
CONSTITUTION
OF
THE DON DUNSTAN FOUNDATION
AS ADOPTED ON 30 APRIL 2004

I. PREAMBLE

This Constitution recognises the predominant relationship between the Don Dunstan Foundation and the University of Adelaide and Flinders University as public education institutions involved in furthering the aims and objects of the Foundation.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution the following expressions shall, unless the context otherwise requires, bear the following meanings:

1.1.1 “Accounting Period” means

1.1.1.1 the period of twelve (12) months ending on the 30th day of June in each year; and

1.1.1.2 the period commencing on the first day of July prior to the winding up of the Trust Fund and ending on the day of the winding up of the Trust Fund;

1.1.2 “Board of Management” has the meaning stated in Clause 8.4;

1.1.3 “Relevant Areas” has the meaning stated in Clause 3.3;

1.1.4 “Founder’s Family” has the meaning stated in Clause 5.2.1;

1.1.5 “Tax Act” means the Income Tax Assessment Act 1997;

1.1.6 “Trustees” means the persons holding office for the time being as Trustees of the Foundation;

1.1.7 “Trust Fund” means

1.1.7.1 the sum of money mentioned in introductory paragraph A;

1.1.7.2 all money, investments and property paid or transferred to and accepted by the Trustees as additions to the Trust Fund;

1.1.7.3 any income accumulated;

1.1.7.4 all other accretions to the Trust Fund; and

1.1.7.5 the investments and property from time to time held by the Trustees upon the trusts of this Constitution until paid out or otherwise dealt with in accordance with this Constitution;

1.1.8 “University” means The University of Adelaide as continued in existence by the University of Adelaide Act 1971 and “Flinders University” means the Flinders University of South Australia as

established and incorporated by the Flinders University Act of South Australia 1966;

1.1.9 “Vice-Chancellor” means the Vice-Chancellor for the time being of The University of Adelaide.

1.2 In this Constitution, unless the context otherwise requires:-

1.2.1 the singular includes the plural and vice versa;

1.2.2 a reference to one gender includes all genders;

1.2.3 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

1.2.4 a reference to a person includes a natural person, partnership, corporation, trust, association, unincorporated body, authority or other entities;

1.2.5 a reference to a statute includes regulations and other subordinate instruments issued pursuant to the statute and includes consolidations, amendments, re-enactments or replacements of any of them; and

1.2.6 references to a clause, paragraph or schedule mean a clause, paragraph or schedule respectively of this Constitution.

1.2.7 Clause headings and the table of contents are provided for convenience only and do not affect the interpretation of this Constitution.

2. DECLARATION OF TRUST

2.1 The Trustees hold the Trust Fund and the income of the Trust Fund as a public charitable trust in perpetuity upon the trusts and subject to the provisions set out in this Constitution.

2.2 Provided that no part of the Trust Fund shall be at any time be held or applied by the Trustees otherwise than for public charitable purposes in Australia, the charitable trust shall be maintained primarily for the benefit of the University and Flinders University.

3. TITLE OF THE TRUST AND MAIN AIM OF THE FOUNDATION

3.1 The title of the Trust is The Don Dunstan Foundation.

3.2 The Foundation is established with a view to perpetuating the memory of the Founder and reflecting his life’s work through the fostering of research and education on a broad range of issues concerning social development based on:

- 3.2.1 social and economic equity;
 - 3.2.2 the appropriate use of government intervention to secure socially just outcomes;
 - 3.2.3 the ability of individuals substantially to control their own lives;
 - 3.2.4 democratic and inclusive forms of governance;
 - 3.2.5 cultural and ethnic diversity;
 - 3.2.6 tolerance and respect for fundamental human rights and the rights of minorities suffering discrimination;
 - 3.2.7 respect for and protection of the rights of indigenous people; and
 - 3.2.8 remediation of global mal-distribution of wealth and income.
- 3.3 For the purposes of Clause 4.1, the issues mentioned in Clause 3.2 are called “the Relevant Areas”.

4. OBJECTS AND FUNCTIONS OF THE FOUNDATION

- 4.1 Without limiting the main aim of the Foundation as set out in Clause 3.2, the objects and functions of the Foundation shall be all or any of the following:
- 4.1.1 to endow a chair at the University initially to be called The Don Dunstan Chair of Social Inquiry;
 - 4.1.2 to award scholarships, trusts, donations, endowments or gifts with the object of funding and encouraging study and research in any of the Relevant Areas whether at the University, Flinders University or at any other post-secondary educational institution in Australia approved by the Trustees;
 - 4.1.3 to commission, promote or subsidise academic research projects into any of the Relevant Areas whether at the University, Flinders University or at any other post-secondary educational institution in Australia approved by the Trustees;
 - 4.1.4 to publish or subsidise the publication of the results of academic research projects into any of the Relevant Areas;
 - 4.1.5 to disseminate or subsidise the dissemination of educational materials relating to any of the Relevant Areas;
 - 4.1.6 by means of scholarships, grants, sponsorships, prizes or other financial assistance to support students or intending students of the University, Flinders University or any other post secondary educational institution

in Australia approved by the Trustees in the pursuit of their studies into any of the Relevant Areas whether in Australia or overseas;

- 4.1.7 to commission, promote or subsidise academic studies or research into the influences on the social development and history of Australia achieved by the Founder through his life and work and to publish or subsidise the publication of the results of such studies or research;
 - 4.1.8 to convene, organise and conduct seminars, lectures, classes, courses of study, presentations or public forums with the intention of furthering the objects of the Foundation;
 - 4.1.9 to solicit and accept gifts, donations, trusts, endowments, bequests, subsidies, sponsorships or grants from any individual, organisation, association, estate or governmental body to assist the Foundation in carrying out its functions, and to raise funds for all or any of the Foundation's objects;
 - 4.1.10 to advertise and promote the activities of the Foundation by any means or medium;
 - 4.1.11 to do all such other acts, matters or things as are or appear to the Trustees to be incidental or conducive to the attainment of the above objects.
- 4.2 The Trustees shall be responsible for managing the objects and functions of the Foundation and they shall have all powers necessary for or ancillary to such management.

5. THE TRUSTEES

- 5.1 The number of Trustees shall not be less than four and the total number shall be as determined by the Trustees from time to time.
- 5.2
 - 5.2.1 The Founder's children and more remote issue aged over 18 ("the Founder's Family") may if they wish nominate one of their number for appointment as a Trustee. The person so nominated shall be appointed by the Vice-Chancellor as a Trustee of the Foundation. The same procedure shall be adopted on the retirement as Trustee of each successive representative of the Founder's Family.
 - 5.2.2 Nominations under Clause 5.2.1 shall be in writing and shall be lodged with the Vice-Chancellor within thirty days of being called for. Every request by the Vice-Chancellor for a nomination shall be effective if given to any one member of the Founder's Family at his or her address last known to the Vice-Chancellor.

- 5.2.3 The Vice-Chancellor shall not be bound to consider any nomination not lodged within the period specified in Clause 5.2.2.
- 5.3 The Vice-Chancellor shall be a Trustee ex officio.
- 5.4 The Vice Chancellor of Flinders University of South Australia shall also be a Trustee ex officio.
- 5.5 Any Trustee may retire from office by giving to the Vice-Chancellor ten days' notice in writing of his or her retirement.
- 5.6 The office of a Trustee shall automatically be vacated if the Trustee dies, becomes of unsound mind or is adjudicated bankrupt.
- 5.7 The power to appoint new Trustees of the Foundation, other than Trustees appointed under clauses 5.2, 5.3 and 5.4, shall be vested in the Trustees. Every appointment of a new Trustee shall be made by the Trustees acting pursuant to a resolution of the Trustees carried by the affirmative vote of at least two-thirds of those attending and entitled to vote at the relevant meeting of Trustees.
- 5.8 In considering the appointment of a new Trustee under Clause 5.7 the Trustees shall take into account the Founder's wishes as expressed in the First Schedule.
- 5.9 There shall be a Chair and Deputy Chair of Trustees elected by the Trustees.
- 5.10 The Trustees shall not be entitled to any remuneration for acting as such, but each of them may claim his or her expenses properly incurred in attending to the affairs of the Foundation. Such expenses shall be repaid out of the Trust Fund as soon as practicable.
- 5.11 As at and by virtue of the adoption of this Constitution:
- 5.11.1 the persons mentioned in the Second Schedule shall be deemed to have retired from the Office of Trustee; and
- 5.11.2 the Trustees thereafter shall be those persons mentioned in the Third Schedule.

6. MEETINGS OF THE TRUSTEES

- 6.1 The Trustees shall meet as often as they consider necessary for the proper performance of their duties, and at least twice in every year.
- 6.2 A quorum for meetings shall be constituted by the presence of half the number of Trustees then holding office plus one other Trustee.
- 6.3 At meetings of the Trustees each Trustee including the Chair shall have one vote. The Chair shall if necessary also have a casting vote as required to resolve a deadlock on any matter.

- 6.4 Every meeting of the Trustees shall be chaired by the Chair or in his or her absence by the Deputy Chair or (if neither is present) by another of the Trustees appointed by the Trustees then present at the meeting.
- 6.5 The Trustees may meet together either in person or (provided that all persons participating in the meeting are able to hear and be heard by all other participants) by telephone or any other form of instantaneous communication for the despatch of business and may adjourn and otherwise regulate their meetings and proceedings as they see fit. Any Trustee not present in person at any meeting but participating in a meeting in the manner previously mentioned shall be taken for the purpose of this Constitution to be present at that meeting.
- 6.6 The Chair of Trustees or either of the Vice-Chancellors may convene a meeting of Trustees by giving not less than twenty-one days' prior notice in writing to the Trustees specifying in the notice the time, date and place and the business of the proposed meeting. If all the Trustees so agree in writing a meeting may be held notwithstanding that no prior notice or less than twenty-one days' prior notice may have been given.
- 6.7 Unless otherwise provided in this Constitution, all decisions of the Trustees shall be made by simple majority of those present and voting at the meeting.
- 6.8
- 6.8.1 If all the Trustees have signed a document containing a statement that they are in favour of a resolution of the Trustees in terms set out in the document, a resolution in those terms shall be taken to have been passed at a meeting of the Trustees held on the day on which the document was signed and at the time at which the document was last signed by a Trustee, or (if the Trustees signed the document on different days) on the day on which and at the time at which the document was last signed by a Trustee.
- 6.8.2 For the purposes of Clause 6.8.1, two or more separate documents containing statements in identical terms each of which is signed by one or more Trustees shall together be taken to constitute a single document containing a statement in those terms signed by those Trustees on the respective days on which they signed the separate documents.

7. PATRONS

- 7.1 The Trustees may appoint such persons as it determines to be Patrons of the Foundation who must be distinguished members of society.
- 7.2 The Patrons of the Foundation will be determined by the Trustees having regard to the Founder's wishes detailed in the First Schedule and having regard to individual commitment to the Foundation.
- 7.3 The Trustees may at any time withdraw the status of Patron as they think fit.

8. ADMINISTRATION - BOARD OF MANAGEMENT

- 8.1 The Trust Fund and its administration is vested in the Trustees.
- 8.2 In the exercise of the authorities, powers and discretions vested in them, the Trustees shall unless otherwise expressly provided in this Constitution have an absolute and uncontrolled discretion and they may at any time exercise or refrain from exercising or enforcing any of their authorities, powers and discretions.
- 8.3 The Trustees shall ensure that proper books of account and records of the Trust Fund are kept at all times. An account of the Trust Fund shall be prepared in respect of every Accounting Period and a copy delivered to the Vice-Chancellors.
- 8.4 The Trustees shall be entitled to delegate the administration of the Foundation and the financial management of the Trust Fund to a committee of persons appointed by the Trustees for that purpose to be known as the “Board of Management”. There shall be a Chair of the Board of Management, and an Executive Director of the Board of Management who shall also be a member of the Board of Management and who shall be responsible for managing its operations.
- 8.5 The Board of Management shall be accountable to the Trustees and shall provide the Trustees with accounts and reports whenever so required by the Chair of Trustees. The Board of Management may create an “Executive Committee” of the Board to facilitate management of the Foundation. The Trustees shall determine the “Terms of Reference” for and the accountability of the Board of Management to the Trustees.
- 8.6 The Trustees shall have power to pay out of the Trust Fund all costs, charges and expenses incidental to the administration, maintenance or management of the Foundation or the performance of the trusts. Such costs, charges and expenses shall be taken to include any income or other taxes payable in respect or by reason of the activities of the Foundation and the costs and expenses connected with the preparation and implementation of this Constitution, and to include the payment for public liability and other relevant insurances determined by the Trustees to be necessary for the Trustees, the members of the Board of Management, Committees and/or Chapter Committees.
- 8.7 Subject to the prior approval of the Trustees the Board of Management may engage the services of any person (the Trustees and members of the Board of Management excepted) to assist them in the administration or management of the Foundation and may determine the conditions of engagement of that person as they think fit.
- 8.8 The Board of Management shall consist of not less than four people representing at least the University and Flinders University of South Australia.

9. COMMITTEES AND CHAPTERS

- 9.1 Subject to the prior approval of the Trustees the Board of Management may establish such Committees as it deems necessary for specific purposes and to promote the Foundation.
- 9.2 In particular the Board of Management will endeavour to establish special Committees in each State and Territory of Australia and elsewhere to be known as “Chapters” of the Foundation.
- 9.3 The purpose of each Chapter is to promote the Foundation in the State, Territory or place where it is established.
- 9.4 Such Chapters will not have the power to commit the Board of Management to any expenditure not previously approved by the Board of Management.
- 9.5 The net proceeds of any fund raising activity of such Chapters must be paid into a Bank Account in the name of the Foundation.
- 9.6 The Chapters will not have any power to commit the Board of Management to any liability without the prior written consent of the Board of Management.
- 9.7 Each Chapter will have a Chair or Convenor who will be responsible to report to the Board of Management on a regular and timely basis regarding the activities of the Chapter.
- 9.8 Each Chapter will endeavour to recruit “Friends” of the Foundation in accordance with the rules determined by the Board of Management and as approved by the Trustees.

10. TRUSTEES’ INVESTMENT POWERS

- 10.1 Except as expressly limited by this Constitution or by the general law governing trustee investments, the Trustees shall have the same discretionary powers of investing moneys forming part of the Trust Fund as if they were the absolute beneficial owners of those moneys.
- 10.2 No substantial or long-term investment of moneys in the Trust Fund shall be made by the Trustees except upon the previous written advice of the Vice-Chancellor.

11. AMENDMENT OF THE CONSTITUTION

The Trustees acting pursuant to a resolution of the Trustees carried by the affirmative vote of at least two-thirds of those attending and entitled to vote at the relevant meeting of Trustees may at any time by Deed vary, revoke, add to or replace any of the provisions of this Constitution.

12. PROTECTION FOR TRUSTEES

12.1 The Trustees shall not as trustees of the Trust Fund or in respect of the execution or purported or attempted execution of or failure or neglect to exercise or carry out the Trustees' duties, authorities, powers or discretions under this Constitution incur any personal responsibility or be liable in any way except for a breach of trust knowingly and wilfully committed by the Trustees or a Trustee.

12.2 No Trustee shall be responsible for:

12.2.1 any loss or damage occasioned by the exercise of any discretionary power conferred on the Trustees by this Constitution or by general law or by the failure to exercise any such discretion or power; or

12.2.2 any breach of duty or trust unless proved to have been committed, made or omitted in personal conscious fraudulent bad faith by the Trustee charged to be so liable

AND all persons claiming any interest or right whatever in or to the property comprised in the Trust Fund shall be taken to have notice of and take subject of the protection conferred on the Trustees by this clause.

12.3 Except in case of a breach of a trust knowingly and wilfully committed by him or her, each of the Trustees shall be indemnified out of the Trust Fund against all liabilities incurred by him or her as one of the Trustees or in the execution or attempted or purported execution of or failure or neglect to execute the trusts, duties, authorities, powers or discretions under this Constitution. The Trustees shall have a lien on and may use the Trust Fund for such indemnity.

13. JOINT ACTS - NO DELEGATION BY TRUSTEES

13.1 The Trustees shall act jointly but any resolution of a majority of the Trustees shall (unless unanimity is required under some express provision of this Constitution) be binding on the minority.

13.2 No Trustee may delegate the exercise of any of the powers or discretions vested in him or her as a Trustee.

14. APPLICATION AND WINDING UP OF FOUNDATION

14.1 The income and property of the Foundation, however derived, shall, subject only to any obligations under charitable trust law or any other statutory requirement, be used and applied solely in the promotion of the Foundation in accordance with its objects and in the exercise of the powers conferred under this Constitution.

14.2 Subject to the provisions of Clause 14.3, the Trustees may at any time by unanimous resolution determine to wind up the Foundation.

- 14.3 The Trustees shall not have power to wind up the Foundation except with the prior written approval of the Vice-Chancellor.
- 14.4 Upon the winding up or dissolution of the Foundation (whether voluntary or not) and after satisfaction of all the debts and liabilities of the Foundation, including the expenses of the winding up or dissolution, the balance of the Trust Fund then remaining together with any unexpended income shall be disposed of in accordance with Clauses 14.5 and 14.6.
- 14.5 The balance of the Trust Fund together with any unexpended income shall be given or transferred as follows:-
- 14.5.1 to the University and/or Flinders University for one or more educational purposes similar to those of the Foundation provided that such purposes are charitable under the law; but otherwise
- 14.5.2 to such one or more of the educational funds, authorities or institutions in South Australia as are mentioned in Subdivisions 30-A and 30-B of the Tax Act or as approved by the Commissioner of Taxation and which have objects similar to those of the Foundation.
- 14.6 The selection of the recipients under Clause 14.5 and the proportions in which they are to benefit shall be determined by the Trustees at or before the time of winding up or dissolution. If the Trustees fail to make a determination then it shall be made instead by the Vice-Chancellor.

15. CHAIR APPOINTMENTS COMMITTEE

The Trustees agree that whenever so requested by the Vice-Chancellor they will nominate a sufficient number of the Trustees then in office to constitute at least half the members of the Chair Appointments Committee formed to consider the appointment of the first and subsequent Professors of The Don Dunstan Chair at the University.

16. GOVERNING LAW

This Constitution shall be governed by and construed in accordance with the law of the State of South Australia.

FIRST SCHEDULE

The Founder wishes that so far as convenient and without jeopardising the good management of the Foundation the Trustees shall consider appointing as Trustees of the Foundation persons who have a background and interest and a demonstrated achievement in any of the following fields:

- X reformist social democratic politics
- X literature
- X the Arts
- X food and wine

and who have a commitment to and an understanding of the Founder's philosophies.

SECOND SCHEDULE

Mr Phillip Adams AO
Ms Robyn Archer AO
Mr David Combe
Mr Andrew Dunstan
Hon Barry Jones AO
Dr Lowitja O'Donoghue
Mr Greg Mackie

Hon Jane Lomax-Smith
Ms Carmel O'Loughlin
Professor Sue Richardson
Professor Hugh Stretton
Professor Mary O'Kane
Ms Jennie George
Mr Noel Pearson

THIRD SCHEDULE

Professor James Alexander McWha
Vice-Chancellor
The University of Adelaide
University of Adelaide SA 5005 (ex-officio)

Ms Bronwen Vivien Dohnt
35 Sturt Avenue
Clapham SA 5062 (Founder's Family)

Hon Gregory John Crafter
86 Edward Street
Norwood SA 5067

Professor Anne Rosalie Edwards
Vice Chancellor
Flinders University
GPO Box 2100
Adelaide SA 5001 (ex officio)

Mr William Raymond Cossey
39B Brunswick Street
Walkerville SA 5081

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