

# Deed

Draft 1  
14 September 2006

## Stand Like Stone Foundation Educational Scholarship Trust

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# The deed

[Stand Like Stone Foundation Educational Scholarship Trust]

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Date ►

Between the parties

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of

**John Woodruff**

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of

**Stand Like Stone Foundation Limited**

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Background

- A. The Founder wishes to establish a public fund for the public charitable purposes of providing scholarships, bursaries and prizes on the terms set out in this deed.
  - B. The Founder has paid the Settled Sum to the Trustee as a grant 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.
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This deed witnesses

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree as set out in this deed.

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## 1 Definitions and interpretations

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### 1.1 Definitions

The meanings of the terms used in this document are set out below.

Term	Meaning
<b>Accounting Period</b>	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;
<b>Advisory Committee</b>	means a committee established under clause 12;
<b>Commissioner</b>	means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97;
<b>Eligible Charity</b>	means a fund, authority or institution which is charitable at law;
<b>ITAA 97</b>	means the Income Tax Assessment Act 1997;
<b>Principal Purpose</b>	means the purpose outlined in clause 5;
<b>Responsible Person</b>	means an individual who: <ul style="list-style-type: none"><li>(a) performs a significant public function;</li><li>(b) is a member of a professional body having a code of ethics or rules of conduct;</li><li>(c) is officially charged with spiritual functions by a religious institution;</li><li>(d) is a director of a company whose shares are listed on the Australian Stock Exchange;</li><li>(e) has received formal recognition from government for services to the community; or</li><li>(f) is approved as a Responsible Person by the Commissioner;</li></ul>
<b>Settled Sum</b>	means the payment of \$100 made by the Founder for the establishment of this Trust;
<b>Specified Income</b>	means income of the Trust other than donations, gifts, government grants, and other voluntary transfers of property to the Trust;

<b>Term</b>	<b>Meaning</b>
<b>Trust</b>	means the trust established under this deed;
<b>Trust Fund</b>	means: <ul style="list-style-type: none"> <li>(a) the Settled Sum;</li> <li>(b) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund;</li> <li>(c) all accretions to the Trust Fund;</li> <li>(d) all accumulations of income; and</li> <li>(e) the money, investments and property from time to time representing the above or into which they are converted,</li> <li>(f) and includes any part of the Trust Fund; and</li> </ul>
<b>Trustee</b>	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.

## 2 Name

The Trust is to be known as the Stand Like Stone Foundation Educational Scholarship Fund.

## 3 Interpretation

### 3.1 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 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.

### 3.2 Headings

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

## 4 Declaration of trust

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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.

## 5 Purpose

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### 5.1 Educational scholarships, bursaries or prizes

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 the purpose of providing money for scholarships, bursaries or prizes which:

- (a) may only be awarded to Australian citizens or permanent residents of Australia; and
- (b) are open to individuals or groups of individuals throughout a region of at least 200,000 people, or throughout at least an entire State or Territory; and
- (c) are to promote the recipients' education in either or both of:
  - (1) a pre-school course, primary course, secondary course or tertiary course (each as defined in ITAA 97);
  - (2) an educational institution overseas, by way of study of a component of a course referred to in (1) above; and
- (3) are awarded on merit or for reasons of equity.

### 5.2 Not for profit

No part of the Trust Fund or the income may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or other profit distribution, to the Trustee or any of its members or directors. However, this clause does not prohibit making a payment permitted by clause 14.

No scholarships, bursaries or prizes may be awarded to the members or directors of the Trustee, or to any of their relatives.

### 5.3 Factors Trustee may consider

In exercising its discretions under clause 5.1, 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.

#### 5.4 Trustee may accumulate income

Despite clause 5.1, the Trustee may in any Accounting Period accumulate and retain as part of the Trust Fund so much of the income and capital 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, if it does exceed 20%, the accumulation is approved by the Commissioner.

#### 5.5 Sub-funds

- (a) The Trustee may maintain a management account in respect of gifts or other receipts of money or property from a particular donor or group of donors or for a particular scholarship, bursary or prize, and give the management account a name for identification.
- (b) The Trustee may record in the management account money or property received from a donor or group of donors or for the particular scholarship, bursary or prize, money received because of those gifts, and payments or applications from the management account.
- (c) The Trustee may permit the donor or group of donors or an advisory committee to make requests or indicate preferences, as to the name of the management account, and as to the payments or applications from the account but must not be under an obligation to, and must not give an assurance that it will:
  - (1) make a payment or application in accordance with a request or preference; or
  - (2) obtain the approval of any person before making payments or applications from the management account.
- (d) The management account forms part of the Trust Fund and is not a separate fund.
- (e) The Trustee must not separately invest or separately account for the management account in the statutory financial statements of the Trust.
- (f) The Trustee may at any time cease to maintain the management account.
- (g) The Trustee may provide reports of the investments, payments and applications of the management account to the donor or group of donors or advisory committee.
- (h) The Trustee may formulate rules and policies relating to the maintenance of the management account provided they are not contrary to this Trust Deed or any requirements of the Commissioner of Taxation.

## 6 Establishment and operation of Gift Fund

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### 6.1 Maintaining Gift Fund

The Trustee must maintain for the Principal Purpose of the Trust, a fund (**Gift Fund**):

- (a) to which gifts of money or property for that purpose are to be made;
- (b) to which any money received by the Trust because of those gifts is to be credited; and
- (c) that does not receive any other money or property.

## 6.2 Limits on use of Gift Fund

The Trustee must use the following only for the Principal Purpose of the Trust:

- (a) gifts made to the Gift Fund; and
- (b) any money received because of those gifts.

## 6.3 Winding up

- (a) At the first occurrence of:
  - (1) the winding up of the Gift Fund; or
  - (2) the Trust ceasing to be endorsed as a deductible gift recipient under Division 30-BA of the ITAA 97,

any surplus assets of the Gift Fund must be transferred to one or more Eligible Charities, gifts to which are deductible under item 1 of the table in section 30-15 of the ITAA 97, as the Trustee decides.
- (b) Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the ITAA 97 are satisfied, a transfer under this clause 6.3 must be made in accordance with those conditions.

## 6.4 Bank account

The Trustee must maintain a separate bank account for the Gift Fund.

## 6.5 Gift Fund forms part of the Trust Fund

To avoid any doubt, it is declared that the Gift Fund forms part of the Trust Fund.

## 6.6 Gifts from the Public

The Trustee must invite and receive donations to the Gift Fund from the public.

# 7 Qualifications of Trustee

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- (a) The Trustee must be a company or other body corporate, a majority of whose board of directors or other controlling body comprises Responsible Persons.
- (b) If at any time the requirement in clause 7(a) is not met, the Trustee must not exercise any discretion or power until the requirement is met, except:
  - (1) for the purpose of exercising a statutory power to appoint a new or additional Trustee;
  - (2) to protect the Trust Fund; or
  - (3) in the case of urgency.

## 8 Trustee's powers

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### 8.1 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.

### 8.2 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;
- (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:
  - (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;
- (h) attract and encourage donations, gifts (by will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;
- (i) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;
- (j) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (k) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;

- (l) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;
- (m) 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, power to allow any Eligible Charity to occupy the property on the terms and conditions the Trustee thinks fit;
- (o) do all other things incidental to the exercise of the Trustee's powers under this deed.

### 8.3 Powers are supplementary

The powers and discretions in clause 8.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

## 9 Liability for breaches of trust

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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.

## 10 Indemnity of Trustee from Trust Fund

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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 10(a)

including, but not limited to, the Trustee performing its duties and exercising its powers, rights and discretions under this deed.

## **11 Books of account and receipts**

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### **11.1 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.

### **11.2 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.

### **11.3 Receipts**

Receipts issued for gifts must state:

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

## **12 Advisory Committees**

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- (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 under clause 5.
- (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.

## 13 Amending this deed

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The Trustee may by deed revoke, add to or vary any of the provisions of 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 has consented to the revocation, addition or variation:
  - (1) no part of the Trust Fund or the income of the Trust Fund becomes subject to trusts other than trusts for the provision of money, property or benefits to or for Eligible Charities;
  - (2) no amendment is made to or affecting clause 5.2;
  - (3) 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;
  - (4) no amendment is made to this clause 13 so as to permit this deed to be amended in a manner prohibited by clauses 13(b)(1), (2) or (3); and
  - (5) the Trustee notifies the Commissioner of the amendment.

## 14 Trustee's remuneration

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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** in respect of that Accounting Period.

## 15 General

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### 15.1 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.

### 15.2 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.

### 15.3 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 8.1) 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.

#### **15.4 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.

#### **15.5 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.

#### **15.6 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.

### **16 Winding up**

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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 for the Principal Purpose, or to or for one or more Eligible Charities, as the Trustee decides.

### **17 Governing law**

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This deed is governed by the laws of South Australia.

## Signing page

Executed as a deed

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Signed sealed and delivered by  
**As Founder**

*sign here* ► \_\_\_\_\_

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

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Signed sealed and delivered by  
As Trustee by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*print name* \_\_\_\_\_

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

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Date ►

