



HERBERT  
SMITH  
FREEHILLS

# Gardens for Wildlife Victoria Trust – Trust Deed

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# Contents

## Table of contents

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<b>1</b>	<b>Name</b>	<b>3</b>
<b>2</b>	<b>Definitions and interpretation</b>	<b>3</b>
	2.1 Definitions .....	3
	2.2 Interpretation .....	4
	2.3 Headings .....	5
<b>3</b>	<b>Declaration of trust</b>	<b>5</b>
<b>4</b>	<b>Purposes</b>	<b>5</b>
	4.1 Application of income and capital .....	5
<b>6</b>	<b>Qualifications of Trustee</b>	<b>8</b>
<b>7</b>	<b>Trustee's powers</b>	<b>8</b>
	7.1 Investment .....	8
	7.2 Other powers .....	8
	7.3 Powers are supplementary .....	10
<b>8</b>	<b>Liability for breaches of trust</b>	<b>10</b>
	8.1 Indemnity .....	10
	8.2 Limitations .....	10
<b>9</b>	<b>Books of account and receipts</b>	<b>10</b>
	9.1 Trustee to keep accounts .....	10
	9.2 Financial statements .....	11
	9.3 Receipts .....	11
<b>10</b>	<b>Advisory Committees</b>	<b>11</b>
<b>11</b>	<b>Amending this deed</b>	<b>11</b>
<b>13</b>	<b>General</b>	<b>12</b>
	13.1 Receipts by others .....	12
	13.2 Trustee's discretion .....	12
	13.3 Personal interest of Trustee .....	12
	13.4 Delegation of powers .....	12
	13.5 Trustee's receipts .....	13
	13.6 Trustee's decisions .....	13
<b>14</b>	<b>Winding up</b>	<b>13</b>
<b>15</b>	<b>Governing law</b>	<b>13</b>
	<b>Signing page</b>	<b>14</b>



## Gardens for Wildlife Victoria Trust – Trust Deed

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Date ► 19 October 2020

Between the parties

Founder **Nadine Tracey Gaskell and Irene Cecilia Kelly**

Trustee **Gardens for Wildlife Victoria Ltd**  
ABN 69 642 771 542

Recitals

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

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**This deed witnesses as follows:**

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## 1 Name

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The Trust is to be known as **Gardens for Wildlife Victoria Trust**.

## 2 Definitions and interpretation

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### 2.1 Definitions

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

<b>Term</b>	<b>Meaning</b>
<b>Accounting Period</b>	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>	a committee established under clause 10.
<b>Commissioner</b>	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97.
<b>Deductible Contribution</b>	a voluntary transfer of money or property in relation to a fundraising event as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97.
<b>Department</b>	the department from time to time administering the Register, or administering any successor scheme or regulatory process to the Register.
<b>Eligible Charity</b>	an organisation which is on the Register and which is charitable, and Gifts and Deductible Contributions to which are deductible.
<b>Gift</b>	a voluntary transfer of money or property where the donor receives no material benefit or advantage.
<b>ITAA 97</b>	the <i>Income Tax Assessment Act 1997</i> (Cth).

<b>Term</b>	<b>Meaning</b>
<b>Register</b>	the register of environmental organisations as described in Subdivision 30-E of ITAA 97, or any successor register or similar scheme to it.
<b>Responsible Person</b>	<p>an individual who:</p> <ol style="list-style-type: none"> <li>1 performs a significant public function;</li> <li>2 is a member of a professional body having a code of ethics or rules of conduct;</li> <li>3 is officially charged with spiritual functions by a religious institution;</li> <li>4 is a director of a company whose shares are listed on the Australian Securities Exchange;</li> <li>5 has received formal recognition from government for services to the community;</li> <li>6 before whom a statutory declaration may be made;</li> <li>7 is otherwise accepted by the Department administering the Register as having the requisite degree of responsibility to the wider Australian community; or</li> <li>8 is approved as a Responsible Person by the Commissioner.</li> </ol>
<b>Settled Sum</b>	the payment of \$100 made by the Founder for the establishment of this Trust.
<b>Trust</b>	the trust established under this deed.
<b>Trust Fund</b>	<ol style="list-style-type: none"> <li>1 the Settled Sum;</li> <li>2 all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund;</li> <li>3 all accretions to the Trust Fund;</li> <li>4 all accumulations of income; and</li> <li>5 the money, investments and property from time to time representing the above or into which they are converted,</li> </ol> <p>and includes any part of the Trust Fund.</p>
<b>Trustee</b>	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.

## 2.2 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 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;
- (d) a reference to a donation includes a gift.

## 2.3 Headings

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

## 3 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.

## 4 Purposes

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### 4.1 Application of income and capital

- (a) The Trustee must pay or apply the Trust Fund for purposes which are public charitable purposes and which:
  - (1) protect and enhance the natural environment or a significant aspect of the natural environment; or
  - (2) provide information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.by, without limitation, educating and supporting individuals and communities to understand, protect and enhance the natural environment in order to:
  - (3) improve biodiversity across landscapes on public and private land through wildlife gardening;
  - (4) understand the importance of creating and improving habitat for locally native flora and fauna;
  - (5) build a network of environmental stewards and champions;
  - (6) research, improve and communicate the impact of wildlife gardening on the natural environment.
- (b) 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 4.1(b) does not prohibit making a payment permitted by clause 12.



## 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

In carrying out its obligation to pay or apply 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 rules and formulate others.

# 5 Inclusion on the register of environmental organisations

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## 5.1 Introduction

If the Trust is on the Register it must comply with this clause 5.

## 5.2 Ministerial Rules

The Trust must comply with subdivision 30-E of ITAA 97 and with any rules that the Treasurer of the Commonwealth of Australia, the Commissioner, or the Minister responsible for the Register make to ensure that gifts made to the Public Fund (established under clause 5.6) will only be used for the purposes outlined in clause 4.1.

## 5.3 Statistical information

The Trust must provide to the Department:

- (a) statistical information on the gifts made to the Public Fund within 4 months of the end of the financial year or other time as permitted or required by the Department;
- (b) any other information and financial statements required by the Department.

## 5.4 Notifying the Department

The Trust must notify the Department, as soon as practicable, of:

- (a) any changes to its principal purposes and activities;
- (b) any change to the name of the Trust or its Public Fund;

- (c) any change to the membership of the committee administering the Public Fund under clause 5.6(f);
- (d) any departure from this rule 5;
- (e) if the Trust becomes insolvent, or commences any process for the winding up of the Trust or experiences other financial difficulties; or
- (f) any other issues reasonably required by the Department.

## 5.5 Conduit policy

The Trust must not act as a mere conduit for a donor by passing a donation of money or property to other charities, bodies or persons as directed or indicated by the donor. It must not act as a collection agency for donations intended by a donor for another institution or person.

## 5.6 Establishment and operation of Public Fund

- (a) The Trust must establish and maintain for its environmental purposes and activities a fund to be called **Gardens for Wildlife Victoria Public Fund** (or such other name as decided by the directors and notified to the Department) (**Public Fund**):
  - (1) to which Gifts and Deductible Contributions for those purposes are to be made;
  - (2) to which any money received by the Trust because of those Gifts and Deductible Contributions is to be credited; and
  - (3) that does not receive any other money or property.
- (b) The purposes of the Public Fund are the same as the environmental purposes of the Trust and the Trust may only use the Gifts and Deductible Contributions and money received by the Trust because of those Gifts and Deductible Contributions, for the purposes of the Trust as outlined in clause 4.1.
- (c) The Trust must maintain a separate bank account for the Public Fund. The signatories of the bank account must be Australian resident members of the committee administering the Public Fund.
- (d) In accordance with section 382-15 of Schedule 1 of the *Taxation Administration Act 1953* (Cth), the records of the Trust must:
  - (1) record and explain all transactions and other acts the Trust engages in that are relevant to the Trust's status as a deductible gift recipient; and
  - (2) show the Gifts and Deductible Contributions and money received by the Trust because of those Gifts and Deductible Contributions are used only for the purposes of the Trust as outlined in clause 4.1.
- (e) The Trust must seek donations from the public to the Public Fund.
- (f) The Trustee will administer the Public fund provided a majority of its directors are Responsible Persons. If there is not a majority of directors who are Responsible Persons, the directors must delegate the power to administer the Public Fund to a sub-committee of no fewer than 3 people, a majority of whom are Responsible Persons.
- (g) Receipts for gifts to the Public Fund must be made in the name of the Public Fund and state:



- (1) the number of the receipt;
- (2) the name and ABN of the Trust;
- (3) the name of the Public Fund and a reference to it being on the Register;
- (4) the name of the donor;
- (5) the amount of the gift, the fact that it was a gift and the date the gift was received,

and include the signature of a person authorised to act on behalf of the Public Fund.

- (h) At the first occurrence of:
- (1) the winding up of the Public Fund;
  - (2) the Trust or the Public Fund ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITAA 97; or
  - (3) the Trust and the Public Fund ceasing to be on the Register,
- any surplus assets of the Public Fund must be transferred to one or more Eligible Charities, the identity of which must be decided by the directors.

## 6 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 6(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.

## 7 Trustee's powers

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### 7.1 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.

### 7.2 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 custodian trustee, agent, contractor or professional person without being responsible for the default of the custodian trustee, 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;
- (o) do all other things incidental to the exercise of the Trustee's powers under this deed.



### 7.3 Powers are supplementary

The powers and discretions in clause 7.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

## 8 Liability for breaches of trust

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### 8.1 Indemnity

Subject to clause 8.2, the Trustee, and any officer, agent or employee of the Trustee where purporting to act in the exercise of the trusts and powers of 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, liability, costs and expenses 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) all matters incidental to the Trust; and
  - (4) 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 8.1(b) including, but not limited to, the Trustee performing its duties and exercising its powers and discretions under this deed.

### 8.2 Limitations

Notwithstanding clause 8.1, the Trustee and an officer, agent or employee of the Trustee is prohibited from being indemnified from the Trust Fund if the loss, liability, cost or expense is attributable to:

- (a) the dishonesty of the Trustee (or of the relevant officer, agent or employee of the Trustee);
- (b) gross negligence or recklessness of the Trustee (or of the relevant officer, agent or employee of the Trustee); or
- (c) a deliberate act or omission known by that Trustee, officer, agent or employee of the Trustee to be a breach of trust.

## 9 Books of account and receipts

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### 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 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 at the end of that Accounting Period.

## 9.3 Receipts

Receipts issued for gifts must state:

- (a) the name of the Trust;
- (b) the ABN applicable to the Trust; and
- (c) the fact that the receipt is for a Gift or Deductible Contribution of the specified amount to the Trust.

## 10 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 4.1.
- (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 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 charitable trusts;
- (b) unless the Commissioner consents to the revocation, addition or variation, the deed will continue to comply with the requirements of item 4.1.3 of section 30-45 of the ITAA 97; and



- (c) the Trustee notifies the Australian Charities and Not-for-profits Commission or Commissioner, as required, of the amendment.

## 12 Trustee's costs and expenses

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The Trustee may charge and be paid out of any part of the capital or income of the Trust Fund for all reasonable costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management, or the management or administration of the Trustee, and 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.

## 13 General

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### 13.1 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.

### 13.2 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.

### 13.3 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 7.1) 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 or conflict of fiduciary duty 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
- (c) even though the Trustee is a sole trustee.

### 13.4 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 except in respect of the administration of the Public Fund. 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.



### 13.5 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.

### 13.6 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.

## 14 Winding up

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- (a) If, on the winding up of the Trust, any property remains after the satisfaction of all its debts and liabilities, and application of clause 5.6(h), that property must be transferred to a fund, authority or institution:
  - (1) which is charitable; and
  - (2) falls within item 4.1.3 of section 30-45 of the ITAA 97.
- (b) The identity of the fund, authority or institution must be decided by the Trustee, or if the Trustee does not decide or does not wish to decide, by the Supreme Court of Victoria. .

## 15 Governing law

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This deed is governed by the laws of Victoria.