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| **WILL OF**  **Dated:**  ***Cooma Monaro Legal Services***  ***166 Sharp Street***  ***Cooma NSW 2630***  ***02 6452 5474***  ***02 6452 5480*** |

**THIS IS THE LAST WILL** of me, of in

**I REVOKE** all previous wills and testamentary dispositions.

No gift to any person takes effect unless that person survives me by 30 days. ***[See Section 35 of the Succession Act 2006 (NSW). See also Section 41 of the Succession Act 2006 (NSW).]***

**I APPOINT** **my HUSBAND** of ***[address]***and **MY** of , as **Executors** and **Trustees** of this my will (hereinafter called “my trustee”) and **I DECLARE** that the expression “my trustee” shall mean the trustees or trustee of this my Will for the time being whether original or substituted.

**I GIVE** all of my property of whatsoever nature and wheresoever situate to my said husband absolutely **PROVIDED THAT** he survives me for a period of 30 days.

**IN THE EVENT THAT** my said husband does not so survive me **I GIVE** all of my property to my Trustee upon trust upon the following trusts:

to pay all debts, legacies, funeral and testamentary expenses and any death, estate or succession duties; and

As to the rest and residue of my estate to such of my children and

and as shall survive me in equal shares as tenants in common or if only one for that one alone upon their attaining the age of twenty-one (21) years.

**PROVIDED HOWEVER** that should any of my said children predecease me or fail to survive me leaving a child or children surviving **THEN** such surviving child or children shall take the bequest which his her or their parent would have taken under this clause of my Will in their stead in equal shares as tenants in common or if only one then absolutely and upon their attaining the age of twenty five (25) years.

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Testatrix

………………………………………… …………………………..

Witness Witness

My Trustee may, on such terms and for such purposes as my Trustee thinks appropriate, without being liable for loss:

sell;

postpone the sale of;

lease;

borrow, give a guarantee and mortgage; and

manage,

the whole or any part of my estate.

My Trustee may invest or re-invest any funds in:

any investment authorised by law; ***[see Section 14A of the Trustee Act 1925 (NSW)]***

any investment in which any part of my estate is invested at my death; ***[this goes further than Section 14C(2) of the Trustee Act 1925 (NSW)]***

all or any part of any form of real estate of any tenure (including a lot within the meaning of any Strata Titles or Community Titles legislation) whether or not productive of income;

shares in a company in which all the issued shares are owned by persons each of whom, because of that share ownership, has an exclusive right to occupy a part of a building on the land;

any mortgages including contributory mortgages; and

shares, debentures, stocks, notes or similar securities in any public company listed or intended to be listed on an Australian Stock Exchange.

My Trustee may:

apply for or accept bonus shares or other rights or benefits offered by a company in which my estate has an interest; ***[takes into account Mill v Permanent Trustee Co of NSW (1930)AC 720]***

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Testatrix

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Witness Witness

apply for the maintenance, education, advancement or benefit of a beneficiary, the whole or any part of the capital or income of that share of my estate to which that beneficiary is entitled or may in future be entitled and the receipt of the payee is an absolute discharge; ***[this broadens powers under Sections 43 & 44 of the Trustee Act 1925 (NSW)]***

if the beneficiary is a minor, pay or apply any amount pursuant to clause 0 at my Trustee’s discretion to or at the direction of the parent or guardian of that beneficiary without being responsible to see that the money is properly applied;

determine whether receipts and outgoings are capital or income; ***[negates the rule in Howe v Lord Dartmouth]***

retain any asset even though it is wasting, hazardous or reversionary; ***[negates the rule in Howe v. Lord Dartmouth]***

maintain, repair, improve, develop, alter, renovate, pull down or erect any land and buildings; and

without the consent of any person appropriate in kind any asset in satisfaction or part satisfaction of any share or interest under this Will and without regard to differences in asset costs bases for capital gains tax purposes and, in so doing, ascertain and fix the value of any such asset as my Trustee thinks fit and for that purpose employ a duly qualified valuer in any case where necessary, so that any appropriation is binding on all persons entitled under this Will. ***[A power to appropriate may be important in helping the Trustee to reduce the impact of CGT. If assets are transferred in specie to beneficiaries, CGT is not assessed at that time: Section 128-10 of the Income Tax Assessment Act 1997 (Cth).]***

**I DECLARE AND DIRECT** that:

all income of my estate shall be treated as arising at the time when it is paid and shall not be apportioned to any other time or period;

where any interest of any person under this Will is subject to that person attaining a certain age or living to a certain point of time then such an interest shall until it vests in possession be a contingent interest only and shall not be deemed to be an interest which is vested subject to any defeasance;

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Testatrix

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Witness Witness

where capital gains tax is assessed against my Trustee either consequent upon my death or upon the sale of any asset of my estate by my Trustee then (notwithstanding any other provision of this Will charging the residue of my estate with the payment of taxes) such tax shall be a charge firstly upon the asset giving rise to the tax or upon the net proceeds of sale thereof (as the case may be) and secondly, upon my residuary estate **PROVIDED ALWAYS** that where an asset forming part of my residuary estate is disposed of or deemed to be disposed of by my Trustee my Trustee shall have the power to determine from which part or parts of the capital or income of my residuary estate my Trustee will pay any income or capital gains tax liability flowing from the disposal or deemed disposal; and

where a devise of real property is made in this Will, which property is charged with a debt or on which money is owing, that gift of real estate is primarily liable for the debt pursuant to Section 145 of the *Conveyancing Act 1919 (NSW)* or any statutory provision that replaces it, but to the same effect unless a contrary intention is described in this Will.

Dated:

Signature of Testatrix

**SIGNED** by the Testatrix in the presence of us both being present at the same time and attested by us in the presence of her and of each other.

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| Signature of Witness    Print name of Witness in full      Address of Witness    Occupation of Witness | Signature of Witness    Print name of Witness in full      Address of Witness    Occupation of Witness |