



## Deed

Dated 10<sup>th</sup> January 2008

**The Royal Society of Tasmania (“Society”)**

**and**

**The Trustees of the Tasmanian Museum  
 (“Trustees”)**

**The Crown Solicitor of Tasmania  
GPO Box 825  
Hobart 7001  
Phone: (03) 6223 3409  
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Email: [crown.solicitor@justice.tas.gov.au](mailto:crown.solicitor@justice.tas.gov.au)**

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Parties     Society, Trustees

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Name	<b>The Royal Society of Tasmania</b> constituted a body corporate Pursuant to the provisions of the <i>Royal Society Act 1911</i> (" <b>Society</b> ")
Address	The Royal Society of Tasmania GPO Box 1166 HOBART TAS 7001
Telephone	03 6211 4152
Fax	03 6211 4112
Attention	Honorary Secretary

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Name	<b>The Trustees of the Tasmanian Museum</b> constituted a body Corporate pursuant to Section 4 of the Act (" <b>Trustees</b> ")
Address	GPO Box 1164 HOBART TAS 7001
Telephone	03 6211 4188
Fax	03 6211 4112
Attention	Steven de Haan

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- Recitals**
- A** Pursuant to Section 3 of the 1885 Act the land described in the Schedule of the 1885 Act was vested in the then Trustees of the Tasmanian Museum and Botanical Gardens.
- B** Part of the Museum is constructed on the land described in the Schedule to the 1885 Act.
- C** Section 4 of the 1885 Act provided that in consideration of the services rendered by the Society that "... the Society shall have exclusive possession of the Library Room of the Museum, or other sufficient and convenient rooms therein, for the safe custody of their library of books and other effects, and for their meetings and for all other purposes connected with the Society."
- D** Section 5(2) of the Act provided that "The Trustees may at the request of the Royal Society of Tasmania, convey to that society, either in exchange for or in addition to the room of which that society is seised in fee simple by virtue of " section four of the Tasmanian Museum and Botanical Gardens Act 1885, other sufficient and convenient rooms in the Tasmanian Museum for the safe custody of its library of books and other effects and for its meetings and for all other purposes connected with it.
- E** Section 3(2) of the 1950 Act provided that "The trustees shall convey to the Museum Trustees the land described in the first schedule to the Principal Act [the 1885 Act] except the room of which the Royal Society is seised in fee simple by virtue of section four of the Principal Act".

- F** The Trustees of the Tasmanian Museum and Botanical Gardens did not convey the land described in the First Schedule of the 1885 Act to the Trustees (as required by Section 3(2) of the 1950 Act).
- G** Doubts have arisen with respect to the statements in Section 3(2) of the 1950 Act that "... the Royal Society is seised in fee simple by virtue of section four of the Principal Act" and Section 5(2) of the Act "... that the Society is seised in fee simple by virtue of section of the *Tasmanian Museum and Botanical Gardens Act 1885* ..." in that the Society was to be seised in fee simple but rather stated that "... the Society shall have exclusive possession of the Library Room of the Museum, or other sufficient and convenient rooms therein, for the safe custody of their library of books and other effects, and for their meetings and for all other purposes connected with the Society...".
- H** The reasons that doubts have arisen is that the 1885 Act by only referring to exclusive possession did not grant a fee simple ownership.
- I** The Society has agreed to enter into this Deed to acknowledge that it is not the fee simple owner of any room within the Museum and that the Trustees may call for a title to the Land on the proviso that the Trustees acknowledge that the Society will be entitled to the exclusive possession of a dedicated room and other sufficient and convenient rooms in the Museum for the purposes of the custody of the Society's library of books and other effects and for the Society's meetings and for all other purposes connected with the Society.
- J** The other sufficient or convenient rooms referred to in Recital I will with the approval of the Society acting reasonably be shared with the Trustees Provided That such use must not adversely affect the use and enjoyment of the said rooms by the Society.
- K** The Society has no objection to a bill being introduced into the Parliament of Tasmania to vest the Land in the Trustees and to clarify any confusion that may have arisen between the 1885 Act, the 1950 Act and the Act Provided That the terms and conditions of this Deed including the Society's right to exclusive possession of a dedicated room and other sufficient and convenient rooms in the Museum is referred to in the bill.
- L** The parties have agreed to enter into this Deed upon the terms and conditions herein contained.

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**Date of Deed**

See Signing page

# General terms

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## 1. Interpretation

### 1.1 Definitions

In this Deed unless the contrary and otherwise requires:

**“1885 Act”** means the *Tasmanian Museum and Botanical Gardens Act 1885*;

**“1950 Act”** means the *Tasmanian Museum and Botanical Gardens Act 1950*;

**“Act”** means the *Tasmanian Museum Act 1950*;

**“Business Day”** means any day on which banks are open for business in Hobart but does not include weekends, public holidays or the days between Christmas Eve and New Year’s Day inclusive;

**“Deed”** or **“this Deed”** means this document and all schedules and annexures hereto;

**“Land”** means the areas of land situate in the City of Hobart upon which the Museum is constructed;

**“Museum”** means the buildings constructed on the Land which buildings are known as the Tasmanian Museum and Art Gallery;

**“Society”** means The Royal Society of Tasmania constituted a body corporate pursuant to the provisions of the *Royal Society Act 1911* which expression includes the Society’s successors and assigns and where the context permits the employees agents contractors and subcontractors of the Society;

**“Trustees”** means the Trustees of the Tasmanian Museum constituted a body corporate pursuant to the provisions of the Act which expression includes the Trustees’ successors and assigns and where the context permits the employees agents contractors and subcontractors of the Trustees;

**“Writing”** and words of like import include typing, lithography, photography and other modes of representing or reproducing words in a tangible and visible form and “written” has a corresponding meaning.

### 1.2 Interpretation

- a) a reference to a clause or schedule is a reference to a clause of or schedule to this Deed and a reference to this Deed includes a recital or schedule;
- b) a reference to this Deed or another instrument is a reference to this Deed or that other instrument as the same stands at the date hereof;
- c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations amendments re-enactments or replacement of any of them;
- d) a word importing the singular includes the plural and vice versa, a word importing a gender includes each other gender and a reference to person includes an individual firm body corporate association (whether incorporated or not) government or governmental semi-governmental or local authority or agency;
- e) a reference to a person includes the person’s executors administrators successors substitutes (including person taking novation), transferees and assigns; and
- f) a reference to an act matter or thing includes the whole or any part of that act matter or thing and

a reference to a group of acts matters or things or persons includes each act matter or thing or person in that group.

g) the verb “include” (in all its parts tenses and variants) is not used as nor is it to be interpreted as a word of limitation;

h) a reference to writing includes a reference to printing typing and each other method of producing words figures or symbols in visible form.

i) where a word or expression is given a particular meaning other parts of speech and grammatical forms of that word or expression have corresponding meanings.

### **1.3 Timing**

Where under or pursuant to this Deed or anything done hereunder the day on or by which any act matter or thing is to be done is not a Business Day such act matter or thing must be done on the immediately following Business Day.

### **1.4 Headings**

Headings are inserted for convenience and do not affect the interpretation of this Deed.

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## **2 Society’s acknowledgement**

The Society hereby acknowledges that it was not granted a fee simple right to any particular room within the Museum by Section 4 of the 1885 Act and that the recitals of fee simple ownership in Section 3(2) of the 1950 Act and in Section 5(2) of the Act were incorrect.

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## **3 Fee simple title**

Subject to the obligations of the Trustees herein contained the Society hereby consents to the Trustees making application for a fee simple title to the Land and that the Society will not raise any objection and will sign any further documentation that may be required to enable the Recorder of Titles to issue an unencumbered fee simple title in the name of the Trustees.

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## **4 Trustees covenant**

The Trustees hereby covenant with the Society that the Society will be entitled to the exclusive possession of a dedicated room and other sufficient and convenient rooms within the Museum for the purpose of the Society providing safe custody for its library of books and other effects for the Society’s meetings and for all other purposes connected with the Society Provided That any new room or other sufficient and convenient rooms within the Museum will not be of a lesser standard than those presently enjoyed by the Society.

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## **5 Society’s access**

The Trustees will not prevent the Society from having access to a dedicated room and other shared facilities within the Museum nor will the Trustees change the location of the room without the prior written consent of the Society which consent must not be unreasonably withheld.

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## **6 Society's covenant**

In consideration of the Trustees making available to the Society a suitable space in accordance with clause 4 and access to other shared facilities within the Museum the Society undertakes to give free and exclusive use to the Trustees of the Society's collections for the purpose of furthering knowledge understanding and appreciation of the cultural heritage contained within the Society's collection upon such terms and conditions as the Society may determine from time to time on the proviso that the Society must act reasonably and not make a charge for the use of the Society's collection.

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## **7 Non merger**

The provisions of this Deed and the rights and obligations of the parties will not merge on issue of a title to the Land in the name of the Trustees with all rights and obligations to remain in full force and effect.

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## **8 Costs**

The Trustees will pay the Society's reasonable legal costs associated with the preparation and completion of this Deed.

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## **9 Goods and Services Tax**

### **9.1 GST exclusive**

All fees or other sums payable or any other consideration provided or to be provided under or in connection with this Deed exclude GST.

### **9.2 Taxable supply**

The Society may recover from the Trustees and the Trustees must pay the amount of any GST ("Additional Amount") payable under the GST Act subject to the Society issuing a valid tax invoice for the taxable supply.

### **9.3 Additional amount**

The Additional Amount must be paid in accordance with the tax invoice.

### **9.4 Cross reference**

Clauses 0.1 and 9.2 will also operate as if references to the Trustees are references to the Society and vice versa.

### **9.5 Terms and expressions**

Terms and expressions used in this clause which are defined in the GST Act have the same meanings given to those terms and expressions in that Act. "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cwth) including all amendments made to the GST Act and any other regulations and other regulations and other instruments made under the GST Act.

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## **10 Notices**

### **10.1 How to give a notice**

A notice claim consent or other communication to be given or made under this Deed is taken to have



been duly given or made when:

- (a) hand delivered in writing; or
- (b) sent by prepaid post; or
- (c) sent by facsimile transmission from a facsimile machine which produces a print out of the time date and uninterrupted transmission record of the sending notice (to the listed facsimile number);

to the party to which the notice claim or consent is required or permitted to be given or made under this Deed at the following addresses:

The Society	Honorary Secretary The Royal Society of Tasmania GPO Box 1166 HOBART ... 7001 Facsimile number: (03) 6211 4112
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The Trustees	The Manager Business and Support Services Tasmanian Museum and Art Gallery GPO Box 1164 HOBART ... 7001 Facsimile number: (03) 6211 4112
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## **10.2 How to serve notice**

Any notice demand consent in writing or other communication will be deemed to have been duly served:

- (a) in the case of hand delivery when delivered;
- (b) if sent by prepaid certified or registered post on the third Business Day after the date of posting;
- (c) if sent by facsimile transmission (provided that the sending facsimile machine produces a print out of the time date and uninterrupted transmission record of the sending of the Notice) upon completion of sending if such completion is within ordinary business hours in the place where the recipient's facsimile machine is located but if not then at 9.00a.m. on the next following Business Day in such place.

## **10.3 Who can sign a notice**

Any notice demand consent in writing or other communication requiring to be given or made pursuant to this Deed will be sufficient if:

- (a) in the case of the Society it is under the hand of the Society or the Society's authorised agent or solicitors;
- (b) in the case of the Trustees it is under the hand of the Trustees or the Trustees' authorised agent or solicitors.

A printed or copied signature will be sufficient for the purposes of sending any notice demand consent in writing or other communication by facsimile transmission.

## **10.4 English language**

All notices must be in the English language.

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## **11 Relationship of parties**

Nothing contained in this Deed will be deemed or construed to create the relationship or partnership or of principal and agent or of joint venture between the Society and the Trustees.

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## **12 Waiver**

### **12.1 Waiver by the Society**

No waiver by the Society or any provision or right remedy or power of the Society under this Deed will be effective unless it is in writing signed by the Society or the Society's agent or solicitor and such waiver will be effective only in the specific instance and for the specific purpose for which it was given. No failure or delay by the Society to exercise any right remedy or power under this Deed or to insist on strict compliance by the Trustees with any obligation under this Deed and no custom or practice of the parties at variance with the terms of this Deed will constitute a waiver of the Society's rights to demand exact compliance with this Deed.

### **12.2 Waiver by the Trustees**

No waiver by the Trustees of any provision or right remedy or power of the Trustees under this Deed will be effective unless it is in writing signed by the Trustees or the Trustees' agent or solicitor and such waiver will be effective only in the specific instance and for the specific purpose for which it was given. No failure or delay by the Trustees to exercise any right remedy or power under this Deed or to insist on strict compliance by the Trustees with any obligation under this Deed and no custom or practice of the parties at variance with the terms of this Deed will constitute a waiver of the Trustees' rights to demand exact compliance with this Deed.

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## **13 Dispute resolution**

### **13.1 Management level and committee discussions**

Should any dispute arise with respect to any of the clauses herein contained or the rights and obligations of either party then the parties must use all reasonable endeavours to settle the matter in dispute within ten (10) Business Days of both parties becoming aware of the dispute. For the purpose of this clause to assist in revolving any dispute at first instance the matter in dispute must be discussed at management level and failing satisfactory resolution a committee consisting of representative from the Society and a representative from the Trustees with an independent third person appointed by the President of the Law Society of Tasmania or its successor body to act as mediator must be established to try and resolve the dispute.

### **13.2 Independent consultant**

Having complied with the provisions referred to in clause 13.1 hereof and if the matter in dispute has not been settled within twenty (20) Business Days of the committee being formed then either party may require that such dispute be resolved by an independent consultant expert in the area of the dispute such expert to be nominated by the President of the Law Society of Tasmania or its successor body.

### **13.3 Acting as an expert**

In making any determination any independent consultant will be deemed to be acting as an expert and not as an arbitrator.

### **13.4 No other action to be taken**

Neither the Society nor the Trustees will be entitled to commence or maintain any action whether by way of legal proceedings or arbitration relating to such dispute until it has been referred to and determined by the independent consultant as provided for in this clause Provided That the provisions of this clause will not prevent either party from applying for urgent interlocutory relief.

### **13.5 Notice of dispute**

Each party must ensure that any notice of dispute given under this clause contains full and complete particulars of such dispute to ensure that all determinations are expeditiously completed.

### **13.6 Costs**

The cost of such determination will be paid by the Society and the Trustees in such proportions as determined by the independent consultant.

### **13.7 Determination binding on parties**

The determination of the independent expert consultant will be binding on both parties.

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## **14 Severance**

### **14.1 Reading down provisions**

If a provision of this Deed is void or voidable or unenforceable by either party but would not be void or voidable or unenforceable as aforesaid if it were read down it must be read down accordingly.

### **14.2 Severance**

If notwithstanding clause 14.1 a provision of this Deed is still void or voidable or unenforceable by either party:

- (a) if the provision would not be void or voidable or unenforceable as aforesaid if a word or words were omitted therefrom that word or those words (as the case may be) are hereby severed; and
- (b) in any other case the whole provision is hereby severed,  
and the remainder of this Deed has full force and effect.

**Executed** as a Deed.

# Signing page

Dated: 10 January 2008

2008

The Common Seal of Royal  
Society of Tasmania fixed in the  
presence of:

  
.....  
President  
  
.....  
Director/Secretary

The Common Seal of the Trustees  
of the Tasmanian Museum fixed in  
the presence of:

  
.....  
The Common Seal of the  
Trustees of the  
Tasmanian Museum  
  
.....

.....  
Director

.....  
Director/Secretary

