportions and the decision of the Trustee whether made in writing or implied from the acts of the Trustee is conclusive and binding

(10) to employ and pay for such professionals or other assistance in the discharge of the duties of the Trustee and further so that the Trustee is not responsible for any loss occasioned by acting or not acting according to the advice

(11) to determine all questions and matters of doubt which may arise on any matter

(12) to erect buildings on and make repairs, improvements, alterations or additions to any of the Trust Fund and also to conduct farming and pastoral operations and lease any part of any property

(13) to start and defend proceedings at law

(14) to incorporate and promote any company (public and private) in any place under the law of that place at the expense of the Trust Fund with limited or unlimited liability for any purpose

(15) to borrow any monies upon any terms. The Trustee may mortgage or charge in favour of the lender any of the Trust Fund

(16) to carry on anywhere in the world and either alone or in partnership with any person or company any trade and business venture

(17) to employ any person (including any Trustee) and to decide the remuneration, superannuation and retirement benefit to be paid

(18) to take any of the Trust Fund in the actual condition or state of investment towards the satisfaction of the interest of any person in the Trust Fund or towards the satisfaction of any sum that the Trustee determines to pay for the benefit of any Beneficiary. In making such appropriation to estimate the value of the component parts of the Trust Fund without obtaining any consents otherwise required by law. Every appropriation so made binds all persons interested in the Trust Fund

(19) to open and operate any bank or similar accounts

(20) to grant options over any assets

(21) subject to Clause 13, appoint for any of the Trust Fund new trustees in any country and to transfer over the investments to any of the new trustees

(22) subject to Clause 13, at any time before the Vesting Day to state that any part of the Trust Fund is held upon the trusts of any other settlement in favour of any of the General Beneficiaries. Upon such application being made the

Trustee may transfer to the Trustee this property. At the time of transfer the trusts in this Deed cease for that property.

(23) to pay any Beneficiary employed by the Trustee

(24) to deal in as principal, agent or otherwise hire, purchase, bill of sale, mortgage and other securities, debentures, debenture stock, bonds, obligations and other choses in action and while the holder to exercise all the rights of ownership and to carry on and transact every kind of guarantee and indemnity business

(25) to deal in bills of exchange, promissory notes and other negotiable instruments and securities

(26) to advance, lend money to and grant financial accommodation to any person on any terms with or without security or interest

(27) to guarantee and indemnify the performance of contracts and debts and obligations of all kinds of any person and to mortgage or charge the Trust's property in support of any guarantee and indemnity

(28) to carry on business in land, whether improved or unimproved and in real or personal estate of every description, financiers, discounters, hire purchase acceptors, stock and share brokers and underwriters

(29) to exercise such additional powers as given by the Guardian

10. What does the Trustee do with Shares in a company?

For shares held in the Trust:

(1) The Trustee is responsible only for the shares actually transferred and dividends paid to the Trustee. Nothing obliges the Trustee to investigate the accounts or management of the company. No neglect is chargeable as a breach of trust by the Trustee.

(2) The Trustee is not bound to:

(a) enquire into any action or interfere with the control of any company; or

(b) take any action to vary the Articles of Association or seek to wind up the company.

(3) The Trustee does not have to attend any general meetings of a company. The Trustee is authorised to appoint a representative and give a proxy to represent the Trustee at any meetings.

11. Can the Trustee get paid a fee?

In addition to any indemnity or reimbursement the Trustee may:

(1) discharge out of the Trust Fund all expenses incurred by the Trustee

(2) charge a fee for administering the trusts

12. Can the Trustee contract with itself or friends?

Notwithstanding anything to the contrary, the Trustee may enter into any relationship (legal or otherwise) whether

there is a direct or personal interest, with any person, including Related Parties (even if the Trustee is a sole trustee) to do all things (including all things set out in clause 9) in such manner, on any terms (favourable or otherwise), as the Trustee thinks fit including:

- (1) to sell, transfer, hire, lease, divide any assets in specie (in kind) or dispose of any property and to lend or advance any monies and give guarantees and indemnities
- (2) to buy, transfer, acquire, hire or lease any property and to borrow any monies
- (3) to carry on any profit or loss making undertaking or scheme in partnership
- (4) generally to deal with the Trustee (or any of them in their personal capacity) in all respects as if there were 2 separate persons to the dealings

13. Is the Guardian the person in control?

Subject always to any express provision to the contrary, every discretion conferred on the Trustee by this Deed and at law is absolute and uncontrolled. Every power given to the Trustee is exercisable at its absolute and uncontrolled discretion. However:

- (1) the Trustee may before exercising any power consult the Guardian
- (2) the Trustee can not make a declaration of exclusion under Clause 1(1) nor exercise any power contained in Clauses 3, 8(1), 8(2), 9(24), 9(25) and 21 or exercise the power contained in Clause 2 except with the Guardian's consent. If there is no Guardian, then the Trustee has no power to make any declaration of exclusion under Clause 1 (1). The Trustee can not exercise the powers referred to in this sub-clause so as to impair the expectations of any of:
 - any Specified Beneficiary; or
 - persons appointed with the Guardian's consent under Clause 5 upon whom the Trust Fund devolves on the Vesting Day.

However, the Trustee has power to make a declaration of exclusion for any General Beneficiary who is an adult and of sound mind and who requests them to do so

- (3) the Guardian may (in writing) state that the Trustee is not obliged to obtain the consent of the Guardian as a condition precedent to the making or revocation of an appointment under Clause 5 or to the exercise of any power contained in Clauses 1(1), 2, 3, 8(1), 8(2), 9(24), 9(25) or 21 and after any such declaration the Trustee may make an appointment or revoke any revocable appointment or exercise any of the powers in its absolute and uncontrolled discretion.

14. Is one Trustee enough?

There is no requirement to have more than one Trustee.

15. How is the Trustee protected?

- (1) A Trustee is not liable to any third party except to the extent of the Trust Fund. The Trustee is entitled to exoneration and indemnity out of the Trust Fund for any liability, loss, expense or judgment recovered against or paid by the Trustee (other than a liability, loss, expense or judgment arising out of the wilful misconduct or bad faith of the

Trustee).

(2) If any probate, succession, estate or other duties fees and taxes are payable on the death of the Settlor or any Beneficiary then the Trustee may pay the charges out of the Trust Fund. This is the case even though such charges are not recoverable from the Trustee through the courts.

(3) Every discretion and power given (subject to any express provision to the contrary) is an absolute and uncontrolled discretion and power. No Trustee is liable for any loss in an exercise of any such discretion or power.

(4) No Trustee is liable for any error of judgment or mistake of law or other mistake or for anything except the wilful misconduct of trust by the Trustee. The Settlor and each Trustee is held harmless against any claims, losses, death taxes and taxes.

16. Can the Trustee charge professional fees?

Any Trustee who is a Financial Planner, Accountant or Solicitor or any firm of which a Trustee may be a member is entitled to make all usual charges for both the Trustee's professional and other services for administering the trusts.

17. Does the Trustee prepare annual accounts?

The Trustee must keep complete and accurate minutes of the Trustee's business, determination and meetings and accurate records of all receipts and expenditures. Promptly after the close of each Accounting Period the Trustee must prepare written accounts. A copy must be furnished upon request to the Guardian.

18. Can the Appointor dismiss the Trustee?

(1) The Appointor may:

- (a) remove any Trustee
- (b) appoint any additional trustees
- (c) appoint a new trustee and trustees in the place of any Trustee who for any reason ceases to be Trustee

However, if at any time there is no Appointor the statutory and other rights of removing and appointing Trustees is exercised (in this order) by the Trustee or by the Appointor's legal personal representatives or (if the Trustee is a corporation) the liquidator of that corporate Trustee.

(2) Trustee and Appointors may resign (in writing) to the Trustee with immediate effect.

(3) However, if at any time there is no Appointor entitled to exercise the power of appointment in Clause 18.1 then a sole surviving Trustee can not resign until a new Trustee is put in place.

(4) A Trustee ceases to so act if of unsound mind, bankrupt or liquidated.

(5) Persons dealing with the Trustee may rely upon a copy of this Deed (certified by a Trustee or Trustee's lawyer) as if it was the original.

(6) A new Trustee may accept the accounts and property delivered by the continuing Trustee without further enquiry.

An outgoing Trustee may be given a full discharge by the Appointor.

- (7) The Appointor may (in writing) appoint another or replacement Appointor.
- (8) The Guardian may (in writing) appoint another or replacement Guardian.
- (9) The Guardian must act jointly and unanimously. The Appointor must act jointly and unanimously.

19. How does the Trustee make decisions?

- (1) Any exercise by the Trustee of any power is made:
 - (a) in writing signed by all the Trustees; or
 - (b) by a resolution duly passed by all present at a meeting of the Trustee or in the case of a sole corporate Trustee by all the directors.
- (2) The Trustee must act jointly with unanimous consent, otherwise the matter is referred to the Guardian. The Trustee may in writing delegate the exercise of all or any of the powers or discretionary authorities conferred on the Trustee and execute any powers of attorney or other instruments necessary. However, a Trustee is not released from the liability to perform its duties.
- (3) A corporate Trustee may exercise or concur in exercising any power conferred on the Trustee by a resolution of the corporate Trustee or by a unanimous resolution of all of its directors appoint a representative for attending meetings of the Trustee.

20. Can a Trustee appoint a substitute?

Any natural person Trustee may (with the consent of all other Trustees) appoint any person as an alternate trustee in that person's place. The Trustee may revoke and alter such appointment. However, by such appointment the Trustee is not released from its liability to perform its duties.

21. How do you vary this Family Trust?

The Trustee may amend the trust's terms subject to Clause 13. However, such amendments do not benefit the Settlor or affect a beneficiary's beneficial entitlement already set aside.

22. Can the Settlor benefit under this Trust?

The Settlor can never gain a benefit from the Trust Fund, receive income or loans.

23. What parts of the Trustees Act don't apply?

The following provisions do not apply to this Trust: sections 7(2)(c) and 58 of the *Trustees Act* 1962 (WA); sections 6 (5)(f) and 43 of the *Trustees Act* 1925 (NSW); such relevant provisions under the *Trustee Act* 1957 (ACT); sections 37 and 42(1)(c) of the *Trustee Act* 1958 (VIC); sections 12(2)(c) and 61 of the *Trustee Act* 1973 (QLD); Sections 14 (2)(c) and 33 of the *Trustee Act* 1936 (SA); Section 13(2)(c) of the *Trustee Act* 1898 (TAS); and Sections 11(2)(c) and 24 of the *Trustee Act* 1893 (NT).

24. How does the Trustee prove that a beneficiary received something?

A book entry made by the Trustee for the payment of Income to a Beneficiary proves distribution as at the date of entry regardless of the date of payment.

25. What laws apply to this Family Trust?

This Deed is governed by the laws of the State of the Commonwealth of Australia in which the Trustee resides as evidenced by the Trustee's address in this Deed. Except as amended by this Deed, the Trustee has all the powers given by such laws.

SIGNED AS A DEED

Datedday of (month) in the year 20.....

THIS CONCLUDES THE DEED. THE NEXT PAGE CONTAINS THE SIGNING CLAUSES.

(As trustee)

The Common Seal of Anderson and Sons Pty Ltd ACN 223 990 885 was affixed by the authority of the Director(s) below or if no common seal signed by the Director(s) below:



1st Director's signature

Company Secretary's signature
(if applicable)

1st Director's name
(please print)

Company Secretary's name
(please print)

(As Settlor)

SIGNED by Martha Thompson	
in front of the person below being over 18 years of age and not involved with the contents of this document or related to any of the parties to this document	
Witness signature: (Australian citizen)	
Witness name: (please print)	
Witness address:	
Witness occupation:	

This Resolution is completed throughout the life of the Trust whenever a company (from time to time) takes on the role of Trustee or co-trustee. This is bound with your Trust Deed. Photocopy as required.

Minute Book page number ____

Resolution for The Anderson Family Trust

Held at _____

On _____ day of _____ 20____

Company Name: Anderson and Sons Pty Ltd (“ Trustee ”)

ACN: 223 990 885

Signed: _____

IT WAS RESOLVED as followed:

1. THAT the Trustee accept the role of Trustee of The Anderson Family Trust
2. THAT the Trustee has received a copy of The Anderson Family Trust Deed.
3. THAT the Trustee will carry out its duties according to law.

The meeting closed.

Signed as a true and correct record of the resolutions.

Signed in accordance with
Section 258(1)(b) of

The *Corporations Act* 2001
as a true and correct record

Chairperson

Date

Taxable income exceeds accounting income and the amount of excess distributed Resolution

It was resolved under the powers vested in the Trustee that the income of the trust is deemed the income falling within the definition of 'net income' set out in section 95 of the Income Tax Assessment Act 1936 or the corresponding section of any act amending or replacing the Tax Act for that definition. It was further resolved to distribute to the beneficiaries the income in the proportions as follows:

Name	Amount
TOTAL	100%

Accounting income exceeds taxable income and the amount of excess distributed distribution

To distribute to the beneficiaries the income of the trust (the income), it being noted the income exceeds that part of the income falling within the definition of 'net income' set out in section 95 of the Income Tax Assessment Act 1936 or the corresponding section of any act amending or replacing the Tax Act for that definition. It was further resolved to distribute of the beneficiaries the income in the proportions as follows:

Name	Amount
TOTAL	100%

Where taxable income exceeds accounting income because of capital gain, and the capital gain amount is distributed differently to accounting income distribution

It was resolved under the powers vested in the Trustee that the income of the trust is deemed the income falling within the definition of 'net income' set out in section 95 of the Income Tax Assessment Act 1936 or the corresponding section of any act amending or replacing the Tax Act for that definition. It was further resolved to distribute to the beneficiaries the income in the proportions as follows:

Name	Amount of distribution of income being a net taxable capital gain (%)	Amount of distribution of income not being a net taxable capital gain (%)
TOTAL	100%	100%

The above persons are all Trust beneficiaries. They are entitled to receive fixed and discretionary distributions of the income and capital of the Trust Fund.

There being no further business, the meeting was declared closed. Signed as a true and correct record:

Trustee(s):
Guardian:
Appointor:

Dated:200

(a resolution may be made earlier than the last day of the financial year)

Hints on completing Income Minutes

Do I slavishly follow these sample Minutes?

These draft Minutes are something you copy from. Your accountant adapts the minutes. With all well drafted modern trust deeds the minutes can segregate the income of a particular category e.g. capital gains or franked dividends. This is called “streaming” and is highly valuable.

Can I make these minutes after the end of the financial year?

These minutes are completed and signed off BEFORE the end of the financial year. If you don't then the default distribution provisions of the trust deed come into effect.

Can I change my mind about the distribution of income later?

Sorry. Determinations of the trustee distributing income are irrevocable.

Is distributing to a company the same as distributing to a human?

No it isn't. Often you may distribute to beneficiary but no money actually changes hand. Sections 109UB of the *Income Tax Assessment Act 1936* (Cth), which applies from 27 March 1998, affects distributions made to corporate beneficiaries. Section 109UB is where the trustee makes a private company beneficiary 'presently entitled' to an amount. What if that amount is not actually paid to the company? That unpaid amount is a deemed dividend as if the amount has then been loaned by the trustee to a shareholder or associate of the private company. You need a Division 7A loan agreement.

If desired when completing details state whether part or whole is a category of income e.g. '\$10,250 being the franked dividends received by the trustee during the current financial year' or '\$20,250 including \$10,250 being the franked dividends received by the trustee during the current financial year' or '50% of the net income of the trust including \$10,250 being the franked dividends received by the trustee during the financial year' - see taxation ruling TR 92/13.

Describe how payment is to be made e.g. 'by payment of the beneficiary's school expenses' or by paying the monies to [name] to be paid for the benefit of the beneficiary.

Examples

Peter Nettleton \$17,000 by setting aside the money to a separate account in the name of the beneficiary in the books of the trust.

Hemal Modi \$15,000 by paying the amount, which includes franked dividends, to a parent of a beneficiary.

Jason Styles \$4,500 by applying money for the benefit of the beneficiary by payment of the beneficiary's school fees.