

Date

Will of

Peter Parker

SAMPLE

cleardocs.com
770 Industrial Street
5653 Bourke Street
Ballarat VIC 3350
Tel: 000000000
Fax: 03 98869123
admin2@cleardocs.com

Table of Contents

1.	Revocation.....	3
2.	Parts of my Will.....	3
Part A - Appointments		3
3.	Appointment of Executor.....	3
4.	Appointment of Trustee.....	3
Part B - Distribution of my estate		4
5.	Payment of debts and funeral expenses.....	4
6.	Residuary estate.....	4
Part C - Powers and Discretions		4
7.	Earlier vesting in certain circumstances.....	4
8.	Gifts to charities.....	5
9.	Additional powers of Executor and Trustee	5
10.	Non-apportionment clause	7
11.	Liability of Executor.....	8
12.	Governing law.....	8
13.	Exercise of discretions by Executor, Trustee or Appointor	8
Part D - Dictionary.....		10
14.	Definitions and interpretations.....	10
Part E – Terms of Testamentary Discretionary Trust.....		16
15.	Name of Trust.....	16
16.	Ending of Trust	17
17.	Consent of the Primary Beneficiary	17
18.	Powers to pass to Specified Beneficiaries	17
19.	Determination of income and classes of income.....	18
20.	Distribution of net income and capital	18
21.	Net income and capital upon vesting.....	19
22.	Trustee's powers.....	19
23.	Exercise of Trustee's discretion.....	23
24.	Trustee's indemnity.....	23
25.	Trustee's remuneration	24
26.	Appointment and removal of Trustee.....	24
27.	Appointment and resignation of Appointor	25
28.	Amendment to Trust provisions.....	26
29.	Main residence	26

This is the Will of me, Peter Parker of 5/83 George Street, Parramatta, NSW, 2150, Accountant.

1. Revocation

I revoke all wills and testamentary dispositions previously made by me.

2. Parts of my Will

This Will is in 5 main parts:

- 2.1 Part A sets out the appointments I make.
- 2.2 Part B sets out how my estate is to be divided.
- 2.3 Part C sets out the powers and discretions I give to my Executor.
- 2.4 Part D sets out a dictionary of words and phrases used in my Will.
- 2.5 Part E sets out the terms of any testamentary discretionary trust established for a Primary Beneficiary.

Part A - Appointments

3. Appointment of Executor

- 3.1 I appoint my spouse, Julie Parker of 5/83 George Street, Parramatta, NSW, 2150, as Executor of my Will and Trustee of my estate. If my spouse is unable or unwilling to act, then I make the following appointment.
- 3.2 I appoint the following as Executor of my Will and Trustee of my estate:
 - 3.2.1 Lia Parker of 5/83 George Street, Parramatta, NSW, 2150.

4. Appointment of Trustee

- 4.1 Subject to the powers to appoint and remove Trustees contained in my Will, where a Primary Beneficiary has been nominated and determined in respect of a Trust, the Primary Beneficiary or the person nominated by the Primary Beneficiary will be the Trustee of the Trust.

.....
Peter Parker

.....
witness 1

.....
witness 2

4.2 Otherwise, my Executors will be the Trustees of each Trust under this Will unless or until another Trustee is appointed pursuant to this Will or pursuant to the relevant legislation governing Trustees, in the state or territory I resided in at the date of my death.

Part B - Distribution of my estate

5. Payment of debts and funeral expenses

My Executor must pay out of my estate my debts, funeral and testamentary expenses and any duties, taxes and fees payable on my estate and on the transfer of my assets to any Beneficiary. These payments take priority over all gifts made in my Will.

6. Residuary estate

6.1 I give my residuary estate to my Trustee to establish a testamentary discretionary trust for my spouse, Julie Parker, with my spouse as the Primary Beneficiary.

6.2 If Julie Parker does not survive me then the following sub-clauses of this clause will apply.

6.3 I give my residuary estate to my Trustee to establish a testamentary discretionary trust for Sam Parker of 5/83 George Street, Parramatta, NSW, 2150 as Primary Beneficiary.

6.4 I expressly direct that any provision of any legislation which would result in a gift to a child or other descendant of mine (who fails to survive me) passing to their child or other descendant will not apply to my Will.

6.5 Accruer clause

If any share of my residuary estate fails to vest, then that share is to be added to the other share or shares in the same proportions as those other shares bear to each other.

Part C - Powers and Discretions

7. Earlier vesting in certain circumstances

.....
Peter Parker

.....
witness 1

.....
witness 2

The requirements in this Will for a Primary Beneficiary or Specified Beneficiary to attain a nominated age will not apply if at the vesting date of the specific Trust, the requirement would have prevented the vesting of all or any part of my estate or of the specific Trust.

8. Gifts to charities

8.1 In respect to any gift made to a charitable organisation:

8.1.1 The receipt of the secretary, treasurer or public officer for the time being of any organisation benefiting under my Will discharges my Executor absolutely; and

8.1.2 If any charitable organisation has ceased to exist, merged or amalgamated with another organisation, ceased as a charitable organisation or for any other reason cannot receive a gift, then that gift must be made to the charitable organisation in Australia that my executor considers most nearly fulfils the objects I intend to benefit.

9. Additional powers of Executor and Trustee

My Executor (and any Trustee) has the following powers in addition to those conferred by law which may be exercised in my Executor's or Trustee's absolute discretion:

9.1 Use of capital and income for beneficiaries

My Executor may pay or apply all or part of the capital and income of the share of my estate to which a Beneficiary is actually or contingently entitled towards the maintenance, education, benefit and advancement in life (including travel) of that Beneficiary. The receipt of the parent or guardian of any minor is a sufficient discharge to my Executor for such payment.

9.2 Investments

My Executor may:

9.2.1 invest the assets of my estate in such assets as my Executor thinks fit and in any manner authorised by law, and vary those investments;

9.2.2 retain any part of my estate regardless of its state or condition of investment without being liable for any loss or impeachment for waste; and

9.2.3 invest money in my estate in the purchase of any freehold or leasehold land or a share or interest in land in Australia (including the purchase of shares in any

.....
Peter Parker

.....
witness 1

.....
witness 2

company which confer rights to the occupancy of any premises), whether income-producing or not, and to permit any beneficiary to use or occupy such land or interest in land on such terms as my Executor thinks fit.

9.3 **Power to sell**

My Executor may sell, call in and convert into money such assets of my estate as do not consist of money at the time and on the conditions that my Executor thinks fit.

9.4 **Power to lease**

My Executor may grant leases and vary, release, waive or surrender any lease.

9.5 **Power to borrow**

My Executor may borrow money whether with or without giving security and to enter into any mortgage, charge, bill of sale, lien or security over any part of the Trust Fund.

9.6 **Appropriate assets towards interest under Will**

My Executor may appropriate in kind any asset in satisfaction or part satisfaction of any share or interest under this Will without the consent of any person and without regard to differences in asset cost bases for capital gains tax purposes, so that any appropriation is binding on all persons entitled under this Will.

9.7 **Power to manage repair and deal with property**

My Executor may manage, repair (whether structural or otherwise), improve or otherwise deal with the whole or any part of any property of my estate, as if my Executor was the beneficial owner.

9.8 **Make determinations as to income or capital and other matters**

My Executor may determine:

9.8.1 whether any money received is of a capital or income nature and whether any outgoings are to be paid out of capital or income; and

9.8.2 all questions and all matters of doubt arising in the execution of the Trusts of this my Will.

Subject to the jurisdiction of any relevant court, every such determination will be conclusive and binding on all persons interested under this Will.

.....
Peter Parker

.....
witness 1

.....
witness 2

9.9 **Use of capital and income to pay taxes etc**

My Executor may use income or capital or both to pay income tax, capital gains tax or any other tax or duty levied on my estate or in respect of the disposal of any asset by my Executor and apportion liability for that tax or duty as my Executor thinks fit.

9.10 **Employ professionals**

9.10.1 Instead of acting personally, my Executor may employ a solicitor, accountant or other person to do anything required to be done in connection with the Trusts under this Will and pay the costs or fees of such person out of my estate.

9.10.2 If any of my Executors is a solicitor, accountant or other person engaged in a profession or business, that Executor and the Executor's firm, whether as Executor or Trustee, may be paid all usual charges for all work done and time spent in the administration of my estate and the performance of the responsibilities of Executor and Trustee including acts not requiring the engagement of a professional person.

9.11 **Power to carry on business**

My Executor may acquire, carry on or join in carrying on any business either alone or in partnership with any other person or persons at the discretion of my Executor during such period as my Executor thinks proper. For this purpose, the Executor may:

9.11.1 employ such part or parts of the capital of my estate as my Executor thinks fit;

9.11.2 appoint as manager of the business any person or persons (whether a Trustee or beneficiary of my estate or not) or leave the entire management of the business to any partner in the business;

9.11.3 renew any partnership; and

9.11.4 generally act in all matters relating to the business or businesses as if my Executor were beneficially entitled thereto and without responsibility for loss.

9.12 **Obtain valuation**

My Executor may obtain a valuation of any assets of my estate as my Executor thinks fit.

10. **Non-apportionment clause**

.....
Peter Parker

.....
witness 1

.....
witness 2

All dividends, rent, interest and other periodical payments in the nature of income received after my death in respect of a period wholly or partly before my death must not be apportioned under any rule or law but must be treated as having been paid in respect of a period immediately after my death.

11. Liability of Executor

My Executor will not be liable for any loss to my estate unless it is attributable to the dishonesty of an Executor or any wilful act known by such Executor to be a breach of trust. This clause does not apply to a licensed trustee company.

12. Governing law

12.1 Subject to the following subclause, the courts of the state or territory of the jurisdiction have exclusive jurisdiction in any proceedings involving the rights or obligations under the Will.

12.2 The Trustee may at any time before the Vesting Date by deed with the consent of the Primary Beneficiary declare that from the date of such declaration:

12.2.1 the law of any Qualifying Jurisdiction governs the validity of any Trust made by the Will, and its construction, effects and administration, or any severable part of that Trust; and

12.2.2 the courts of any Qualifying Jurisdiction have exclusive jurisdiction in any proceedings involving rights or obligations under that settlement.

13. Exercise of discretions by Executor, Trustee or Appointor

13.1 Unless otherwise stated:

13.1.1 if more than one person is an Executor, or a Trustee, or an Appointor, then a decision of my Executors or Trustees or Appointors (as the case may be), must be a decision of those persons unanimously;

13.1.2 in this clause:

13.1.2.1 references to my 'Trustee' or 'Trustees' is also to be taken as a reference to my 'Executor' or 'Executors' or my 'Appointor' or Appointors'; and

13.1.2.2 the term 'other Trustees' will include all other Trustees, whether one or more.

.....
Peter Parker

.....
witness 1

.....
witness 2

13.2 In relation to the exercise of any power or discretion or the making of any decision by my Trustees under this Will or by law (**the verdict**):

13.2.1 where my Trustees are unable or fail to unanimously agree on the verdict, there will be deemed to be a dispute between my Trustees;

13.2.2 any Trustee may by written notice (**first notice**) served upon the other Trustees:

(a) set out the terms of the verdict they propose and require that my Trustees unanimously agree on the verdict within 7 days after the service upon the other Trustees of the first notice (**first period**);

(b) if any Trustee does not agree in writing within the first period they must within a further period of 7 days (**second period**) serve written notice (**second notice**) on the other Trustees specifying their reasons and any submissions in support of their reasoning. Failure by any Trustee to serve a second notice or agree in writing to the verdict proposed in the first notice will be deemed to be agreement by them to the terms of such verdict;

13.2.3 If a unanimous decision or agreement has not been reached within a further period of 7 days (**third period**) any Trustee (the **referring Trustee**) may refer the matter to mediation as follows.

13.3 If the matter is referred to mediation, the following provisions will apply.

13.3.1 The referring Trustee must request the President of the Institute, Society or Body responsible for the regulation of solicitors in the jurisdiction to appoint a Mediator. Without limiting the discretion of such President in making the appointment, it is my wish that such person be either:

(a) a lawyer holding a full practising certificate to practice as a barrister and/or solicitor in the jurisdiction for at least 10 years preceding the date of appointment; or

(b) a chartered accountant having been a member of the Institute of Chartered Accountants in Australia (or its successor or body) for at least 10 years preceding the date of appointment;

13.3.2 The Mediator, once appointed will determine the mediation procedure. It is my wish that the mediator be instructed to:

.....
Peter Parker

.....
witness 1

.....
witness 2

- (a) set a date for the mediation of the dispute as soon as practicable but not later than 35 days after the date of that person's appointment; and
- (b) negotiate all aspects of the dispute with my Trustees in a final attempt to settle the dispute;

13.3.3 the result of such negotiated settlement will be binding upon my Trustees as though it were a decision by all of my Trustees.

13.4 If the dispute has not settled within 7 days after the mediation, or such further period as agreed to in writing by my Trustees, the dispute must be submitted to arbitration administered by Australian Commercial Disputes Centre (**ACDC**) in accordance with the ACDC Rules for arbitration operating at the time the dispute is referred to arbitration which are hereby deemed incorporated into these Trust Provisions; and

13.4.1 the arbitrator must not be the same person as the mediator. If the result of such arbitration is a negotiated settlement, such settlement will be binding upon the Trustees as though it were a decision by all my Trustees. Any decision made by the arbitrator will be deemed to be a unanimous decision of my Trustees and will be binding on all persons having an interest in my estate; and

13.4.2 if it is not possible for the specified person or entity to appoint a Mediator or Arbitrator, then the Umpire may appoint the Mediator or Arbitrator and the rules for such mediation or arbitration.

Part D - Dictionary

14. Definitions and interpretations

In this Will unless expressed or implied to the contrary:

- 14.1 Headings are for convenience only and do not affect the interpretation of this Will.
- 14.2 References in this Will to a statute or law include consolidations, amendments, re-enactments or replacements of that statute or law or corresponding statutes or laws in any other relevant state or territory.
- 14.3 A reference to the singular includes the plural and vice versa.
- 14.4 A reference to a gender includes any other gender and 'they' includes the terms 'he', 'she' and 'it'.

.....
Peter Parker

.....
witness 1

.....
witness 2

- 14.5 A reference to 'includes' or 'including', means 'including but not limited to' or 'including without limitation'.
- 14.6 A reference to 'parts', 'sections' and 'portions' is intended to mean a reference to shares of my estate in descending order.
- 14.7 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- 14.8 **Appointor** means the person or persons for the time being having the right to remove and appoint Trustees of any specific Trust.
- 14.9 **Beneficiary and Beneficiaries** means in relation to any testamentary discretionary trust:
- 14.9.1 the Primary Beneficiary of the Trust;
 - 14.9.2 the children and descendants of the Primary Beneficiary;
 - 14.9.3 any person who is a descendant of a grandparent of either the Primary Beneficiary of the Trust or spouse of the Primary Beneficiary;
 - 14.9.4 the spouse and children of any of the persons specified in the preceding paragraph;
 - 14.9.5 the entities (including companies and trusts) in which any of the above beneficiaries are a director, or directly or indirectly have an absolute, contingent or expectant interest; and
 - 14.9.6 charitable or religious funds or institutions;
- provided that the Trustee may:
- 14.9.7 elect to temporarily or permanently exclude a beneficiary from all or any part of the Trust fund;
 - 14.9.8 elect to temporarily or permanently refrain from distributing or providing income, capital or other benefits in respect to all or any part of the Trust Fund, to or for the benefit of a beneficiary; or
 - 14.9.9 need to take note of any family trust or other election that may be made.
- 14.10 **capital** means the capital of the specific Trust.

.....
Peter Parker

.....
witness 1

.....
witness 2

14.11 **Child and Children**, for the purpose of determining a Primary Beneficiary in Part B of this Will:

14.11.1 excludes stepchildren and foster children; and

14.11.2 includes legally adopted children and children born as a result of an artificial conception procedure as defined in the *Family Law Act 1975* (Cth); and

Child, Grandchild, Grandchildren, Great-Grandchild, Great-Grandchildren and Descendant will have a corresponding meaning.

14.12 **Child and Children**, in relation to a beneficiary of a testamentary discretionary trust, include an adopted child, an ex-nuptial child, a foster child, child of a spouse, or any child in the custody or care of the Beneficiary, widow or widower of a Beneficiary and 'grandchild' and 'grandchildren' and 'great-grandchild' and 'great-grandchildren' have corresponding meanings.

14.13 **Death Benefit** in relation to superannuation has the meaning given to it by section 307-5 of the *Income Tax Assessment Act 1997* (Cth) and 'Death Benefits' will have a corresponding meaning.

14.14 **Death Benefits Dependants** means persons who are, as at the date of my death, my death benefits dependants as defined by section 302-195 of the *Income Tax Assessment Act 1997* (Cth).

14.15 **Descendants in Substitution** means that where that term is used and:

14.15.1 any Beneficiary dies before becoming the Primary Beneficiary of a Trust under the clause leaving a child or children of their own who:

- (a) survives me or are born after my death; and
- (b) attains the nominated age,

then that part that would have been held on trust with the Beneficiary as Primary Beneficiary if that beneficiary had not died will:

- (c) if there is only one such child of the Beneficiary, be held on trust with the beneficiary's child being the Primary Beneficiary of that Trust; or
- (d) if there is more than one such child of the Beneficiary, be divided by the number of such children of the Beneficiary into equal sections with each section held on separate Trusts and with each such child of the Beneficiary being the Primary Beneficiary of one such Trust;

.....
Peter Parker

.....
witness 1

.....
witness 2

14.15.2 provided further that if any of the aforesaid Beneficiary's children die before becoming the Primary Beneficiary of a Trust under this clause leaving a child or children of their own who:

- (a) survives me or are born after my death; and
- (b) attains the nominated age,

then that section that would have been held on trust with the Beneficiary's child as Primary Beneficiary if that child had not died will:

- (c) if there is only one such child of the Beneficiary's child, be held on trust with that child being the Primary Beneficiary of that Trust; or
- (d) if there is more than one such child of the Beneficiary's child, be divided by the number of such children into equal portions with each portion held on separate Trusts and with each such child of the Beneficiary's child being the Primary Beneficiary of one such Trust.

Where the expression 'Descendants in Substitution' is preceded by the word 'our', the expression is limited to persons who are also a descendant of the Will maker.

14.16 **Disqualified Person** means a person who:

14.16.1 is married or has been in a relationship with a person of the same gender or different gender (howsoever described) and begins to live separately and apart from her or his spouse or partner in a manner that constitutes a separation for the purposes of a Commonwealth, state or territory law, and has not settled, by way of court order or financial agreement, the financial claims or rights arising from the relationship of both the person and their spouse or partner; or

14.16.2 is the subject of a declaration by a board or tribunal governing the appointment of guardians and administrators under Commonwealth, state or territory law, made on the grounds of disability, infirmity, or lack of legal capacity, or two registered medical practitioners certify that the person is unable to understand the nature or effect of their own decisions, or is no longer able to communicate their decisions; or

14.16.3 is unable to pay debts as and when they fall due, or is or becomes an undischarged bankrupt, is in liquidation, receivership or administration, or is unable in law to act or continue to act as Trustee and/or Appointor, as relevant;

.....
Peter Parker

.....
witness 1

.....
witness 2

14.16.4 the majority of my Executors (other than the Disqualified person and where the Disqualified Person is my sole Executor the substitute Executor or Executors named in this Will) deem by Deed to be a Disqualified Person.

14.17 **Executor** means the Executor and Trustee or Executors and Trustees for the time being of the Will.

14.18 **gift or gifts** means any bequest, devise or legacy of real or personal property. I understand that if I give a beneficiary a specific asset which I no longer own when I die, then the gift fails.

14.19 **gift of money** means a money gift in Australian currency. I understand that any gift of money is dependent on there being sufficient assets in my residuary estate to pay the gift or gifts.

14.20 **income of the Trust Fund** means either:

14.20.1 income according to ordinary concepts and usages; or

14.20.2 what the Trustee determines it means in relation to a financial year in accordance with the clause headed 'Determination of income and classes of income'.

14.21 **jurisdiction** means the state or territory of Australia where I resided at the date of death, and if not resident in Australia, will be the state or territory in Australia in which the greatest amount (by dollar value) of my residuary estate at my death is situated.

14.22 **legal personal representative** means:

14.22.1 in the case of a person under the age of 18 years, his or her parent or guardian;

14.22.2 in the case of an adult under a legal disability:

(a) a person who holds an enduring power of attorney granted by the adult,
or

(b) the adult's manager, guardian or trustee as appointed by a Court or Tribunal empowered to make such appointment, other than a trustee in bankruptcy;

14.22.3 in the case of a deceased person, the executor or administrator of his or her estate.

14.23 **minor** means a person under the age of 18 years.

.....
Peter Parker

.....
witness 1

.....
witness 2

- 14.24 **net income of the Trust Fund** means the income of the specific Trust Fund less such outgoings, expenses, charges and provisions that the Trustee determines in its absolute discretion is to be levied against that income.
- 14.25 **nominated age** means the age of 25 years.
- 14.26 **parents**, in relation to a Beneficiary, include the parent of a spouse, widow or widower of a Beneficiary.
- 14.27 **Primary Beneficiary** means the relevant Primary Beneficiary in respect of whom a Trust has been established.
- 14.28 **Qualifying Jurisdiction** is one which recognises trusts (as defined in Article 2 of the Hague Convention on the Law Applicable to Trusts and on their Recognition).
- 14.29 **residuary estate** means my real and personal estate not specifically gifted to a beneficiary (excluding for the purpose of this definition a specific gift to a beneficiary, whether by gift or direction, where the gift is expressed as a percentage of my residuary estate) after my Executor has paid all my debts, funeral and testamentary expenses and any duties, taxes and fees payable on my estate and on the transfer of my assets to any beneficiary (including in respect of giving effect to a specific gift to a beneficiary, whether by gift or direction, where that gift is expressed as a percentage of my residuary estate).
- 14.30 **Specified Beneficiaries** means:
- 14.30.1 the Beneficiary or Beneficiaries whose appointment by the Primary Beneficiary by deed or Will as Specified Beneficiaries has taken effect; or
- 14.30.2 if the Primary Beneficiary dies without making such an appointment, those persons named in this Will to have been the Primary Beneficiaries of trusts instead of the Primary Beneficiary had the Primary Beneficiary failed to survive me; and
- 14.30.3 a Specified Beneficiary may similarly be solely or jointly succeeded as a Specified Beneficiary.
- 14.31 **spouse** includes a defacto spouse, whether of the same or different gender and 'widower' and 'widow' having corresponding meanings.
- 14.32 **survive me** means 'survive me by 30 days' unless there is a contrary intention expressed. Any provision of my Will or any legislation which deems the term 'survive' to mean survive by any defined period whether it is 30 days or any other period will not apply to any

.....
Peter Parker

.....
witness 1

.....
witness 2

superannuation death benefits paid to my estate if the beneficiary is a tax dependent. In that case the terms 'survived' or 'survive' will mean survive by any time period.

- 14.33 **Trust** means the trust or trusts as the case may be.
- 14.34 **Trustee** includes the Executor or Executors of my Will and for the purpose of any Trust established by my Will, the Trustee or Trustees of such Trust.
- 14.35 **Trust Fund** means in respect of any Trust that part of my estate that has been transferred to the Trustee for the benefit of the Beneficiaries or the Trust pursuant to the provisions of the Will and includes any additions, accumulations, and/or accretions.
- 14.36 **Trust Position** means the position of trustee, appointor, guardian, or similar position in regard to a trust and includes any position that at the time of my death required me to give my consent before the trust's trustee could make certain determinations including any determination to distribute capital.
- 14.37 **Vesting Day** means the earlier of the following dates:
- 14.37.1 eighty (80) years from the date of death of the Will maker or the maximum period allowed by law in the jurisdiction or relevant Qualifying Jurisdiction (as the case may be); or
 - 14.37.2 such earlier date as is nominated in writing by the Trustee.
- Nothing in this definition implies or requires any Trust to vest at the same time as any other Trust established by my Will.
- 14.38 **Will maker** means Peter Parker.
- 14.39 **Will** means the Will of the Will maker together with any codicil or codicils.

Part E – Terms of Testamentary Discretionary Trust

In respect of the Trusts created for which a Primary Beneficiary is nominated, the following provisions of this Part will apply.

15. Name of Trust

The Trustee of a Trust established by this Will will have the power to name the Trust.

.....
Peter Parker

.....
witness 1

.....
witness 2

16. Ending of Trust

The Trust ends on the Vesting Day.

17. Consent of the Primary Beneficiary

17.1 Regardless of any other provision in this part, and subject to the following subclause, if any person other than the Primary Beneficiary is one or more of the persons comprising the Trustee, the written consent of the Primary Beneficiary or all of the Specified Beneficiaries will be required before the Trustee may do any of the following:

- 17.1.1 amend the terms of the Trust;
- 17.1.2 nominate an earlier vesting day;
- 17.1.3 distribute, pay or apply capital or net income (other than to the Primary Beneficiary);
- 17.1.4 pay or apply capital or net income (other than to the Primary Beneficiary or in the Specified Proportions, between all of the Specified Beneficiaries);
- 17.1.5 accumulate net income;
- 17.1.6 lend Trust monies other than at market rates of interest;
- 17.1.7 permit the use of Trust property without, or at a nominal charge (other than by the Primary Beneficiary or all of the Specified Beneficiaries); or
- 17.1.8 make an election allowed under the definition of Beneficiary or Beneficiaries.

18. Powers to pass to Specified Beneficiaries

18.1 On the death of the Primary Beneficiary:

- 18.1.1 all:
 - 18.1.1.1 powers in respect of the Trust held by the Primary Beneficiary;
 - 18.1.1.2 the matters requiring the consent of the Primary Beneficiary; and
- 18.1.2 all such powers or matters that would have been restored to the Primary Beneficiary had the Primary Beneficiary ceased to be a Disqualified Person,

.....
Peter Parker

.....
witness 1

.....
witness 2

18.1.3 will pass to the Specified Beneficiaries jointly.

18.2 Where a Specified Beneficiary has not attained the nominated age or is otherwise under a legal disability, my Executors must exercise that Specified Beneficiary's powers in the best interests of that Specified Beneficiary.

19. Determination of income and classes of income

19.1 The Trustee may, instead of relying on the definition of 'income' of the Trust Fund in this Will, decide at any time prior to the end of each financial year to adopt, in respect of that financial year, another definition of the expression 'income' of the Trust Fund. A decision under this clause must be evidenced by signing a minute to that effect.

19.2 Notwithstanding anything to the contrary contained or implied elsewhere in my Will the Trustee in determining the net income derived by the Trust Fund during each financial year may determine whether any receipt or expense or outgoing or any sum of money or investment is to be regarded as being on account of income or on account of capital and may:

19.2.1 treat as income of the Trust Fund any receipt profit, gain or capital which is assessable income for the purposes of the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) or both, as amended;

19.2.2 segregate income into one or more types and allocate expenses to each type of income in accordance with the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) or both, as amended; and

19.2.3 pay apply or set aside net income of one or more types to or for one or more of the Beneficiaries to the exclusion of other Beneficiaries.

20. Distribution of net income and capital

20.1 The Trustee may, in each year, deal with all or part of the net income and capital (or any category of the net income or capital) of the Trust in the following manner:

20.1.1 pay, allocate or distribute (including by way of in specie distribution) to, or apply for the benefit of, such of the Beneficiaries as the Trustee may determine; or

20.1.2 accumulate all or any part as an addition to the Trust Fund of the Trust.

.....
Peter Parker

.....
witness 1

.....
witness 2

20.2 The Trustee may, while a Beneficiary is a minor or otherwise under any legal disability, pay or apply the whole or any part of the net income and capital (or category thereof), of that part of my estate which the beneficiary is contingently entitled, for the maintenance, support, education, advancement or benefit of:

20.2.1 the Beneficiary; or

20.2.2 (unless my Trustee irrevocably or revocably resolves otherwise), a person considered by my Trustee to be a dependant of the Beneficiary.

20.3 For the purposes of the preceding subclause my Trustee may:

20.3.1 make payments to the parent, guardian or care giver of the beneficiary or of the Beneficiary's dependant; and

20.3.2 accept the receipt of the payee as an absolute discharge.

21. Net income and capital upon vesting

21.1 As from the Vesting Day, the Trustee must hold the Trust Fund and any net income from the Trust Fund upon trust for those Beneficiaries and in such proportions as the Trustee nominates in writing.

21.2 If the Trustee does not make a nomination, then as from the Vesting Day, the Trustee must hold the Trust Fund and any net income from the Trust Fund upon trust for the Primary Beneficiary absolutely, provided that if the Primary Beneficiary dies before the Vesting Day survived by a child or children alive or living at the Vesting Day, then that child or, if more than one, those children equally will take the share that his, her or their parent would have taken had that parent been alive at the Vesting Day, or if no such children are then living, then to such person or persons as the Trustee determines to be the next-of-kin of the Primary Beneficiary.

22. Trustee's powers

22.1 In relation to the Trust Fund, the Trustee has all of the powers of a natural person and without limitation, the power to invest and change investments freely as if the Trustee were beneficially entitled to them and the power to apply, accumulate or otherwise deal with income by identifying and dividing that income into different parts including differences in the nature character and source of that income to or for the benefit of any Beneficiary.

.....
Peter Parker

.....
witness 1

.....
witness 2

22.2 In the exercise of the Trustee's powers, to the extent legally possible, the Trustee will not be restricted or obligated by provisions relating to trustees contained in any Commonwealth, state or territory law.

22.3 In the event that the Trust Fund includes land, the Trustee will hold that land on trust for sale with power to postpone sale.

22.4 Without derogating from the provisions of the previous sub-clauses and by way of illustration only, the Trustee has the following powers and discretions in respect of the Trust Fund in addition to those conferred by law:

22.4.1 to pay distributions to a Minor Beneficiary, to the parent or guardian of the Minor Beneficiary and the receipt of the parent or guardian of the Minor Beneficiary is sufficient discharge to the Trustee;

22.4.2 to postpone the sale of the Trust Fund (including the power to reinvest investments which mature), whether such investments of mine are invested in authorised trustee securities or otherwise, without the Trustee being liable for impeachment for waste;

22.4.3 to grant leases and to vary, release, waive or surrender any lease of any part of the Trust Fund as the Trustee thinks fit;

22.4.4 to determine, in the Trustee's absolute discretion, whether receipts or outgoings are of a capital or income nature so as to bind the Beneficiaries;

22.4.5 to manage, repair (whether structural or otherwise), improve or otherwise deal with the Trust Fund in the same manner as if the Trustee was the beneficial owner;

22.4.6 to exercise the powers of a trustee for sale in respect of any assets in the Trust;

22.4.7 to sell all or any of the Trust Fund by public auction or private sale for cash or on credit;

22.4.8 to make loans to Beneficiaries whether secured or unsecured, at interest or interest free, and on such terms as the Trustee thinks fit;

22.4.9 to acquire or lease assets for occupation use or enjoyment by any Beneficiary (whether alone or with some other person or persons);

22.4.10 to vote in a shareholders meeting of, and apply for and accept any directorship of, any corporation in which the Trustee may be interested or concerned;

.....
Peter Parker

.....
witness 1

.....
witness 2

- 22.4.11 to apply for, accept or take up bonus shares or other rights or benefits made available by a corporation in which the Trustee may be interested or concerned;
- 22.4.12 to borrow money whether with or without giving security and to enter into any mortgage, charge, bill of sale, lien or security over any part of the Trust Fund;
- 22.4.13 to act as surety or guarantor or to grant any bond to secure any debt or other obligations (whether arising from a contract or otherwise) of any person, whether or not a Beneficiary corporation or company, or to undertake or give any indemnity in respect of any debt or other obligation of any such person, corporation or company either with or without consideration and whether limited in amount or not and to mortgage, charge or otherwise hypothecate in the same manner as if the obligation undertaken was in respect of a borrowing by the Trustee all or any part of the Trust Fund to secure the performance of any surety guarantee bond covenant or indemnity given made or undertaken by the Trustee;
- 22.4.14 to enter, participate in, take out, accept the assignment of or maintain:
- (a) any insurance policy against risks affecting the Trust Fund;
 - (b) any life insurance policy in respect of any person;
 - (c) any policy or contract of health or accident insurance or benefit in respect of any person;
 - (d) an interest in any friendly society, credit union or association of employees benefit scheme in respect of any person;
 - (e) any superannuation or pension scheme in relation to any person; and
 - (f) any funeral benefit or payment scheme in relation to any person;
- 22.4.15 to use income or capital or both to pay capital gains tax levied on the disposal of any asset and apportion liability for that tax and for that purpose the Trustee may determine what is capital and what is income;
- 22.4.16 to allocate and pay the whole or any part of any particular type of net income to all or such one or more of the Beneficiaries to the exclusion of the other or others of them without being liable to take into account the tax consequences of such payment;
- 22.4.17 to set aside any unpaid or unapplied net income of the Trust Fund by crediting such amount to any Beneficiary in the books of the Trust. However, if this power is

.....
Peter Parker

.....
witness 1

.....
witness 2

exercised so that any Beneficiary is a creditor of the Trust, then such creditor has no right to claim any interest in any specific asset of the Trust Fund;

22.4.18 to acquire carry on or join in carrying on any business either alone or in partnership with any other person or persons at the discretion of the Trustee during such period as the Trustee thinks proper. For this purpose, the Trustee may:

- (a) employ such part or parts of the capital of the Trust Fund as the Trustee thinks fit;
- (b) appoint as manager of the business any person or persons (whether a Trustee of or otherwise interested in the Trust Fund or not) or leave the entire management of the business to any partner in the business;
- (c) renew any partnership; and
- (d) generally act in all matters relating to the business or businesses as if the Trustee was beneficially entitled and without responsibility for loss;

22.4.19 to take and act upon the opinion of any barrister or solicitor of more than five years standing practising in the jurisdiction whether in relation to the interpretation of the Will, these Trust Provisions or any other document or statute or as to the administration of the Trust without being liable to any one in respect of any act done by the Trustee in accordance with any such opinion. However, the Trustee is not obliged to act in accordance with any such opinion and nothing in this clause prohibits the Trustee from applying to the Court as the Trustee thinks fit;

22.4.20 to act as surety or guarantor or grant any bond to secure any obligation of any person corporation or company whether with or without consideration and whether limited in amount or not and to mortgage, charge or otherwise hypothecate all or any part of the Trust Fund to secure the performance of any covenant guarantee bond or borrowing given or made at the request of the Trustee or any other person corporation or company;

22.4.21 to apply the whole or any part of the capital or net income of the Trust Fund in or towards payment of any liability undertaken by the Trustee as guarantors or sureties of a Beneficiary;

22.4.22 in addition to the rights of the Trustee to be reimbursed out of the Trust Fund for all costs charges and expenses incurred or undertaken in the administration of the Trust, the Trustee may pay or discharge out of the Trust Fund:

.....
Peter Parker

.....
witness 1

.....
witness 2

- (a) all other costs and expenses of and incidental to the management of the Trust or incurred in the exercise or purported exercise of any power authority or discretion vested in the Trustee, including the costs or expenses of any person employed by the Trustee to carry out any duty even if the Trustee could or ought to have carried out our undertaken that duty personally and all costs charges and expenses of and incidental to the establishment maintenance and management of any corporate trustee; and
- (b) all duties and taxes imposed on any part of the Trust Fund or the income derived from the Trust Fund (except any duty or tax imposed personally upon the Trustee);

22.4.23 to distribute to any Beneficiary any property of the Trust Fund in specie;

22.4.24 make any election the Trustee is empowered to make under the provisions of the taxation laws to have a Trust declared a 'Family Trust' for the purposes of allocating franking credits to Beneficiaries or otherwise and if such election is made, the Trustee will be specifically protected from any claim for loss or damage in accordance with clause the clause headed 'Trustee's Indemnity';

22.4.25 establish a second or more Trusts by allocating specific assets of this Trust to such other Trust or Trusts, such Trust or Trusts to be on terms identical so far as possible with those of this Trust;

22.4.26 terminate or wind-up this Trust at any time.

23. Exercise of Trustee's discretion

Unless otherwise stated, if more than one person is a Trustee of the Trust, then a decision of the Trustee must be a decision of those persons unanimously.

24. Trustee's indemnity

24.1 The Trustee is entitled to be indemnified out of the assets for the time being of the Trust Fund against any liabilities incurred by the Trustee in the exercise of, or failure to exercise, any of the Trusts powers or discretions set out in this Trust but the Trustee will not have a right of recourse to any Beneficiary to meet such liability.

24.2 The Trustee is not responsible for:

.....
Peter Parker

.....
witness 1

.....
witness 2

- 24.2.1 any loss or damage occasioned to the Trust Fund or any part of it or to any person by the exercise of any discretion or power conferred by the Will or by law on the Trustee or by any alleged failure to exercise such discretion or power; or
- 24.2.2 any breach of duty or trust unless the breach is proved to have been committed or made or omitted to be made in personal conscious and fraudulent bad faith in which case the Trustee will be personally liable.

25. Trustee's remuneration

If any of my Trustees practises a profession, that Trustee is entitled to be paid (either directly or to his or her firm), for work done by that Trustee in the administration of the Trust (including work normally done by a trustee), as if that Trustee was not one of my Trustees but had been employed to act for my Trustees.

26. Appointment and removal of Trustee

- 26.1 Unless specified to the contrary in my Will, the first Trustee will be such person, persons or company as appointed by my Executor (with the consent of the Primary Beneficiary, and failing consent will be the Primary Beneficiary). If the Primary Beneficiary is a Disqualified Person the first Trustee will be my Executors (other than the Disqualified Person) and where the Disqualified Person is my sole Executor the first Trustee will be the substitute Executor or Executors named in this Will.
- 26.2 Subject to the power of the Appointor where the Trustee is a sole Trustee they may by will or deed appoint one or more successors as Trustee.
- 26.3 The Appointor may appoint new or additional Trustees and remove one or more Trustee.
- 26.4 Subject to the following sub-clauses, where a Trustee becomes a Disqualified Person the Trustee will be deemed to have immediately resigned as Trustee and they or their legal personal representative must as soon as practicable notify the Appointor and, if applicable, any remaining Trustee, in writing.
- 26.5 Any Trustee, not being the sole Trustee, may resign by notice in writing to the remaining persons acting as Trustee and to the Appointor (if any) and such notice will take effect immediately.
- 26.6 Where the sole Trustee ceases to be Trustee for whatever reason, then that Trustee will be succeeded by:

.....
Peter Parker

.....
witness 1

.....
witness 2

26.6.1 a person or persons nominated by the Appointor or if this does not result in a successor Trustee being appointed then,

26.6.2 my Executor (other than any Disqualified Person) and where a Disqualified Person is my sole remaining Executor then my substitute Executor as are then living, or if this does not result in a successor Trustee being appointed then,

26.6.3 the Trustee's legal personal representative.

26.7 A Trustee who is a Disqualified Person ceases to be a Disqualified Person when that Trustee no longer meets the terms of the definition of Disqualified Person. A person who has ceased to be a Disqualified Person may be appointed as Trustee.

26.8 My Executor (not including a Disqualified Person) has the power (subject to law) in their discretion to declare a Trustee who would otherwise be or become a Disqualified Person to be, or remain eligible to be, a Trustee. Where the Disqualified Person is my sole Executor this power may be exercised by the substitute Executor named in this Will.

27. Appointment and resignation of Appointor

27.1 Unless specified to the contrary in my Will, the first Appointor will be such person, persons or company as appointed by my Executor (with the consent of the Primary Beneficiary, and failing consent will be the Primary Beneficiary). If the Primary Beneficiary is a Disqualified Person the first Appointor will be my Executor (other than the Disqualified Person) and where the Disqualified Person is my sole Executor the first Appointor will be the substitute Executor named in this Will.

27.2 The Appointor may by will or deed nominate any person or persons or company to act together or in place of the Appointor, and may place such conditions or restrictions on such nomination (and may make such nomination revocable or irrevocable) by any notice in writing to the Trustee.

27.3 If two or more persons act as Appointor any decision must be a unanimous decision evidenced by deed executed by all of them.

27.4 Where an Appointor becomes a Disqualified Person the Appointor will be deemed to have immediately resigned as Appointor and they or their legal personal representative must as soon as practicable notify the Trustee and, if applicable, any remaining Appointor, in writing. In the event that the resignation results in the position of Appointor being vacant, or if the position becomes vacant for any other reason, then the Appointor will be my Executors

.....
Peter Parker

.....
witness 1

.....
witness 2

(other than the Disqualified Person) and where the Disqualified Person is my sole Executor the Appointor will be the substitute Executor or Executors named in this Will.

27.5 Any Appointor, not being the sole Appointor, may resign by notice in writing to the remaining Appointor or Appointors and the Trustee and such notice will take effect immediately.

27.6 My Executor (not including a Disqualified Person) has the power (subject to law) in their discretion to declare an Appointor who would otherwise be or become a Disqualified Person to be, or remain eligible to be, an Appointor. Where the Disqualified Person is my sole Executor this power may be exercised by the substitute Executor or Executors named in this Will.

28. Amendment to Trust provisions

Subject to the clause headed 'Consent of the Primary Beneficiary' and any other provision to the contrary, the Trustee may by deed revoke, add to, substitute or otherwise vary all or any of the Trusts or provisions of the Trust provided always that this power will not be exercised so that such addition, deletion or variation:

28.1 affects the beneficial entitlement to any amount allocated for, or otherwise absolutely and irrevocably vested in, any Beneficiary before the date of the amendment;

28.2 alters the class of Beneficiaries other than as permitted by my Will;

28.3 infringes the law against perpetuities; or

28.4 has the effect of delegating testamentary power or otherwise resulting in any provision of the Will becoming void.

29. Main residence

29.1 With respect to all residential real property forming part of a Trust, the Trustee of such Trust will hold such property on trust for sale, and subject to all the powers given by law and this Will, including the power to postpone such sale, without any liability for any loss as a result of such postponement, will deal with it in accordance with the remainder of this subclause:

29.1.1 the Primary Beneficiary or any other beneficiary (with the consent of the Primary Beneficiary or his or her legal personal representative) will have a personal right of occupation in respect of each residential property for as long as they wish for their lifetime;

.....
Peter Parker

.....
witness 1

.....
witness 2

29.1.2 during the term of such right of occupation, the property may not be sold without the prior consent of the Primary Beneficiary (or their legal personal representative);

29.1.3 at the written request of the Primary Beneficiary (or their legal personal representative), the property may be sold and the sale proceeds used to acquire a substituted residence to which the provisions of this subclause may apply.

SAMPLE

.....
Peter Parker

.....
witness 1

.....
witness 2

Dated this day of

Signed by **Peter Parker** on each page)
in our joint presence and attested and)
subscribed by us in their presence and)
in the presence of each other:

.....
Peter Parker

.....
Signature of witness 1

.....
Signature of witness 2

.....
Full name of witness 1 (block letters)

.....
Full name of witness 2 (block letters)

.....

.....

.....
Address of witness 1

.....
Address of witness 2

.....
Occupation of witness 1

.....
Occupation of witness 2

