

UTR7.235 - THE RUSSELL AND MAB GRIMWADE MIEGUNYAH FUND

Recitals -

- A. Sir Russell Grimwade ('Testator'), of 'Miegunyah', Orrong Road, Toorak, who died on 2 November 1955, in addition to other bequests (see University trust record 7.236), bequeathed to the University furniture, furnishings, pictures and other household goods in or about 'Miegunyah'.
- B. The Testator further wished that 'the books making up my collection of Australiana ('The Grimwade Australiana Collection') shall remain as a collection for all time and shall be retained, suitably cared for at Miegunyah and shall serve as a reference library for students of Australiana, for members of the University Press and for other persons who have a special interest in such matters.' The Grimwade Australiana Collection is now preserved in the Baillieu Library.
- C. Lady Grimwade ('Testatrix'), who died on 19 December 1973, bequeathed to the University 'Miegunyah' and furniture, furnishings, pictures and personal chattels.
- D. The Testatrix in her will referred to the will of the Testator in which he stated 'Without imposing any binding obligation on the said University of Melbourne or on its governing body for the time being', he wished 'Miegunyah' and the furniture, furnishings and pictures to be put to certain uses which he expressed as the joint wish of himself and the Testatrix, and in respect of which he noted that 'events which are not now foreseen may render impracticable or undesirable the carrying out of some of our wishes in the form that they are expressed in this clause. In such circumstances we are content to leave it to the Governing Body for the time being of the University of Melbourne to adapt our expressed wishes to the circumstances of the time in the full confidence that adherence to our general intention will at all times and under all circumstances be maintained', and the Testatrix in her will affirmed that those were her wishes.
- E. The Council of the University, having found it impractical to maintain 'Miegunyah' for University purposes in accordance with the wishes of the Testatrix, made an application to the Supreme Court of Victoria to sell 'Miegunyah' and certain items of furniture, and to establish with the proceeds of the sale a perpetual endowment fund in memory of the Testator and the Testatrix.
- F. The Supreme Court on 20 November 1984 declared that 'Miegunyah' could no longer be applied in accordance with the directions given by the Testatrix, regard being had to the spirit of the gift, and made an order authorising the University to sell 'Miegunyah' and such items of furniture and other articles bequeathed to the University by the Testatrix as it saw fit and that the proceeds of sale be applied cy-près in accordance with a scheme to be approved by the Court.
- G. In 1987, the University sold 'Miegunyah' (receiving from that sale the net sum of \$3,379,844), the Testator's land (receiving from that sale the net sum of \$1,475,000) and certain items of the furniture and other articles receiving from those sales the net sum of \$8,081.
- H. The Supreme Court of Victoria on 26 September 1990 approved the establishment of a perpetual endowment fund to be known as 'The Russell and Mab Grimwade Miegunyah Fund' with the sums described in Recital G, the income from which is to be applied in the manner set out in a scheme approved by the Court ('scheme'). The value of the assets comprising The Russell and Mab Grimwade Miegunyah Fund and described in the scheme amounted to \$4,790,261.
- I. The Supreme Court of Victoria on 7 November 2004 made an Order varying the terms of the scheme by substituting another formula for calculating that part of the annual income to be added to capital and substituting Melbourne University Publishing for Melbourne University Press.

It is provided as follows -

1. The sum of \$4,790,261, together with any accumulations and additions, is to form a fund called 'The Russell and Mab Grimwade Miegunyah Fund' ('fund') and the fund must be paid into one or more investment common funds and remain there until Council determines otherwise.

2. There is to be a committee of Council and a committee of management established and known as The Russell and Mab Grimwade Miegunyah Fund Committee ('committee') which will have the following members-
 - (a) the vice-chancellor or a person nominated by the vice-chancellor, who is chairperson of the committee;
 - (b) the Chancellor
 - (c) Sir Andrew Grimwade, or his nominee during his lifetime, being Angus Grimwade, and after his death, a person associated with that family who must be selected from time to time by Council;
 - (d) the provost;
 - (e) the deputy vice-chancellor (research);
 - (f) the deputy vice-chancellor (engagement) or nominee;
 - (g) the president of the Board;
 - (h) the Herald Professor of Fine Arts;
 - (i) the chairperson of the finance committee;
 - (j) the senior vice-principal; and
 - (k) not more than two members appointed annually by Council.
 - (2) The committee must at all times include one person with knowledge of the publication of scholarly works, one with knowledge of the housing and conservation of books, and one with knowledge of the housing, conservation and development of a collection of works of art, furniture and furnishings.

Where one person has knowledge of all three of these areas it will be sufficient compliance with this sub-section if that person is a member, and where one person has knowledge of any two of these areas it will be sufficient compliance if that person and another person with knowledge of the remaining area are members.
 - (3) The committee must on behalf of Council, manage and administer the fund in accordance with this University trust record and by such terms of reference as may be formulated by Council from time to time provided that the role of the committee is advisory only and it is not authorised to exercise any power required by law to be exercised by Council.
 - (4) The committee must, subject to the direction of Council, report to and advise Council annually on the administration of the fund and must meet at least once a year as soon as practicable after 31 January.
 - (5) Save in exceptional circumstances, Council must not exercise any powers in relation to the administration of The Miegunyah Fund unless it has first obtained the advice of the committee.

3. From the net annual income of the fund there must be applied in the ensuing year to the capital of the fund an amount equal to either -
 - (a) ten per cent of that net annual income; or
 - (b) the sum determined by the formula -

$$I \times D/100$$
 where

I is the net annual income;

D is the percentage points increase in the cost of goods and services measured by the Australian Bureau of Statistics during the relevant period by changes in the Consumer

Price Index or such other index as may supersede that index or is in the opinion of the Council the most appropriate measure of that increase;

whichever is the greater.

4. The remainder of the net annual income of the fund must be applied in the ensuing year as follows -
- (1) 10% for the publication by Melbourne University Publishing (whether operated as a department of the University or as a separate entity controlled by the University) of books of high quality and educational value, to be known as 'The Miegunyah Volumes', each of which must bear an imprint referring to 'Miegunyah' and The Russell and Mab Grimwade Miegunyah Fund; and insofar as this proportion of the income or any part thereof is not required for that purpose in any year, the income or part may be applied for the purpose described in section 4(3).
 - (2) 50% for -
 - (i) the housing and conservation, as a collection to be known as The 'Grimwade Australiana Collection', of the books referred to in the Testator's will as 'my collection of Australiana';
 - (ii) the housing, conservation and development of the collection of works of art, furniture and furnishings known as 'The Miegunyah Collection' and described in the Court order of 26 September 1990

and insofar as this proportion of the income or any part thereof is not required for that purpose in any year, the income or any part may be applied for the purpose described in section 4(3).
 - (3) 40% to create annually a fund ('reserve') for distribution for such general University purposes as Council may from time to time direct.
5. Subject to any limits determined from time to time by Council either generally or for specific purposes, in respect of the fund sums may be appropriated in any year for expenditure in a later year, and commitment may be entered into requiring expenditure in a later year from future income provided that no such commitment may be made for a period exceeding ten years or that may result in more than $(100-8n)\%$ of the current income at constant prices being forward committed 'n' years ahead of the current year.
6. (1) The committee must keep full and proper accounts and provide an annual report to Council giving details of the income and expenditure of the fund and of appropriations from the fund made in the year of expenditure in a later year and of commitments entered into requiring expenditure in later years from future income of the fund.
- (2) In 1993 and every fifth year thereafter, on dates to be fixed by Council, the committee must carry out a review of the management of and expenditure from the fund.

[Made 11/7/05, Recital G, ss. 4(a) and (b) am. 6/3/06, renumber para 4 (a)(b) and para (iii) replace sec 4(c) am 8/5/06; section 2(1) amended 8/12/08; revoked as a Regulation and certified as a University trust record 26/5/10; Recitals A, B, C, D, E, F, G, H am; sections 1, 2 am, ss2(f) am; ss 5 am; ss 3(a) am, ss 4(3) am; sections 1 and 2 amended 11/2/13;]