

1993—No. 421

**CREDIT ACT 1984—REGULATION**

(Relating to the establishment of the financial counselling trust fund)

NEW SOUTH WALES



*[Published in Gazette No. 94 of 27 August 1993]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Credit Act 1984, has been pleased to make the Regulation set forth hereunder.

WENDY MACHIN  
Minister for Consumer Affairs.

**Commencement**

1. This Regulation commences on 1 September 1993.

**Amendment**

2. The Credit Regulation 1984 is amended:

(a) by inserting after clause 28 the following clause:

**Financial Counselling Trust Fund**

29. (1) The fund, and the scheme for the administration of the fund, established by the trust deed executed on 6 August 1993 by the Minister for Consumer Affairs is established for the receipt of money the subject of a direction under section 86B of the Act.

(2) The terms of the trust deed are set out in Schedule 8.

(3) The money in the fund is to be applied for the following purposes:

(a) the provision of funding to community based non-profit organisations that operate in New South Wales to provide financial counselling or train persons in financial counselling;

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- (b) the provision of funding to non-profit organisations that operate within New South Wales which, or persons who, satisfy the trustees of the fund that they can educate the public of New South Wales in any matter related to the management of personal finances.
- (b) by inserting after Schedule 7 the following Schedule:

#### **SCHEDULE 8—TRUST DEED**

(Cl. 29)

THIS DEED OF TRUST made the sixth day of August, 1993

BETWEEN *WENDY SUSAN MACHIN* Minister for Consumer Affairs for the State of New South Wales (hereinafter called “the Settlor”) of the one part

AND *JOHN LEONARD GARRICK* of 15 Wembury Road, St Ives;  
*JOHN FREDERICK WILLIAMS* of 5 Menzies Road, Marsfield;  
*LYN GAIN* of 191 Brougham Street, Kings Cross;  
*PHILIP JOHN KELLOW* of 31 Prospect Street, Erskineville; and  
*SHENAGH BARNES* of 27 Park Avenue, Randwick  
 (hereinafter called “the Trustees”) of the other part

WHEREAS

- A. The Settlor has paid the sum of one hundred dollars (\$100.00) to the Trustees to be held by the Trustees upon the trusts hereinafter set forth.
- B. The Trustees have consented to act as Trustees of these presents and to accept the trusts hereinafter expressed.
- C. The Trust hereby established is for the purposes of:
  - (a) alleviating the impact of credit-overcommitment of New South Wales consumers, through the provision of funding to New South Wales community based non-profit organisations to be used by them in financial counselling, or the training of persons in financial counselling; and
  - (b) advancing public education in New South Wales in all matters relating to the management of personal finances, through the provision of funding to New South Wales non-profit organisations which or persons who satisfy the Trustees that they can educate the public of New South Wales in any matter related to the management of personal finances.

NOW THEREFORE THIS DEED WITNESSES that it is hereby agreed and declared as follows:

1. NAME

The Trust hereby established shall be known as "The Financial Counselling Trust Fund".

2. INTERPRETATION

In this Deed unless there is something in the subject matter or context inconsistent therewith:

- (a) "the Act" means the *Credit Act* 1984 of New South Wales;
- (b) "available funds" means such part of the income derived from time to time on the investment of the Trust Fund remaining after the deduction of the reasonable administration costs of the Trust;
- (c) "this Deed" means this Deed as altered or varied by any alterations or variations lawfully made thereto;
- (d) "financial counselling" means:
  - (i) the provision (primarily by way of face to face counselling) of advice on and assistance with; and
  - (ii) the dissemination of knowledge and skill with regard to, the management of personal finances;
- (e) "Minister" means the Minister for Consumer Affairs or such other Minister who is responsible for the administration of the Act;
- (f) "Credit Counselling Program" means the scheme administered by the New South Wales Government for the time being for the allocation of grants for the funding of financial counselling;
- (g) "registered company auditor" has the same meaning as in section 9 of the *Corporations Law*;
- (h) "securities" means:
  - (i) shares or stock of, or debentures, notes or bonds issued by, any public company whose registered office is in the Commonwealth of Australia;
  - (ii) prescribed interests, in respect of which a prospectus has been registered with the Australian Securities Commission;
  - (iii) units of such shares or of such prescribed interests;
  - (iv) options to buy or sell any of the things specified in paragraphs (i) to (iii) (both inclusive); or
  - (v) option contracts,

but does not include an excluded security.

For the purposes of this definition, "excluded security", "prescribed interest" and "unit" have the same meanings as they do in section 9 of the *Corporations Law* and "option contract": has the same meaning as paragraph (b) of the definition of that expression in section 9 of the *Corporations Law*;

- (i) "Tribunal" means the Commercial Tribunal established by the *Commercial Tribunal Act* 1984 of New South Wales;
- (j) "Trust" means the trust created by this Deed;

- (k) “the Trust Fund” means and includes the aforesaid sum of one hundred dollars (\$100.00), money received pursuant to a direction by the Tribunal made under section 86B (1) of the Act, donations, the accumulations of income hereinafter directed or empowered to be made, all accretions to the Trust Fund and the investments and property from time to time representing the said moneys donations and accumulations or any part or parts thereof respectively;
- (l) “the Trustees” means the persons referred to herein and such other Trustee or Trustees appointed for the time being under this Deed;
- (m) “year” means financial year ending 30 June;
- (n) words importing any gender include all genders and words importing the singular number include the plural number and vice versa;
- (o) a reference to a statute is to the statute as amended, consolidated or replaced from time to time.

### 3. APPLICATION OF THE TRUST FUND

- (a) Subject to the provisions of this Deed, the available funds of the Trust shall be applied and used by the Trustees exclusively for the provision of funding to:
  - (i) New South Wales community based non-profit organisations to provide financial counselling or train persons in financial counselling; and
  - (ii) New South Wales non-profit organisations which or persons who satisfy the Trustees that they can educate the public of New South Wales in any matter related to the management of personal finances.
- (b) (i) In selecting a recipient of funds pursuant to:
  - clause 3 (a) (i), the Trustees shall apply the most recent needs analysis used in making grants under, and eligibility criteria set out in, the Credit Counselling Program;
  - clause 3 (a) (ii), the Trustees shall apply the most recent needs analysis used in making grants under the Credit Counselling Program, so far as is practicable.

For the purpose of clause 3 (b) (i), “needs analysis” is the triennial evaluation, or such other evaluation from time to time, made by the New South Wales Government using such criteria as it considers appropriate, for the allocation of grants for the funding of financial counselling.
- (ii) Trustees may impose such conditions on grants as they consider appropriate and in doing so shall have regard to the purposes of the Trust set out in Recital C.
- (c) Where the New South Wales Government administers a scheme whose objects include funding the provision of financial counselling services, the Trustees shall consult with the administrators of such scheme in order to ensure the most equitable distribution of both the available funds of the Trust and the funds of the Government.
- (d) Organisations or persons which are to receive funding by the Trust shall be chosen at a meeting of all Trustees.

- (e) In the year of commencement of the Trust, if the Trust has received:
  - money pursuant to a direction by the Tribunal made under section 86B (1) of the Act; or
  - a donation of money,
 the Trustees, within one (1) month of receipt of such money:
  - (i) shall estimate the available funds which will accumulate by 30 June next succeeding, from the investment of such money; and
  - (ii) may use the capital of the Trust Fund to make grants PROVIDED THAT the capital used does not exceed an amount equal to such estimated accumulated available funds.
- (f) No later than two (2) months after the expiration of each year, the Trustees shall determine how all available funds derived by the Trust during such year will be distributed in the following year.
- (g) The Trustees shall keep a register of all applications made to the Trust for funds and record in it details of the names and addresses of the applicants and the results of the applications.

#### 4. SECRETARY AND TREASURER

- (a) The Trustees may from time to time appoint a person to act as secretary and a person to act as treasurer of the Trust. Such persons may be (but need not be) Trustees.
- (b) (i) The secretary of the Trust shall, as soon as practicable after being appointed as secretary, lodge notice with the Trust of the address of his place of employment or business and business and private telephone numbers.
- (ii) It is the duty of the secretary to keep:
  - (a) records of all appointments of Trustees (including the Trustees' names and addresses);
  - (b) minutes of the names of members of the Trustees present at a Trustees meeting; and
  - (c) minutes of all proceedings at Trustees meetings.
- (iii) Minutes of proceedings at a Trustees meeting shall be signed by the Chairperson of the meeting or by the Chairperson of the next succeeding meeting.
- (iv) Except as otherwise provided by this Deed the secretary shall keep in his custody or under his control all records, books and other documents relating to the Trust.
- (v) The records, books and other documents of the Trust may be inspected by any Trustee during normal business hours.
- (c) It is the duty of the treasurer to ensure that:
  - (i) all money due to the Trust is collected and received and that all payments authorised by the Trust are made; and
  - (ii) proper accounts are kept in accordance with clause 9 (b).

**5. TRUSTEE MEETINGS**

- (a) There shall be held at least once in each calendar year a meeting of the Trustees.
- (b) The Trustees may meet either in person or by telephone or other electronic means of conferring for the despatch of business.
- (c) Except in the circumstances specified in clause 3 (d), three Trustees shall form a quorum and a meeting of Trustees at which a quorum is present shall be competent to exercise all or any of the powers and discretions vested in the Trustees. A Trustee may be present at a meeting either in person or by proxy or in accordance with the provisions of clause 5 (k).
- (d) The Trustee appointed by the Minister to represent the Minister shall be the Chairperson.
- (e) Any Trustee may at any time cause the secretary to convene a meeting of the Trustees.
- (f) The Chairperson shall preside at all meetings of the Trustees save that if at any meeting the Chairperson is not present within ten minutes after the time appointed for the same the Trustees may choose one of their number present to be Chairperson of that meeting.
- (g) Questions arising at any meeting shall be decided by a majority of votes (each Trustee present (either in person or by proxy or in accordance with the provisions of clause 5 (k)) having one vote) and in case of an equality of votes the Chairperson shall have a second or casting vote.
- (h) The majority shall be a simple majority save in the circumstances contemplated by clause 10 (e) (iv) hereof.
- (i) Notice of every meeting shall be sent by the secretary to each Trustee. Any notice posted ten clear days before the date of the meeting shall be deemed to have been duly served. Notwithstanding the foregoing, such period of Notice may be shortened or dispensed with where the urgency of the business to be transacted at the meeting so requires.
- (j) Every notice of a meeting shall state the place, day and hour of the meeting and the business to be transacted thereat.
- (k) For the purpose of clause 5 (c), where the meeting is conducted by telephone or other electronic means of conferring, a Trustee shall be regarded as being present if the Trustee is able to hear the entire meeting and to be heard by all others attending the meeting.
- (l) A Trustee wishing to appoint a proxy shall do so by means of the form annexed hereto as Appendix 1. A Trustee may only appoint a proxy who is also one of the Trustees.
- (m) A resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and held.

**6. INVESTMENTS**

- (a) The Trust Fund shall be held in perpetuity and may be invested in one or more of the following modes of investment:
  - (i) upon mortgage of land of any tenure improved or unimproved within the Commonwealth of Australia;

- (ii) in the purchase of stock, debentures, notes or bonds of the Commonwealth of Australia or any of the Territories or States thereof or of any government, semi-government, local government or statutory authority thereof or therein;
- (iii) on deposit with or loan to:
  - any bank licensed to carry on business under the *Banking Act* 1959 of the Commonwealth;
  - any building society within the meaning of the Financial Institutions (NSW) Code; or
  - any company whose registered office is in the Commonwealth of Australia PROVIDED THAT such deposit or loan is secured, for any period whatsoever;
- (iv) in the purchase of securities;
- (v) any other investment which Trustees may lawfully make in the State of New South Wales;

PROVIDED THAT no part of the Trust Fund may be invested in any property in which any Trustee has any beneficial interest whatsoever, direct or indirect (other than the holding of not more than one percent of the capital of a public company listed on an Australian Stock Exchange) without the prior written approval of the Trustees.

- (b) Subject to clause 6 (c) all documents (other than documents of title) requiring signature in connection with operating on or dealing with the accounts referred to in clause 6 (a) and the investments referred to in clause 6 (a) and cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall be signed by any two Trustees or other persons being Trustees or persons authorised to do so by the Trustees. Such authority may be revoked at any time by any two Trustees.
- (c) The Trustees may authorize any person to make deposits to the accounts referred to in clause 6 (a).

## 7. POWERS AND DUTIES OF THE TRUSTEES

- (A) In addition to all the powers vested in the Trustees by law or by statute or by this Deed the Trustees shall have and may, subject to clause 3 (f), exercise at any time and from time to time any or all of the following powers:
  - (a) to sell or convert into money any asset or investment and to re-invest the proceeds;
  - (b) to accumulate the income of the Trust Fund by investing the same or the resulting income therefrom from time to time in any of the modes of investment authorised by this Deed;
  - (c) to change, vary or transpose any investments or assets for the time being forming part of the Trust Fund for others hereby or otherwise by law authorised and to release investments for the purposes of this Deed or to transfer any investment in performance or satisfaction of those purposes;

- (d) to apply any moneys for the time being forming part of the Trust Fund in improving or developing property which or an interest in which or the proceeds of the sale of the whole or part of which may for the time being be subject to the trusts hereof or erecting, enlarging, improving or rebuilding such property;
- (e) to pay all insurance premiums, rates, taxes, rents and other outgoings in connection with any real or personal property subject to the trusts hereof and to manage the said property and effect such repairs as the Trustees may consider necessary or advisable to such property and where such expenditure is unable to be charged against income the Trustees shall be at liberty to resort to capital;
- (f) to lease or license all or any part of any real or personal property for the time being subject to the trusts hereof for any period upon such terms and conditions and for such rent as the Trustees shall determine and make allowances to and with tenants and others and accept surrenders and waive breaches of covenants and determine tenancies and licences and raise out of the capital or income any sum from time to time required and in the Trustees' opinion properly payable thereout for the exercise of any of the powers and discretions herein contained and generally to deal with the said real and personal property in a proper manner and in due course of management as if beneficially entitled thereto;
- (g) to pay application moneys and calls on securities and concur in any arrangement for the modification of the rights of holders of securities;
- (h) to surrender and deliver up any securities forming part of the Trust Fund for such consideration and upon such terms and conditions as the Trustees shall think fit to any company reducing its capital and the Trustees may receive such consideration in the form of cash, securities or other assets as may be agreed upon between the Trustees and such company;
- (i) to consent to any winding-up or reorganisation or reconstruction of any company the securities of which form part of the Trust Fund and to consent to the division or partition in kind or specie of the assets or property of any company or to any reduction of capital or other dealing with such securities as the Trustees may consider advantageous or desirable;
- (j) to employ managers, agents, advisers, solicitors, accountants or other persons or companies in the execution of the trusts and powers herein contained and instead of acting personally from time to time to employ and pay out of the Trust Fund such sums, fees, salaries, commissions, emoluments and expenses as the Trustees shall consider reasonable to any such managers, agents, advisers, solicitors, accountants or other persons or companies to transact any business or to do any act required to be done in connection with the administration of the trusts hereby declared including the receipt and payment of money;
- (k) to institute and defend proceedings at law, to proceed to the final end and determination thereof or compromise the same;

- (l) to exercise or concur in exercising in such manner as the Trustees shall determine the voting and other rights attaching to any securities for the time being forming part of the Trust Fund;
- (m) to compromise and settle all matters arising in relation to the Trust Fund or the trusts hereof;
- (n) to enter into possession and continue in possession of the whole or any part of the Trust Fund and to manage and/or superintend the management of the same, and without limiting the Trustees' powers generally, to exercise all such powers and authorities and discretions as trustees are by law authorised to exercise;
- (o) to raise or borrow money either bearing or free of interest with or without security and to secure repayment of money so borrowed and any interest thereon by mortgage or charge over all or any of the investments or assets of the Trust Fund or with or without giving any other form of security or acknowledgment and to apply such money for any of the purposes for which either the income or the capital of the Trust Fund is for the time being applicable hereunder including investment of money in any manner authorised by clause 6 and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;
- (p) to accept unconditional donations, bequests, legacies and gifts of all types whether subject to any special trust or not to or for the benefit of the Trust Fund provided that the Trustees may reject any donation, bequest, legacy or gift without assigning any reason for its rejection;
- (q) to determine which of the assets and receipts of the Trust are capital and which are income; and
- (r) generally to do all such other lawful acts and things as are incidental or conducive to the attainment of the general purposes and conduct of the trusts hereby established.

(B) The Trustees shall accept to or for the benefit of the Trust Fund all money directed to be paid to the Trust by the Tribunal pursuant to section 86B (1) of the Act, where such direction imposes no conditions on the distribution or application of such money by the Trust.

#### 8. TRUSTEES FEES

- (a) The Trustees shall be paid a fee for attending each Trustee meeting. The amount of such fees shall be determined and varied from time to time by the Minister.
- (b) The Trustees shall be entitled to be reimbursed their costs and expenses properly incurred in the administration of the Trust Fund and the execution of the trusts of this Deed (including without limiting the generality of the foregoing, premiums in respect of indemnity insurance relating to the performance of their duties or exercise of their powers pursuant to this Deed).

#### 9. ACCOUNTS AND AUDIT

- (a) Pending a final decision on the investment of moneys received by the Trustees from any source, such moneys shall be paid by the Trustees into one or more of:

- (i) a current or savings account with any bank licensed to carry on business under the *Banking Act 1959* of the Commonwealth; or
- (ii) an account with a building society within the meaning of the Financial Institutions (NSW) Code.

Any such account shall be in the name of the Trust and shall be operated in accordance with the customs, usages and practices of banks or building societies (as the case may be) as if the Trustees were acting on their own behalf solely including and without limiting the effect of the foregoing to operate any such account on overdraft and to agree to the bank debiting any such account with interest, costs, charges, expenses and liabilities incurred by the bank or building society (as the case may be) at any time on behalf of the Trustees and in addition to any other power herein contained the Trustees shall have power to borrow or raise or secure the payment of money in such manner as the Trustees think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Trustees in any way with such bank or building society (as the case may be).

- (b) The Trustees shall keep or cause to be kept proper accounts of all receipts, payments, assets and liabilities relating to the Trust Fund and all other matters necessary for showing a true statement and condition of the Trust Fund and such accounts shall be audited at least once a year by a registered company auditor. The accounts shall be kept at such place or places as the Trustees think fit from time to time and shall be open for inspection during normal business hours by a duly appointed representative of the Minister.
- (c) The Trustees shall, within three months of the conclusion of each year, forward to the Minister a report of the financial and operational activities of the Trust for that year.

#### 10. TRUSTEES

- (a) There shall be five Trustees.
- (b) There shall be appointed two Trustees with knowledge of the interests of credit providers (not being current employees of or current consultants to credit providers or representative industry bodies), two Trustees with knowledge of the interests of consumers (not being currently practising financial counsellors) and one Trustee to represent the Minister.
- (c) The Minister in her unfettered discretion and without being obliged to give any reason for so doing may at any time and from time to time by Deed:
  - (i) remove any Trustee of the Trust; or
  - (ii) appoint any new Trustee or Trustees in place of any Trustee who is removed from Trusteeship or who resigns.
- (d) A Trustee of this Deed may at any time resign as a Trustee in accordance with clause 10 (e) (iii).
- (e) The office of a Trustee shall be vacated if a Trustee:
  - (i) becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (ii) becomes of unsound mind;
  - (iii) is removed from office or resigns his office by notice in writing to the remaining Trustees or Trustees, or if none remains, to the Minister;

- (iv) is absent from four consecutive meetings of the Trustees and the other Trustees unanimously pass a resolution that such Trustee shall be removed from office PROVIDED THAT a Trustee faced with removal shall have the right to be heard by the other Trustees before a vote is taken.
- (f) A Trustee shall hold office for two years from the date of appointment and shall be eligible for reappointment.
- (g) Any contract made, action taken or determination made or to be made by the Trustees shall be by a majority decision, and shall bind the Trustees as if it were a unanimous decision.
- (h) All acts done by any meeting of the Trustees or of a committee of Trustees or by a person acting as a Trustee are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Trustee or a member of the committee or to act as a Trustee, or that the person so appointed had vacated his office, as valid as if the person had been duly appointed and was qualified to be a Trustee or to be a member of the committee, or had not vacated his office (as the case may be).

#### 11. RECEIPTS BY TRUSTEES

The receipt in writing of the Trustees for all money or other real or personal property paid or transferred to the Trustees shall effectively discharge the person or authority paying or transferring the same from being concerned to see to the application thereof.

#### 12. INDEMNITY OF TRUSTEES

- (a) A Trustee shall not be answerable for any losses except losses arising from the Trustee's own negligence or wilful default, nor shall a Trustee be answerable for the acts or defaults of one or more co-Trustees or for an act done bona fide in conformity with the decisions of the Trustees.
- (b) The Trustees shall not be liable for the negligence or wilful default of a solicitor, banker, accountant or other agent employed bona fide by the Trustees.
- (c) A Trustee shall be indemnified against all liabilities incurred in execution of the duties of the Trustee, other than when they arise from the Trustee's negligence or wilful default, and shall have a lien on the Trust Fund for that indemnity.

#### 13. COMMITTEES

- (a) Subject to this clause, the Trustees may by instrument in writing delegate any of their powers, duties and obligations conferred or created under this Deed to a committee or committees consisting of at least three Trustees.
- (b) The Trustees may by instrument in writing revoke wholly or in part any delegations under this clause.
- (c) The Trustees may vary the membership of a committee from time to time as they see fit and may nominate one or more Trustees who may act in the absence of a Trustee appointed to such committee and who for that purpose shall be deemed to have been delegated the powers, duties and obligations referred to in clause 13 (a).
- (d) The Trustees may not delegate their powers, duties and obligations to determine which organisations are to receive funds in accordance with clause 3 hereof, this power of delegation and any function which is a duty imposed on the Trustees by the *Trustee Act 1925* of New South Wales or by any other law.

- (e) A committee to which powers have been delegated under clause 13 (a) shall exercise those powers in accordance with any directions and subject to such conditions which the Trustees may specify and a power so exercised shall be deemed to have been exercised by the Trustees.
- (f) The Trustees shall appoint one member of each committee to be the chairperson of that committee (in this clause called “the Chairperson”).
- (g) Where at a meeting of a committee the Chairperson is not present within ten minutes of the time appointed for the holding of a meeting or is unable or unwilling to act, the members present may elect one of their number to chair that meeting.
- (h) A committee may meet and adjourn as it thinks proper.
- (i) The quorum at a meeting of a committee shall be one half of the total number of members of the committee or, if that is not a whole number, the next highest whole number.
- (j) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- (k) In the case of an equality of votes, the Chairperson has a casting vote in addition to a deliberative vote.
- (l) A person chairing a meeting who is not the Chairperson shall not have a casting vote.
- (m) Except as otherwise specifically provided in this Deed or directed by the Trustees the meetings and proceedings of a committee shall be governed by the provisions contained in this Deed regulating the meetings and proceedings of the Trustees.
- (n) Notwithstanding any delegation under this clause, the Trustees may continue to exercise any function delegated.

#### 14. SECRECY

- (a) A person who is or has been a Trustee shall not either directly or indirectly make a record of, divulge or communicate information concerning the affairs of a person which was acquired through the firstnamed person’s office or employment under or for the purposes of this Deed, unless the information is recorded, divulged or communicated:
  - (i) in the performance of a function or the exercise of a power under this Deed;
  - (ii) when the person is communicating for the purposes of an Act or this Deed with a person charged with or employed in the administration of such Act;
  - (iii) when the person is giving evidence or producing a document to a person or body which is entitled to hear or determine an application for a licence under an Act or an appeal from or with respect to such an application;
  - (iv) when the person is giving evidence or producing a document to a court of law which is hearing any criminal or civil proceedings connected with or arising under this Deed or an Act;

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- (v) when it is requested by and provided to an agency of the Commonwealth of Australia or a State of the Commonwealth for the purpose of an investigation by the agency into a breach or an alleged breach of a law of the Commonwealth or a State of the Commonwealth; or
- (vi) with the written authority of the second-named person.

(b) Where the Trustees enter into a contract with a person by which the person is employed in or concerned with the administration of the Trust, the Trustees shall in the contract require the person:

- (i) to be bound by and observe the provisions of clause 14 (a) in the same manner and to the same extent as if the person were a Trustee; and
- (ii) if the person enters in turn into a subcontract with a third person, to be bound by and observe the provisions of this clause in the same manner and to the same extent as if the person were the Trustee and the third person were the person.

#### 15. WINDING UP

- (a) The Trust may be terminated at any time by the Minister or by order of the Supreme Court of New South Wales (“the Court”).
- (b) Upon the termination of the Trust created by this Deed all the moneys, investments and property then forming the Trust Fund shall after the payment of all expenses and liabilities be disbursed to such community based non-profit organisations, which provide financial counselling in the State of New South Wales, which in the opinion of the Minister or the Court (as the case may be) share similar objects as those of the Trust in such shares and proportions and on such conditions as may be determined by the Minister in her absolute discretion or the Court (as the case may be).

#### 16. SERVICE OF NOTICES

- (a) For the purposes of this Deed, a notice may be served upon any Trustee:
  - (i) personally or by sending it by post to the Trustee at the Trustee’s address shown in the register of Trustees; or
  - (ii) by sending it by facsimile to the facsimile number of the Trustee (if any) nominated by the Trustee for that purpose,
 or if the Trustee notifies another address or facsimile number then to that address or facsimile number.
- (b) Where a document is sent to a person by properly addressing, prepaying and posting to the person a letter containing the document, the document shall, unless the contrary is proved, be deemed for the purposes of this Deed to have been served on the person at the time at which the letter would have been delivered in the ordinary course of post.
- (c) A facsimile shall be deemed to be received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

**17. VARIATION OF TRUSTS**

- (a) The Trustees may at any time and from time to time by deed vary all or any of the trusts, provisions, terms and conditions contained in this Deed (as varied from time to time by any previous Deed) PROVIDED THAT the prior written consent of the Minister is obtained and PROVIDED FURTHER THAT any such variations:
  - (i) shall not be in favour of or result in any benefit to the Settlor or Trustees or any of them;
  - (ii) shall not alter the objects of the Trust expressed in clause 3 or any of the provisions of clause 15.
- (b) In this clause “vary” includes revoke, add to or amend and “variation” has a corresponding meaning.
- (c) The provisions of this Deed shall not be capable of being varied otherwise than as expressly herein provided.

IN WITNESS WHEREOF these presents have been duly executed the day and year first hereinbefore written.

**APPENDIX 1**

(Clause 5 (1))

**FORM OF APPOINTMENT OF PROXY**

I, .....  
(full name)

of .....  
(address)

hereby appoint .....  
(full name of proxy)

of .....  
(address)

to be my proxy to vote for me on my behalf at the Trustees meeting of the Financial Counselling Trust Fund to be held on the ..... day of ..... 19 ..... and at any adjournment of that meeting.

.....  
Signature of Trustee appointing proxy

Date .....

NOTE: A proxy vote may not be given to a person who is not a Trustee of the Financial Counselling Trust Fund.

**EXPLANATORY NOTE**

The Credit (Amendment) Act 1992 amended the Credit Act 1984 to enable the Commercial Tribunal to direct a credit provider who has contravened the Credit Act 1984 or the Credit (Administration) Act 1984 to pay an amount into a financial counselling trust fund to be established by regulation.

The object of this regulation is to amend the Credit Regulation 1984 to provide for the establishment of the financial counselling trust fund and the scheme for its administration. The trust fund and scheme are to be those established by a trust deed that is executed by the Minister for Consumer Affairs and the trustees and is in the same terms as those contained in Schedule 8 to be inserted by this Regulation.

This regulation is made under the Credit Act 1984, including section 167 (the general regulation making power).

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