

Not Relevant

621 RICHARD LLEWELLYN ARTS AND DISABILITY TRUST FUND BOARD
APPOINTMENTS (Jay Weatherill) - NOTED

Not Relevant

621

CABINET NOTE

TO: THE PREMIER FOR CABINET

RE: RICHARD LLEWELLYN ARTS AND DISABILITY TRUST FUND BOARD APPOINTMENTS

1. PROPOSAL

1.1 It is proposed that Cabinet notes my intention to appoint Dr David Caudrey, Mr Greg Mackie and Ms Becky Llewellyn as Board members to the Richard Llewellyn Arts and Disability Trust Fund Board.

2. BACKGROUND

2.1 In February 2006 the Premier announced the establishment of the new \$1 million Richard Llewellyn Arts and Disability Trust Fund. The Public Trustee will manage the Trust Fund, and Arts SA will manage the associated funding program.

2.2 The Trust Fund will be used to fund:

- creative or artistic projects or initiatives for a person or people with a disability;
- conditional or unconditional grant fellowship gift or scholarship;
- projects developed by disability arts organisations alone or in partnership with mainstream arts producers and presenters;
- projects developed by mainstream arts producers and presenters to enable access and/or participation by people with a disability; and
- ARTS SA for its administration of the Trust Fund.

3. DISCUSSION

3.1 The Department for Families and Communities (Office for Disability and Client Services) has developed the Richard Llewellyn Arts and Disability Trust Fund Deed in consultation with Arts SA and the Crown Solicitors Office.

3.2 Funding models have been developed by Arts SA with suggested allocations of either \$150,000 or \$200,000 per year. There will be one funding round per year closing in March or April. The application process will commence in 2007.

3.3 The administration and assessment process will be managed by Arts SA and recommendations will be forwarded to the Board for approval. The first funding instalment will be paid in July 2007.

- 3.4 The Richard Llewellyn Arts and Disability Trust Fund Deed recommends that the Board members be appointed by the Minister for Disability. A copy of the Deed is attached. The proposed Board appointments include Dr David Caudrey as representative of the Minister for Disability, Mr Greg Mackie as representative of the Minister for Arts and Ms Becky Llewellyn (widow of Richard Llewellyn).
- 3.5 Dr David Caudrey was formerly Chief Executive for the Crippled Children's Association for 15 years and commenced duties with the Department of Human Services, Social Justice and Country Division, as the Director of Office for Disability and Client Services in January 2000. Dr Caudrey has been associated with ACROD, a peak body for disability services, since 1984 when he became the State Chair of South Australia. He has served on the National Board of ACROD as State Chair, an elected member, as Vice President and was president from 1991 to 1993. (Curriculum Vitae attached).
- 3.6 Greg Mackie has been Executive Director Arts SA since 2004. He was awarded the Flinders University Distinguished Alumni Award in 2006, the medal of the Order of Australia for services to arts in 2002 and was Arts Ambassador for South Australia in 1999. Greg has sat on a range of statutory board memberships and has an extensive history as a member on a wide range of arts and community boards and committees. He was an elected member of the Adelaide City Council from May 2000 to May 2003. (Curriculum Vitae attached).
- 3.7 Becky Llewellyn was life-partner and carer of quadriplegic Richard Llewellyn. In 1998, Becky was Co-founder of Disability Consultancy Services Pty Ltd with husband Richard Llewellyn AM, offering disability access consultancy, audits, training to architects, local governments, organisations and businesses mainly in SA. She has carried on the business since May 2004 and the death of Richard. Becky is an inaugural member of the Association of Consultants in Access, Australia Inc. (Curriculum Vitae attached).

4. **RECOMMENDATION**

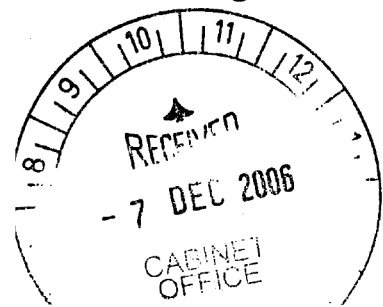
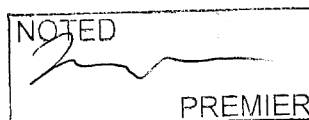
- 4.1 It is recommended that Cabinet notes my intention to appoint Dr David Caudrey, Mr Greg Mackie and Ms Becky Llewellyn as Board members to the Richard Llewellyn Arts and Disability Trust Fund Board.


Hon Jay Weatherill MP
MINISTER FOR DISABILITY

6112/2006

In Cabinet

11 DEC 2006



Curricula Vitae

9 pages removed

Exempt clause 6(1) – personal affairs

DATED

2006

DEED

BETWEEN

MINISTER FOR DISABILITY

("Minister for Disability")

AND

PUBLIC TRUSTEE

("Trustee")



**Government
of South Australia**

CROWN SOLICITOR

Level 9, 45 Pirie Street, Adelaide SA 5000

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THIS DEED is made on the day of 2006

BETWEEN:

MINISTER FOR DISABILITY of Level 12, Terrace Towers, 178 North Terrace, Adelaide South Australia 5000, a body corporate pursuant to the *Administrative Arrangements Act 1994* ("Minister for Disability")

AND

PUBLIC TRUSTEE ABN 72906 921 697 of 25 Franklin Street, Adelaide South Australia 5000, a body corporate pursuant to section 4 of the *Public Trustee Act 1995* ("Trustee")

RECITALS

- A. The Minister for Disability has resolved to establish a public charitable trust for the purpose of supporting projects and initiatives that develop and celebrate the creative and artistic aspirations of people with a disability in South Australia.
- B. For such purpose the Minister for Disability has resolved to execute this Trust Deed and to establish the Trust contemplated by this Deed with the intent that other persons institutions and organisations may make donations to the Trust.
- C. The Trust shall be known as the "**Richard Llewellyn Arts and Disability Trust**".
- D. The Trustee does by execution of this Deed consent to act as trustee of the Trust.

THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS**

In this Deed the following terms where the context so requires or admits will have the following meanings:

"Arts SA" means that division of the Department of Premier and Cabinet known as Arts SA, but if that shall cease to exist then such entity or division of government as the Minister for the Arts may from time to time determine;

"beneficiary" means any person to whom the Trustee resolves that a distribution of a part of the capital and/or income of the Trust should be made in accordance with clause 3.1;

"Board" means the Board of the Richard Llewellyn Arts and Disability Trust established by the provisions of this Deed;

"Richard Llewellyn Arts and Disability Trust" means the public charitable trust established by this Deed ("**Trust**");

"Deed" means this Trust Deed as originally executed and as it may from time to time be lawfully amended or varied;

"disability" includes, but is not limited to:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future; or

(k) is imputed to a person;

“person” includes any natural person, body corporate, partnership, joint venture, trustee, government agency, local government authority or any other body or instrumentality;

“property” includes real or personal property of any kind or tenure, any debt, any chose in action and any estate right or interest, at law or in equity, in or over property;

“Trustee” means the person for the time being holding the office of Public Trustee as appointed by the Governor pursuant to section 4 of the *Public Trustee Act 1995* (SA);

“Trust” means the Trust established by this Deed;

“Trust Fund” means the sum referred to in clause 3.1 together with all moneys, investments, and property from time to time paid or transferred to and accepted by the Trustee as additions to the Trust Fund, all accretions to the Trust Fund, all accumulations of income hereinafter empowered and the moneys, investments and property from time to time derived from the said moneys, additions, accretions and accumulations or any part or parts thereof or into which the same may be converted;

“year” means any year of twelve (12) calendar months ending on the 30th day of June.

2. INTERPRETATION

2.1 Headings are used for convenience only and are not to be construed as in any way affecting or qualifying the meaning of any of the provisions of this Deed.

2.2 Words importing the singular shall include the plural and vice versa and words in the first person singular shall include the third person singular and words importing the masculine gender, the feminine gender and the neuter gender shall include all genders.

2.3 References to any statutory enactment shall mean and be construed as references to that enactment as amended and re-enacted from time to time and to every statute substituted therefore.

3. CONTRIBUTION BY THE MINISTER FOR DISABILITY

3.1 The Minister for Disability does contemporaneously with the execution of this Deed pay to the Trustee the sum of One Million Dollars (\$1,000,000) to be

held by the Trustee UPON TRUST to apply that sum and the income thereof for the purposes set out in clause 3.2.

3.2 Distribution of the Trust Fund

The Trust Fund and all income thereof shall be paid by the Trustee in the following manner:

3.2.1 to people with a disability for the purpose of enabling those people to pursue a creative or artistic project or initiative;

3.2.2 to any person to enable that person to fund a creative or artistic project or initiative for a person or people with a disability; and

3.2.3 to ARTS SA for its work in promoting the arts to people with a disability and in the administration of the Trust Fund.

3.3 Payment of that Trust Fund

Any payment made by the Trustee may be made by way of conditional or unconditional grant fellowship gift or scholarship or in such other manner as the Trustee may from time to time determine.

3.4 Acquittal by a Beneficiary

The Trustee may require any beneficiary to:

3.4.1 undertake to the Trustee or to the Board how that beneficiary will expend funds which are paid out of the Trust Fund by the Trustee to a beneficiary; or

3.4.2 to provide a report to the Trustee or to the Board confirming the manner in which the beneficiary has expended any funds paid by the Trustee to the beneficiary.

3.5 Appointment of Trustee

The Public Trustee is by this Deed appointed as Trustee of the Trust Fund and accepts such appointment on the terms of this Deed.

3.6 Further Settlements

The Trustee may from time to time accept further sums of money or other property as an addition to the Trust Fund in addition to the sums referred to in clause 3.1.

3.7 Receipt

The Trustee shall acknowledge receipt of any sum of money gifted to the Trustee for the purposes of the Trust.

4. **DETERMINATION BY THE TRUSTEE**

- 4.1 The Trustee is responsible for the administration and management of the Trust Fund including the determination of the amount of funds available for distribution to beneficiaries in any year.
- 4.2 The Trustee will make decisions to distribute funds from the Trust Fund to beneficiaries having regard to written recommendations of the Board.
- 4.3 The Trustee:
 - 4.3.1 is not bound by a written recommendation of the Board;
 - 4.3.2 may request the Board to provide further information in relation to any recommendation;
 - 4.3.3 must not distribute funds from the Trust Fund if such a distribution would be inconsistent with the provisions of clause 3.2; and
 - 4.3.4 is not bound to give any reasons for a determination to accept or reject a recommendation of the Board.
- 4.4 The Trustee may after making a decision to distribute funds from the Trust to a beneficiary pay that sum to Arts SA and direct Arts SA to distribute that sum to the beneficiary on such terms and conditions as the Trustee may advise Arts SA in writing.

5. **THE BOARD**

- 5.1 There will be a Board to be known as the "Richard Llewellyn Arts and Disability Trust Board".
- 5.2 The Minister for Disability will appoint the members of the Board and record his appointments by written minute.
- 5.3 From the commencement of the Trust there will be 3 members of the Board, namely:
 - 5.3.1 Rebecca Ann Llewellyn, widow of Richard Llewellyn but if she is unable or unwilling to act then a person nominated by both the Minister for the Arts and the Minister for Disability;
 - 5.3.2 one person nominated by the Minister for the Arts; and
 - 5.3.3 one person nominated by the Minister for Disability.
- 5.4 The term of the appointment of members of the Board. is three years.
- 5.5 A member of the Board is eligible for reappointment at the expiration of his or her term of office.

- 5.6 The nominee of the Minister for Disability pursuant to clause 5.3.3 shall be the Chair of the Board.
- 5.7 If the Chair of the Board does not attend a meeting, the members present must elect a member to act as Chair of the Board for that meeting.
- 5.8 Any member of the Board who has a conflict of interest with any matter under consideration at any meeting, must declare that they have a conflict and must not take any part in any discussion, consideration or voting in relation to that matter.
- 5.9 An act of the Board is not invalid by reason only of:
- 5.9.1 a vacancy in the membership of the Board; or
 - 5.9.2 a defect in the appointment of a member of the Board.
- 5.10 Subject to clause 5.11, no member of the Board will be paid any remuneration for their services as a member of the Board.
- 5.11 Each member of the Board is entitled to reimbursement out of the Trust Fund for all reasonable travelling, accommodation and other expenses incurred in attending to the business of the Board. The scope and quantum of reimbursement must be in accordance with principles agreed between the Trustee and the Board.
- 5.12 Any member of the Board will immediately cease to be a member:
- 5.12.1 if they become bankrupt, or suspend payment to or compound with any creditor;
 - 5.12.2 if they become incapable of performing their duties because of mental illness;
 - 5.12.3 if by notice in writing to the Minister and the Chair of the Board, they resign their office;
 - 5.12.4 if, without the permission of the Chair of the Board, they fail to attend at least half of the scheduled meetings of the Board in any twelve month period; or
 - 5.12.5 if they die.
- 5.13 Each member of the Board relies on their own experience and expertise and does not represent the Minister who nominates them.
- 5.14 Each member of the Board must treat all information contained in applications for a grant from the Trust Fund as confidential.

6. **FUNCTION AND DUTIES OF THE BOARD**

6.1 The Function of the Board shall be to:

6.1.1 Generally assist the Trustee as required, and without in any way limiting the generality of such assistance, carry out the following duties:

- (a) consider such applications as Arts SA considers are appropriate for a grant from the Trust Fund; and
- (b) following the conclusion of the application and assessment process managed by Arts SA, prepare a report for the Trustee recommending selected applicants whom the Board considers are eligible and appropriate to receive a payment from the Trust Fund to enable the Trustee to make a determination as to the applicants who will receive such a payment.

6.1.2 Provide recommendations to the Trustee from time to time as to:

- (a) what persons should in the view of the Board be beneficiaries of the Trust (and on what terms and conditions); and
- (b) the funds which should be available for distribution to beneficiaries from the Trust Fund.

6.1.3 Report annually to the Minister for Disability and the Minister for the Arts as to the operation of the Trust; and

6.1.4 Do such other things as the Trustee may require of the Board.

6.2 The Board shall delegate to Arts SA the following:

- 6.2.1 the task of generating publicity in relation to the Trust;
- 6.2.2 the role of inviting applications by potential beneficiaries for funds from the Trust Fund;
- 6.2.3 the role of making an initial assessment of applications received by Arts SA; and
- 6.2.4 the role of ensuring that distributions from the Trust are used in the manner specified by the Trustee and/or the Board.

7. **PAYMENT TO ARTS SA**

7.1 The Trustee shall from the income and/or capital of the Trust Fund as the Trustee may from time to time determine pay to Arts SA the sum of Twenty Five Thousand Dollars (\$25,000) indexed in accordance with movements in the Consumer Price Index for Adelaide for each of the first five years from the date of this Deed in such manner as the Trustee may determine.

- 7.2 After the first five years from the date of this Deed the Trustee shall pay to Arts SA such sum as the Trustee may from time to time determine.

8. **PROCEEDINGS OF THE BOARD**

- 8.1 The Board must as soon as is practicable after the execution of this Deed, prepare written Board conduct guidelines for approval by the Minister for Disability, and subsequently such amendments as may be found necessary or desirable.
- 8.2 Without in any way limiting the generality thereof, the Board conduct guidelines may provide for:
- 8.2.1 the appointment of a secretary;
 - 8.2.2 the frequency of meetings;
 - 8.2.3 the quorum required for a meeting;
 - 8.2.4 the manner of voting at meetings; and
 - 8.2.5 the proportion of votes required to pass resolutions.
- 8.3 The Board must maintain a record of all the Board guidelines approved by the Minister for Disability, and a copy will be provided to each member upon appointment to the Board.
- 8.4 The Board Chair must within fourteen (14) days after each meeting provide a copy of the minutes of that meeting to the Trustee.

9. **INDEMNITY OF BOARD MEMBERS**

Each member of the Board (including each person who ceases to be a member of the Board for any reason) will be indemnified out of the Trust Fund from and against any civil liability that may be incurred as a result of a bona fide act or omission in the performance or purported performance of the functions of the member of the Board under this Trust Deed.

10. **DISTRIBUTION OF INCOME AND CAPITAL**

- 10.1 In each year the Trustee may distribute the whole or part of the net income of the Trust Fund and any part of the capital of the Trust Fund to the beneficiaries and must do so in accordance with this Deed.
- 10.2 It will not be necessary for the Trustee to pay or apply income of the Trust Fund in the years of its receipt and the Trustee may in its absolute discretion

pay or apply income at any time or times or hold and carry forward such income for subsequent payment or application.

10.3 The Trustee will advise the Board as to the estimated amount of income of the Trust Fund in any year.

11. **CAPITAL**

11.1 The capital of the Trust Fund must at all times be separately identified from the income or any other accretions to the capital of the Trust Fund.

11.2 The Trustee may capitalise any unallocated income of the Trust Fund and the capital of the Trust Fund shall be augmented accordingly.

12. **ACCOUNTING**

The Trustee must cause to be kept proper and timely accounts in respect of all receipts and payments on account of the Trust Fund and of all dealings connected therewith; and as soon as practicable after the end of each financial year shall cause to be prepared a statement showing the financial position of the Trust at the conclusion of that financial year, including a balance sheet and a statement of income and expenditure for that year.

13. **TERMINATION OF TRUST**

13.1 If the Trustee considers that the capital of the Trust Fund is insufficient to enable the Trust to continue to operate efficiently or effectively, the Trustee may, following consultation with the Board, terminate the Trust.

13.2 In the event of the Trust being terminated, the Trustee will distribute all remaining funds having regard to a report prepared by the Board and in accordance with clause 3.2 of this Deed.

14. **TRUSTEE'S FEES**

The Trustee may charge an administration fee in accordance with section 44 of the *Public Trustee Act 1995 (SA)*, but may not charge any commission.

15. **TRUSTEE'S POWERS**

15.1 The Trustee may exercise all or any of the powers and discretions given to the Trustee pursuant to law or an Order of the Court with appropriate jurisdiction.

15.2 The Trustee:

15.2.1 will be indemnified out of the Trust Fund from and against any expense and liability that may be incurred in prosecuting or defending or intervening in any action or suit in respect of the provisions of this Trust Deed, except where the action or suit in respect of the provisions of this Trust Deed arises out of any act of deceit, gross neglect or default or breach of trust by the Trustee;

15.2.2 will not incur any liability to anyone in respect of doing, or performing or failing to do or perform any act or thing, which, by reason of any provision of any present or future law of any State or Territory or the Commonwealth of Australia thereof or any ordinance rule regulation or by-law made pursuant thereto or of any decree order or judgment of any court of competent jurisdiction, either the Trustee is required to do or perform or is hindered prevented or forbidden from doing or performing;

15.2.3 will not incur any liability to anyone in consequence of the Trustee relying in good faith on information that proves to be incorrect;

15.2.4 will not be liable to account for any payments made by the Trustee in good faith to any duly empowered fiscal authority for taxes imposts or other charges made upon or in respect of the Trust or with respect to any transaction involving the Trust, notwithstanding that any such payment ought or need not have been made except to the extent that such payments may be attributable to the Trustee's own act of deceit, neglect or default;

15.2.5 may act upon information obtained from any beneficiaries or "potential beneficiaries" or the opinion advice of or information obtained from barristers or solicitors being persons independent of the Trustee and instructed by the Trustee and upon any statement of or information obtained from any bankers accountants or other persons appointed by the Trustee in good faith to be the expert in relation to the matters upon which they are consulted and the Trustee is not liable for anything

done or suffered by it in good faith in reliance upon any such opinion advice statement or information;

15.2.6 will not be responsible for any misconduct mistake oversight error of judgement, forgetfulness or want of prudence on the part of any auditor, actuary, approved valuer, attorney, banker, receiver, receiver and manager, barrister, solicitor, agent or other person acting as agent or adviser of the Trustee except to the extent that such loss is attributable to the Trustee's own act of deceit, neglect or default; and

15.2.7 will not be liable for any action taken or thing suffered by the Trustee in reliance upon any notice, resolution, direction, consent, certificate, receipts affidavit, statement, holding out, certificate for stock, plan of reorganisation, application or other paper or document reasonably believed by the Trustee to be genuine and to have been possessed, produced, passed, signed or endorsed by the proper parties where liability but for this indemnity would attach by any reason solely that such paper or document was not, in fact, genuine or so possessed produced passed signed or endorsed.

15.3 The receipt of a person authorised to receive money on behalf of a beneficiary will be a full and sufficient discharge and will absolve the Trustee from seeing to the application of the benefit.

15.4 Should the Trustee purchase or otherwise acquire any investment in regard to which, there is liability, the Trustee will have a right of indemnity out of the Trust Fund in respect of that liability except to the extent that such liability may be attributable to the Trustee's own act of deceit, neglect or default.

15.5 In the event that the Trustee has incurred a liability as Trustee and the Trustee is entitled under the terms of this Trust Deed or as otherwise allowed by law to be indemnified in respect of such liability out of the Trust Fund, the Trustee may claim such indemnity from the Trust Fund but the Trustee shall not be entitled to be indemnified for that liability by any beneficiary unless by a separate agreement, with that beneficiary.

16. **AMENDMENT OF THE TRUST DEED**

The Trustee may by Deed with the consent in writing of the Minister for Disability amend the terms of this Deed in such manner as the Trustee considers to be appropriate.

17. **PROPER LAW**

This Trust Deed and the trusts hereof are governed by and construed in accordance with the law for the time being in force in the State of South Australia.

IN WITNESS WHEREOF the parties have hereto set their hands and seals the day first hereinbefore mentioned.

THE COMMON SEAL of)
MINISTER FOR DISABILITY)
was affixed hereto by authority)
of the Minister in the presence of:)



.....

SIGNED by **PUBLIC TRUSTEE**)
and her seal of office affixed)
hereto in the presence of:)

.....