

Jan Pentland Foundation Trust Deed

Details

Interpretation – definitions are at the end of the General terms

Parties	Founder, Trustee	
Founder	Name	Peter John Gartlan
	Address	181 Ainsworth Avenue, Chum Creek 3777
	Telephone	(03) 5962-3532
	Fax	
Trustee	Name	Jan Pentland Limited
	ABN/ACN/ARBN	
	Address	C/ - Australian Financial Counselling & Credit Reform Association Ground Floor, River Tower 20 Pidgeon Close West End PO Box 3786 South Brisbane Qld 4101
	Telephone	07 3004 6966
	Fax	07 3004 6999
	Attention	Fiona Guthrie
Recitals	A	The Trustee has resolved to establish and maintain a public fund to be known as the “ Jan Pentland Foundation ” to honour Jan Pentland.
	B	The Founder has agreed to pay to the Trustee as an original endowment the sum of \$100 to be held by the Trustee on the trusts declared in this deed.
	C	The Jan Pentland Foundation will solicit and accept donations from members of the public. The Founder contemplates making further gifts to the Trust Fund.
Governing law	Victoria	

**Date of
agreement**

See Signing page

Trust Deed establishing The Jan Pentland Foundation

General terms

1 Establishment and Duration of Trust Fund

1.1 Establishment of Trust Fund

The Founder has on the execution of this Deed transferred to the Trustee the sum of \$100 and directs that the Trustee is to, and the Trustee declares that it will:

- (a) act as Trustee of the Trust; and
- (b) hold the Trust Fund as a public charitable trust which must have the Objects set out in clause 2 (“Objects”).

To achieve the Objects, it is intended that money will be raised from members of the public, which, together with any additional property, and all investments and property representing that money and property and any accretions or additions to it must be held by the Trustee and applied under the terms of this deed.

1.2 Trust Fund name

The Trust Fund will be known as “**The Jan Pentland Foundation**”.

1.3 Trustee to further Objects

The Trustee must direct its efforts towards furthering the Objects in managing and conducting the affairs of the Trust.

1.4 Sufficient application of Trust Fund

The receipt by any Approved Recipient of any relevant Eligible Scholarship, Bursary or Prize is a sufficient discharge by the Trustee of the Trust Fund. The Trustee is not obliged to see to the application of the Trust Fund by the Approved Recipient.

1.5 Commencement

Subject to any express provision of this Deed, the Trustee may only in relation to the Trust Fund:

- (a) hold the Trust Fund;
- (b) exercise all rights and powers attaching or relating to the Trust Fund; and
- (c) do any things which the Trustee is authorised, entitled or obliged to do by the provisions of this Deed.

1.6 When does the Trust Fund commence?

The Trust Fund commences when the Founder pays to the Trustee the sum of \$100 as an original endowment.

2 Objects

2.1 General Objects

- (a) The Foundation is established for the sole purpose of providing financial assistance to Approved Recipients by way of Eligible Scholarships, Bursaries or Prizes;
- (b) In providing an Eligible Scholarship, Bursary or Prize, the Foundation may:
 - (i) provide money directly to Approved Recipients; or
 - (ii) sponsor a particular scholarship, bursary or prize provided to an Approved Recipient by another organisation;
- (c) More specifically, the Foundation will provide Eligible Scholarships, Bursaries or Prizes for the following purposes:
 - (i) assisting persons who may be unable to afford to obtain enrolment in courses in the financial counselling or related industries by funding their Educational Expenses for an Approved Course; or
 - (ii) further enhancing the technical or business skills of individuals working within the financial counselling or related industries by funding their Educational Expenses in an Approved Course; or
 - (iii) assisting indigenous financial counsellors or indigenous persons who want to become financial counsellors, to enrol in courses in the financial counselling or related industries by funding their Educational Expenses for an Approved Course; or
 - (iv) providing an award of money or property to individuals who:
 - (A) are currently engaged in study in an Approved Course for the purpose of enhancing their technical or business skills within the financial counselling or related industries; or
 - (B) may wish to join the financial counselling or related industries.

The awards of money or property referred to in this clause 2 will be provided by the Foundation on the basis of:

- merit, such as academic achievement; or

- identified need; or
- the individual has the potential or demonstrated ability to positively assist disadvantaged persons through the provision of financial counselling; or
- for reasons of equity.

2.2 Australia

The Foundation is established in Australia, must be operated in Australia and must be maintained exclusively for public charitable purposes in Australia.

2.3 Raising Funds

The Foundation is to solicit donations, gifts, bequests and other forms of financial assistance to, or for the benefit of, the objects of the Foundation, including by conducting fundraising initiatives.

2.4 Educational purposes

The Trustee may only apply the income and capital of the Foundation for Eligible Scholarships, Bursaries and Prizes for the purpose of promoting the education of an Approved Recipient in an Approved Course.

2.5 Trustee may apply capital and income

- (a) The Trustee may apply the income of the Trust Fund, generated in any financial year for the purposes referred to in this clause 2.1.
- (b) The Trustee may also apply the capital of the Trust Fund in any financial year for the purposes referred to in this clause 2.1.
- (c) The Trustee must distribute a substantial part of the income (but not necessarily capital gains) of the Trust Fund. It must not allow the income of the Trust Fund to accumulate excessively.
- (d) The Trustee may, however, apply some of the income of the Trust Fund to acquire assets that will produce more income in the future. It may also accumulate some of the income of the Trust Fund for later distribution.

2.6 Not for profit

No monies or assets in the Foundation will be distributed to the Founder, the Trustee or to the members or office bearers of the Trustee, except as reimbursement of out-of-pocket expenses incurred on behalf of the Foundation or proper remuneration for administrative services determined on an arm's length basis.

3 Control of Trust Fund

3.1 Qualified persons to control Trust Fund

To ensure that the Trust Fund is controlled and administered by persons who because of their tenure of some public office or position or some activity in the community may be expected to have a high degree of responsibility to the public in exercising that control or administration, the Trustee must be a company in relation to which the following provisions apply:

- (a) the majority of its Directors must be Qualified Persons;
- (b) the number of Directors for the time being in office must not be less than three; and
- (c) if the number of Directors in office falls below three the Trustee may not act in the affairs of the Trust Fund until that number is filled by the election or appointment of further Directors.

4 Trustee

4.1 Retirement of Trustee

The Trustee may retire on at least one month's written notice to the Founder.

4.2 Successor Trustee to be bound by this deed

Any successor Trustee must execute a deed by which it covenants to be bound by this Deed as if it had been originally party to it.

4.3 Release of Outgoing Trustee

When it retires, the outgoing Trustee is released from all obligations in relation to the Trust Fund arising after the time it retires or is removed. The outgoing Trustee must execute and deliver any documents and do every other thing which is necessary or desirable to effect the appointment of the successor Trustee.

5 Public Fund

5.1 Public fund at all times

The Trust Fund is at all times open to subscription by all members of the public.

5.2 Receipts issued by Trustee

All receipts issued by the Trustee on behalf of the Trust must quote the full name of the Trust, the ABN of the Trust and any other requirements specified under Subdivision 30-BA of the Act.

6 Investments

6.1 Authorised investments only

The Trust Fund may be invested solely in or on any investments or securities authorised by the law of the Commonwealth of Australia or any Australian State or Territory for the investment of trust money with power to vary or transpose those investments or securities from time to time and at any time.

6.2 No lending

Except for any investment or security in accordance with clause 6.1 (“Authorised investments only”) no part of the capital or income of the Trust Fund may be lent to or deposited with any person.

7 Powers of the Trustee

In addition to the powers conferred on the Trustee by law or which are otherwise conferred on it by this Deed, the Trustee has, subject always to clause 6 (“Investments”), the following powers and discretions:

- (a) **(distribution of funds)** to apply the funds in accordance with the objects of the Trust, as the Trustee thinks fit; and
- (b) **(unpaid and unapplied income)** to accumulate any unpaid or unapplied income of the Trust Fund by investing it and the resulting income and by holding the accumulations in addition to and on the same trusts and conditions that are applicable to capital but not so as to excessively accumulate investment income such that the Trust Fund is not being applied for its purpose in accordance with the Act; and
- (c) **(securities)** to exercise all rights and privileges and perform all duties pertaining to any bonds, shares, stock or debentures forming part of the Trust Fund with liberty to assent to any arrangements modifying those rights, privileges or duties; and
- (d) **(schemes and arrangements)** to agree to a scheme or arrangement for the reconstruction of or the increase or reduction of the capital of any company and for that purpose to:
 - (i) deposit, surrender and exchange shares or stock or the title to them; and
 - (ii) pay any calls or contributions or other necessary expenses in connection with shares, stock or the title to them; and
- (e) **(real property)** if at any time the Trust Fund comprises real property or any interest in real property:
 - (i) to manage, use and let it or any part of it;
 - (ii) to erect, demolish, rebuild and repair buildings and erections;

- (iii) to carry out improvements of any nature;
 - (iv) to make allowances to and arrangement with tenants;
 - (v) to grant or acquire easements or other rights, to partition or subdivide or join in the partition or subdivision of it; or
 - (vi) generally to deal with that property or interest or to join in dealing with it as if beneficially entitled to it without being responsible for loss; and
- (f) **(retaining donated property)** to retain property donated to the Trust Fund without considering the question of sale, calling in or conversion for as long as the Trustee thinks fit; and
 - (g) **(enforcing contracts)** to commence and carry out legal proceedings of any kind and in any court to enforce a contract entered into by the Trustee and to recover damages for breach of that contract; and
 - (h) **(enforcing property rights)** to cancel, terminate or accept surrenders of leases, to commence and carry out legal proceedings of any kind and in any court to remove tenants and recover possession of any part of a property, to sue for and recover rent and damages for breach of a lease, to sue and prosecute trespassers or other persons for damage to any part of the property and to settle, abandon, compromise and release these legal actions when expedient; and
 - (i) **(maintaining property)** to repair, renovate, decorate and maintain personal property or land including fittings, fixtures, furniture, equipment and grounds and outhouses; and
 - (j) **(appointing agents)** to employ, engage or appoint a secretary, manager, solicitor, accountant or agent or any other person, including a Director or member of the Trustee or any firm or company in which that Director or member is a partner or director, to transact any business required to be done under the trusts established by this Deed, including the receipt or payment of money and the acquisition of property of any kind on behalf of the Trustee, and the Trustee may decide the amount of the remuneration and expenses to be paid to this person;
 - (k) **(acquiring investments)** to acquire any investment to form part of the Trust Fund on terms that require the investment to be paid for by more than one instalment or that the instalments or the residue of purchase money bear interest as the Trustee thinks fit; and
 - (l) **(raising money)** to raise money which the Trustee thinks expedient for any purpose in relation to the execution of the trusts and powers conferred on the Trustee by this Deed, with or without security or by mortgaging or charging with or without power of sale any part of the Trust Fund; and

- (m) **(merging funds)** to merge or mix the Trust Fund or any part of it with any other trust fund, trust money or trust property or to join with any other trustee or person to form a common or merged fund to be invested in any investment permitted by this Deed whether or not the common or merged fund is under the control of or stands in the name of the Trustee; and
- (n) **(paying costs)** to pay out of the capital or income of the Trust Fund the direct and incidental costs of establishing the Trust Fund and all expenses that may be incurred in relation to the trusts of this Trust Deed including all administration expenses; and
- (o) **(accepting or refusing gifts)** to invite persons to make gifts to the Trust Fund and to refuse any gift of property where the Trustee reasonably considers that it would be onerous or uneconomic to maintain; and
- (p) **(fundraising activities)** to conduct activities for the raising of funds from the public, pay reasonable expenses of conducting those activities, and to apply the net proceeds for the purpose; and
- (q) **(obtaining legal advice)** to take and act on the opinion of any barrister or solicitor practising in the Supreme Court of any Australian State or Territory whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts of this Deed without being liable to any one in respect of any act done or not done by it in accordance with that opinion, but this clause does not oblige the Trustee to act in accordance with any such opinion nor prohibit the Trustee from applying to any court as it thinks fit; and
- (r) **(obtaining other advice)** to act upon the opinion or advice or information obtained from any financial adviser, accountant, valuer, surveyor, broker, auctioneer or other expert or professional person and so that the Trustee is not responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance with the advice;
- (s) **(managing and developing property)** to do any act or thing which in the opinion of the Trustee is necessary for the proper and efficient management and development of any property forming part of the Trust Fund; and
- (t) **(appointing agents)** to carry out any of the above powers by or through an agent and to appoint and authorise the agent to carry out all or any of the above powers.

8 Expenses

The Trustee is entitled to reimbursement of all their expenses of administering the Trust, and those expenses may be charged against the income of the Trust Fund. If the income of the Trust Fund is insufficient for

that purpose, then to the extent of such insufficiency the expenses will be charged against the capital of the Trust Fund or so much of it as may be required to meet the shortfall.

9 Trustee's indemnity

9.1 Trustee's indemnity and lien

The Trustee is indemnified against all liabilities incurred by it through any act or omission in the exercise or bona fide intended or purported exercise of the powers, duties and discretions under this Deed and has a lien on the Trust Fund for that indemnity.

9.2 Dishonesty and breach of Trust not indemnified

Except where due to the Trustee's own dishonesty or wilfully or knowingly being a party to a breach of trust, the Trustee is not liable for any:

- (a) act or default done or omitted to be done in the exercise or bona fide intended or purported exercise of those powers, duties and discretions; or
- (b) loss or expenses incurred by the Trust Fund through the insufficiency of any security in or on which any of the money of the Trust Fund are invested; or
- (c) loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom money or securities are deposited; or
- (d) other loss, damage or misfortune whatever.

9.3 "Trustee" includes a Director and delegates

References in this clause to the Trustee include a Director and delegates appointed by it under this Deed.

10 Accounts and audit

10.1 Trustee's duties

The Trustee must:

- (a) direct proper accounts to be kept by the person appointed by the Trustee for the purpose for all sums of money received and spent by the Trust Fund, the matters for which the receipt and expenditure takes place and the assets and liabilities of the Trust Fund; and
- (b) direct a balance sheet and statement of income and expenditure to be drawn up as at 30 June each year and make available to the person appointed by the Trustee for that purpose the documents and information that this person requires to fulfil their task.

10.2 Where must accounts be kept?

The accounts must be kept at the place which the Trustee determines and be open to inspection by any Director.

11 Power of alteration

The Trustee may by deed alter, amend, add to, delete or replace any of the trusts, powers and provisions of this Trust Deed, including this clause, in any manner provided that no part of the Trust Fund becomes subject to any trusts other than trusts for public charitable purposes.

12 Winding up of Trust Fund

12.1 Winding up or dissolution

If on the winding up or dissolution of the Trust Fund there remains after satisfaction of all its debts and liabilities any property, the property must be given or transferred to an Approved Institution which:

- (a) is maintained exclusively for or covenants to use the property exclusively for public charitable purposes; and
- (b) prohibits the distribution of its income and property among its beneficiaries or members to an extent at least as great as is imposed on the Trust Fund.
- (c) is to be determined by the Trustee at or before the time of dissolution or, failing such a determination, by a court of law.

12.2 Approved Institution

An Approved Institution referred to in clause 13.1 (“Winding up or dissolution”) includes any fund, authority or institution of which the Founder or a Director is the Founder or a trustee or director or in respect of which the Founder or a Director is a director of its trustee.

13 Endorsement

If the Trust is endorsed by the Commissioner of Taxation as a Deductible Gift Recipient:

- (a) the Trustee must not act or fail to act in such a way as to cause the Commissioner of Taxation to revoke their endorsement of the Trustee as a Deductible Gift Recipient under Division 30-BA of the Act;
- (b) the Trustee must advise the Commissioner of Taxation in writing before, or as soon as practicable after, the Trust ceases to be entitled to be endorsed as a Deductible Gift Recipient; and

- (c) in the event that the Commissioner of Taxation revokes that endorsement all money, properties and benefits held by the Trustee as Trustee of the Trust must be transferred to an Approved Institution.

14 Governing law

This Deed is governed by the law in force in the place set out in the Details.

15 Definitions and Interpretation

15.1 Definition

The following words have these meanings in this deed unless the contrary intention appears.

Act means the Income Tax Assessment Act 1997 (Cth).

Approved Course means a course:

- (a) the content of which is relevant to training or enhancing the technical or business skills of individuals in the financial counselling or related industries; and
- (b) that is either or both of the following:
 - (i) a “pre-school course”; “primary course”; “secondary course” or “tertiary course” as those terms are defined in section 995-1 of the Act; or
 - (ii) a course or study in an overseas educational institution which is undertaken as a component of a course referred to in subparagraph (b)(i) of the definition of Approved Course in this clause 15.1.

Approved Institution means a fund, authority or institution which at the time of gift falls within the description of an item in any of the tables in Subdivision 30-B of the Act, which has been established for charitable purposes.

Approved Recipient means an individual that is:

- (a) either:
 - (i) an Australian citizen; or
 - (ii) a permanent resident of Australiaas those terms are defined in the *Australian Citizenship Act 2006* (Cwlth);
- (b) seeking to commence a career with or to further his or her career in the financial counselling or related industries; and

- (c) selected by the Trustee.

Corporations Act means the Corporations Act 2001 (Cwlth).

Deductible Gift Recipient has the meaning given by the Act.

Director means a director of the Trustee or any other company for the time being trustee of the Trust Fund.

Educational Expenses means ongoing or one-off expenses relating to an Approved Course, including course fees, textbooks and related expenses such as for uniforms, travel, boarding or living costs.

Eligible Scholarship, Bursary or Prize means a scholarship, bursary or prize that:

- (a) may only be awarded to Australian citizens, or permanent residents of Australia within the meaning of the Australian Citizenship Act 2006 (Cwlth);
- (b) is open to individuals or groups of individuals throughout a State or Territory or a region of at least 200,000 people;
- (c) promotes an Approved Recipient's education in an Approved Course; and
- (d) is awarded on merit or for reasons of equity.

Objects means the objects described in Clause 2 ("Objects") of this deed.

Qualified Person means a person who at the time of their first appointment as a director of the Trustee is a person who due to the tenure of some public office or position or activity in the community may be expected to have a high degree of responsibility to the public and including, but without limiting the generality of the foregoing, a person who is:

- (c) a member of the Commonwealth or a State parliament;
- (d) a judge of a superior court in Australia;
- (e) a member of the council or governing body of an Australian university;
- (f) a professor at an Australian university;
- (g) a senior academic of an Australian University;
- (h) a barrister or solicitor of the Supreme Court of an Australian State or Territory;
- (i) a Fellow of the Royal Australasian College of Surgeons;
- (j) a Fellow of the Royal Australasian College of Physicians;

- (k) a member of the Australian Society of Certified Practising Accountants;
- (l) a member of the Institute of Chartered Accountants in Australia;
- (m) a Principal of an Australian school;
- (n) a minister of a church;
- (o) a Justice of the Peace;
- (p) a town clerk;
- (q) a town councillor; or
- (r) a recipient of the Order of Australia or Governmental award for services to the public or community.

this Deed means this deed including all amendments, additions, deletions or replacements lawfully made to this Deed.

Trust means The Jan Pentland Foundation.

Trustee means Jan Pentland Limited or any other trustee for the time being of the Trust.

Trust Fund includes the money, investments and property for the time being subject to the trusts of this Deed and the charitable purposes and means of achieving those purposes established by this Deed.

15.2 Interpretation

In this Deed unless the contrary intention appears:

- (a) a reference to a clause or schedule is a reference to a clause or schedule to this Deed and references to this Deed include any recital or schedule;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority; and
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns.

15.3 Headings

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

EXECUTED as a deed

Trust Deed establishing The Jan Pentland Foundation

Signing page

DATED:

EXECUTED by **JAN PENTLAND**)
LIMITED in accordance with)
section 127(1) of the Corporations)
Act 2001 (Cwlth) by authority of its)
directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable)

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable)

SIGNED, SEALED AND)
DELIVERED by **PETER JOHN**)
GARTLAN in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
Signature of **PETER JOHN**)
GARTLAN)

Trust Deed establishing
The Jan Pentland
Foundation

Dated

Jan Pentland Limited (“**Trustee**”)
Peter John Gartlan (“**Founder**”)

Mallesons Stephen Jaques

Level 50
Bourke Place
600 Bourke Street
Melbourne Vic 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.mallesons.com

Trust Deed establishing The Jan Pentland Foundation

Contents

Details	1
General terms	3
1 Establishment and Duration of Trust Fund	3
1.1 Establishment of Trust Fund	3
1.2 Trust Fund name	3
1.3 Trustee to further Objects	3
1.4 Sufficient application of Trust Fund	3
1.5 Commencement	3
1.6 When does the Trust Fund commence?	4
2 Objects	4
2.1 General Objects	4
2.2 Australia	5
2.3 Raising Funds	5
2.4 Educational purposes	5
2.5 Trustee may apply capital and income	5
2.6 Not for profit	5
3 Control of Trust Fund	6
3.1 Qualified persons to control Trust Fund	6
4 Trustee	6
4.1 Retirement of Trustee	6
4.2 Successor Trustee to be bound by this deed	6
4.3 Release of Outgoing Trustee	6
5 Public Fund	6
5.1 Public fund at all times	6
5.2 Receipts issued by Trustee	6
6 Investments	7
6.1 Authorised investments only	7
6.2 No lending	7
7 Powers of the Trustee	7
8 Expenses	9
9 Trustee's indemnity	10
9.1 Trustee's indemnity and lien	10
9.2 Dishonesty and breach of Trust not indemnified	10
9.3 "Trustee" includes a Director and delegates	10

10	Accounts and audit	10
10.1	Trustee's duties	10
10.2	Where must accounts be kept?	11
11	Power of alteration	11
12	Winding up of Trust Fund	11
12.1	Winding up or dissolution	11
12.2	Approved Institution	11
13	Endorsement	11
14	Governing law	12
15	Definitions and Interpretation	12
15.1	Definition	12
15.2	Interpretation	14
15.3	Headings	15
	Signing page	16