

CONSOLIDATED TRUST DEED

AUSTRALIAN ETHICAL RETAIL SUPERANNUATION FUND

Australian Ethical Superannuation Pty Limited

A.C.N. 079 259 733

DATED: 1 February 2019

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1 THIS DEED

1.1 Definitions

In this Deed unless the context otherwise requires:

"**Account**" means the account in the Fund established by the Trustee in the name of a Member;

"**APRA**" means the Australian Prudential Regulation Authority and any delegate or its successor;

"**Benefit Arrangement**" means any fund, trust or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account, foreign superannuation fund (as defined in the *Income Tax Assessment Act 1997*) from which contributions may be accepted;

"**Binding Death Benefit Nomination**" means a direction that is a binding direction for the purposes of SIS as to payment of the Member's Death Benefit and referred to in sub-clause 3.5;

"**Business Day**" means any Monday, Tuesday, Wednesday, Thursday or Friday on which banks are open for business in Sydney;

"**Cash**" means the legal tender of Australia for the time being, money on deposit in a financial institution denominated in Australian currency and situated in Australia, a cheque drawn on a bank situated in Australia and denominated in Australian currency, or an electronic transfer of Australian currency (as appropriate);

"**Constitutional Corporation**" has the meaning given that term in section 10 of SIS;

"**Deed**" means this Deed, as amended from time to time including any schedules, and reference to a clause or paragraph is a reference to the same in this Deed;

"**Dependant**" has the meaning given that word in section 10 of SIS;

"**Expense**" means any cost, charge or expense incurred in relation to the Fund in respect of:

- i. the establishment, operation or termination of the Fund including costs relating to this Deed, and any amendment to this Deed, regulatory lodgements, administrative computer hardware and software, and any cost or expense incurred in administering the Fund such as rents, salaries and general overheads of the Trustee referable to that administration;
- ii. fees of accountants, solicitors, valuers and other consultants and advisers instructed by the Trustee under this Deed as well as the fees of the auditor of the Fund and any custodian;
- iii. preparation, registration, printing and distribution including postage (as applicable) of Regulated Documents, annual statements to Members, income and withdrawal cheques and other communications with Members, their advisers or member sponsors;
- iv. retirement and replacement of the auditor, Trustee or any custodian;
- v. commission or brokerage paid other than that relating to an application for an Interest, or an agreement to procure applications;
- vi. taxes, duties and bank fees incurred in the operation of the Fund;
- vii. custody, maintenance, insurance, acquisition, disposal of or any other dealing with respect to any asset; and
- viii. depreciation of any asset and amortisation of any leasehold interest;

"Financial Year" means each period beginning on the date the Fund was established or the day after the end of the preceding Financial Year, and ending on 30 June or some other date determined by the Trustee, or the date of termination of the Fund (as the case may be);

"Fund" means the superannuation fund established by this Deed;

"Insured Benefit" means any amount paid under an insurance Policy arranged by the Trustee less any fees and charges determined by the Trustee for the payment of an insured benefit to or in respect of a Member in the event of Death, Terminal Medical Condition, Permanent Incapacity or Temporary Incapacity;

"Interest" means a beneficial interest in the Fund;

"Lifecycle Exception" has the meaning given to that phrase in section 29TC of SIS and sub-clause 9.2 of this Deed;

"Member" means a member of the Fund;

"MySuper Product" has the meaning given to that phrase in section 10 of SIS;

"Pension" has the meaning given to that word in section 10 of SIS;

"Permanent Incapacity" has the meaning given to that term in SIS.

"Policy" means an insurance policy taken out by the Trustee so it may provide Insured Benefits to Members;

"Policy Committee" means a Policy Committee established in accordance with clause 8.3;

"Retirement Phase" has the meaning given to that term in the *Income Tax Assessment Act 1997* (Cth);

"Reversionary Pensioner" means a Dependant irrevocably nominated by the relevant Member upon commencement of a Pension;

"SIS" means the *Superannuation Industry (Supervision) Act 1993* (Commonwealth) and the regulations and other legislative instruments made under that Act;

"Standard Employer Sponsor" has the meaning given to that phrase in section 16 of SIS;

"Standard Employer Sponsored Member" has the meaning given to that phrase in section 16 of SIS;

"Strategy" means a separate group of assets and liabilities within the Fund identified as such by the Trustee;

"Successor Fund" has the meaning given by SIS;

"Superannuation Authority" means APRA, the Australian Securities & Investments Commission or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

"Superannuation Law" means any requirements under the *Superannuation Industry (Supervision) Act 1993* (Cth), the *Corporations Act 2001* (Cth), the *Superannuation (Resolution of Complaints) Act 1993* (Cth), the *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018* (Cth), the *Bankruptcy Act 1966* (Cth), the *Family Law Act 1975* (Cth) and any other law, or by a Superannuation Authority:

- a) imposed on the Trustee or the Fund;
- b) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds;

- c) to obtain, and continue to hold, any licence or authorisation granted by a Superannuation Authority; or
- d) which the Trustee or a Standard Employer Sponsor must comply with in order to avoid any penalty.

"**Termination Date**" means the date the Fund determines under sub-clause 2.3;

"**Temporary Incapacity**" has the meaning given to that term in SIS.

"**Terminal Medical Condition**" has the meaning given to that term in SIS.

"**Trustee**" means the Trustee for the time being appointed as Trustee under this Deed;

"**Value of [the] Strategy**" means the amount last determined by the Trustee in accordance with sub-clause 5.2 as the total of the market values of all assets of which the relevant Strategy is comprised, less the value of the liabilities of the Fund allocated to that Strategy, including accrued and contingent liabilities;

"**Value of [the] Fund**" means the amount last determined by the Trustee in accordance with sub-clause 5.2 as the total of the market values of all assets of the Fund, less the value of the liabilities of the Fund including accrued and contingent liabilities.

1.2 Interpretation

In this Deed:

- a) unless the context otherwise requires:
 - i. (**gender**) a reference to any gender includes a reference to the other gender;
 - ii. (**singular and plural**) words expressed in the singular include the plural and vice versa;
 - iii. (**amendment and reenactment**) a reference to a deed (including this Deed), agreement, regulation or statute is to be construed as a reference to the same as amended substituted or reenacted;
 - iv. (**SIS definitions**) words defined in SIS the initial letter of which is a capital will, unless also defined in this Deed, have the meaning given in SIS;
 - v. (**successors**) a reference to a person in this Deed (including a party to this Deed) includes any successor of that person;
 - vi. (**persons**) a reference to a person means any manner of legal person;
- b) (**headings**) headings, numberings and the contents page are not to affect the construction of this Deed;
- c) (**covenants in this Deed**) each covenant made by the Trustee is made severally to each Member, so that each covenant in this Deed may be enforced by any Member;
- d) (**benefits and obligations**) this Deed will be construed, except as otherwise provided, to bind the Trustee, each Member and any person claiming through either;
- e) (**proper law**) this Deed is governed by the laws of the State of New South Wales; and
- f) (**section 35B**) the provisions of section 35B of the Trustee Act 1936 (SA) do not apply to this Deed or the Fund.

1.3 Amendment

The Trustee may by supplemental deed amend this Deed in any way except that:

- a) **(Constitutional Corporation)** the Trustee may make no amendment unless this Deed both then and after the amendment provides that the Trustee must be a Constitutional Corporation;
- b) **(main purpose)** no amendment may have the effect of altering the main purpose of this Deed; and
- c) **(accrued benefits)** no amendment will have the effect of reducing or otherwise adversely affecting the right of any Member to an accrued benefit in the Fund without the written consent of that Member if so required by SIS.

1.4 [Deleted]

2 FUND

2.1 Establishment

- a) The superannuation fund established by the Deed is known as the Australian Ethical Retail Superannuation Fund or such other name as the Trustee determines.
- b) The Fund is a regulated superannuation fund and the Trustee will strive to ensure that the Fund operates at all times as a complying superannuation fund. Without limiting the generality of this obligation, in no case shall the Australian Ethical Charter set out in sub-clause 5.1 be applied by the Trustee in a manner inconsistent with this obligation.

2.2 Duration

The Fund will, once established, be indefinitely continuing, and may be determined upon the decision of the Trustee so to do.

2.3 Termination

Where the Fund is to be determined:

- a) **(termination notice)** The Trustee will give prior notice to each Member of the Termination Date.
- b) **(liquidate)** The Trustee will take all reasonable steps to convert promptly the assets of the Fund into Cash, but may delay conversion of any asset for such time as the Trustee considers is in the best interest of Members. The Trustee in doing so may transfer any asset to the trustee of another trust irrespective of any association that it may have with that other trust.
- c) **(costs)** After the Termination Date, the liabilities of the Fund will be recovered from the Fund prior to any final distribution to Members under paragraph (e). The Trustee may retain for as long as it thinks fit Fund assets, converted into Cash or otherwise, for the purpose of meeting any actual or contingent liabilities of the Fund. Any retained asset will be distributed to the extent it ceases to be required to meet actual or contingent liabilities.
- d) **(no Member liability)** If the liabilities of the Fund exceeds its assets the Members will not be liable to satisfy the deficiency.
- e) **(distribution)** Subject to the other provisions of this sub-clause, within 180 days of the Termination Date, the Trustee will endeavour to complete the liquidation of the assets of the Fund. After the liquidation, the Trustee then will allocate to a Strategy the proceeds of the liquidation of the assets of that Strategy and will deduct the costs and expenses of realisation of

Strategy assets (including any relevant share of the costs of liquidation of Fund assets as a whole) from the Strategy Cash. The Trustee then will distribute to each Member a proportion of the Cash of each Strategy in which the Member holds an Interest being equal to the proportion the Member's Interest holding bears in relation to all the Interests in that Strategy then in issue. The Trustee may require from each Member a receipt or discharge in respect of any amount distributed to that Member.

- f) **(payment of member's interest)** Any distribution made under paragraph (e) will be made in accordance with Superannuation Law. If an amount cannot be paid directly to the member, the member's interest is to be discharged through the payment of the amount to a Successor Fund.
- g) **(statement)** Within 8 weeks after the final distribution in relation to the termination, the Trustee will send to each Member a statement setting out the proceeds of liquidation and related costs and the calculation by the Trustee of the amount distributed to the Member.
- h) **(discharge of Trustee)** Upon dispatch of the statements described in paragraph g) the Trustee will be discharged and released from further obligations in respect of the Fund. The discharge will not apply to claims by former Members based on fraud, negligence, breach of duty or trust, or failure to exercise the required degree of care or diligence.

2.4 Strategies

The Fund will consist of assets and liabilities organised as one or more Strategies. The Trustee may establish or close a Strategy. Interests in issue in relation to a closed Strategy may be declared by the Trustee to be cancelled and, if so declared, Interests of an equal value in another Strategy selected by the Trustee or requested by the Members may be issued to all affected Members. Interests in a Strategy may also be cancelled upon the request of the relevant Member coincident with the issue to that Member of Interests to an equal value in another Strategy within the Fund requested by the Member.

2.5 Pensions

The Trustee may pay Pensions to Members of and from the Fund, or class of beneficial interest within the Fund, which is not prohibited under SIS from paying pensions, as it may from time to time determine. Any pensions paid must meet with the requirements of SIS including the actuarial requirements.

2.6 Commutation of Pension

Subject to Superannuation Law, the Trustee may commute the whole or any part of a Pension in any of the following circumstances:

- a) on the written application of the Member;
- b) on receipt of a commutation authority (within the meaning that term in the *Taxation Administration Act 1953* (Cth)) from the Commissioner of Taxation; or
- c) where the Trustee is reasonably satisfied that the Member has exceeded their transfer balance cap (within the meaning of that term in the *Income Tax Assessment Act 1997* (Cth)).

Subject to Superannuation Law, the Trustee may in its absolute discretion deal with the commuted amount of the Pension in any one or more of the following ways:

- d) by retaining all or part of the commuted amount in the Fund in an existing Account not in the Retirement Phase in the name of the Member;

- e) by retaining all or part of the commuted amount in the Fund in a new Account not in the Retirement Phase in the name of the Member. In this case, the Trustee is not required to provide the Member with an investment choice or Insured Benefits in connection with that new Account;
- f) by retaining all or part of the commuted amount in the Fund in a new Account from which a Pension is paid, in the name of the Member;
- g) by transferring all or part of the commuted amount to a Benefit Arrangement nominated by the Member; or
- h) by otherwise paying all or part of the commuted amount out of the Fund.

3 MEMBERS

3.1 Commencement of membership

- a) A Member's membership in the Fund commences:
 - i. if the Member is a Standard Employer Sponsored Member – when the Member commences employment to which the contribution made by the employer relates; or
 - ii. if the Member is not a Standard Employer Sponsored Member – when the Member's application for membership is received, provided that the Trustee accepts the application.
- b) [deleted]
- c) [deleted]
- d) [deleted]
- e) [deleted]
- f) [deleted]
- g) [deleted]
- h) [deleted]
- i) [deleted]

3.2 [Deleted]

3.3 Transfers in

Subject to Superannuation Law, the Trustee may accept into the Fund an amount or asset in respect of a Member or prospective Member that is transferred from another Benefit Arrangement.

3.4 [Deleted]

3.5 Death of Member

- 3.5.1 Upon the death of a Member the Trustee will, if at the time of death the Member was:
 - i. **(no Pension)** not receiving a Pension, at its discretion pay the balance of the Member's Interest in the Fund and any Insured Benefit in accordance with the remaining provisions of this sub-clause 3.5;
 - ii. **(Reversionary Pensioner)** receiving a Pension and in respect of that Pension there was a Reversionary Pensioner, continue the Pension and pay it to the Reversionary Pensioner including any Insured Benefit; and
 - iii. **(no Reversionary Pensioner)** receiving a Pension and in respect of that Pension there was no Reversionary Pensioner, at its discretion pay the balance of the Member's interest including any

Insured Benefit in the Fund to the estate of the Member or pay either that balance or a Pension to a Dependant of the Member.

- 3.5.2 A death benefit to which sub-clause 3.5 applies must, subject to 3.5.1.ii and the remaining provisions of this sub-clause 3.5, be paid in proportions decided by the Trustee to one or more of the following:
- i. one or more of the Member's dependants; and
 - ii. the Member's legal personal representative.

The Trustee must consider any Death Benefit Nomination made in accordance with sub-clause 3.5.4, but unless sub-clause 3.5.5 applies may not treat the Death Benefit Nomination as binding.

- 3.5.3 Subject to SIS, if after making inquiries that it considers reasonable the Trustee cannot locate any Dependants or a legal personal representative, the benefit may be paid to an individual that the Trustee chooses.

- 3.5.4 For the purposes of this sub-clause 3.5, the following provisions apply:

- a) Members may give the Trustee a Death Benefit Nomination Form;
- b) A Death Benefit Nomination may be an Indicative Death Benefit Nomination, or, alternatively, subject to SIS, a Binding Death Benefit Nomination as to payment of the Death Benefit payable in respect of the Member;
- c) Subject to any requirements of SIS, Members may vary Death Benefit Nominations at any time;
- d) The Trustee may disregard an Indicative Death Benefit Nomination if it does not comply with any formal requirements set by the Trustee; and
- e) Subject to SIS, the Trustee must disregard a Binding Death Benefit Nomination if it does not comply with the formal requirements of SIS.

- 3.5.5 The Trustee will treat a Binding Death Benefit Nomination as a binding direction and nomination and effect payments in accordance with the Binding Death Nomination, provided it is given in accordance with the requirements of SIS and it is current and valid at the date of the Member's death.

3.6 Permanent Incapacity of Member

Upon a Member claiming a Permanent Incapacity benefit and the Trustee being satisfied that the Member is suffering Permanent Incapacity, the Trustee will pay the Member a Permanent Incapacity Benefit, including any amount received by the Trustee under a Policy in respect of the Member's Permanent Incapacity.

3.7 Temporary Incapacity of Member

Upon a Member claiming a Temporary Incapacity benefit and the Trustee being satisfied that the Member is suffering Temporary Incapacity, the Trustee will pay the Member a Temporary Incapacity Benefit that is limited to any amount received by the Trustee under a Policy in respect of the Member's Temporary Incapacity.

3.8 Member's interest in Fund assets

Except as provided to the contrary in this Deed or by law, a Member may not interfere with the performance by the Trustee of its duties, rights or powers under this Deed or any law. Members will have no liability to pay to the Trustee any amount of money otherwise than as set out in this Deed and Members will have no obligation to meet the liabilities, including if there is a deficiency in the assets, of the Fund or any Strategy or those of the Trustee. No Member will have a divisible interest in any asset of the Fund.

3.9 Provision of information

Each Member promptly will provide to the Trustee notice of any change of name or address and any other information, including information with respect to the Member's eligibility to contribute to the Fund or to remain a Member, as and when reasonably requested, or required under this Deed.

3.10 [Deleted]

3.11 Other benefits

Upon a Member claiming a benefit that corresponds with a condition of release specified in SIS other than death, Terminal Medical Condition, Permanent Incapacity or Temporary Incapacity and the Trustee being satisfied that the Member has satisfied that condition of release, the Trustee will pay the benefit to the Member, provided that the Member satisfies such requirements as the Trustee may determine for payment of a benefit relating to that condition of release.

4 [Deleted]

5 INVESTMENT

5.1 Investment and the Ethical Charter

The Trustee will from time to time invest the assets of the Fund. When allocating assets among Strategies of the Fund the Trustee will act consistently with the investment strategy of each Strategy. The Trustee may invest the Fund's assets in anything which it could invest in using its own resources, taking into account the terms of the Australian Ethical Charter, which provides that the Trustee shall seek out investments which provide for and support:

- a) the development of worker's participation in the ownership and control of their work organisations and places;
- b) the production of high quality and properly presented products and services;
- c) the development of locally based ventures;
- d) the development of appropriate technological systems;
- e) the amelioration of wasteful and polluting practices;
- f) the development of sustainable land use and food production;
- g) the preservation of endangered eco-systems;
- h) activities which contribute to human happiness, dignity and education;
- i) the dignity and well being of non human animals;
- j) the efficient use of human waste;
- k) the alleviation of poverty in all its forms; or

- l) the development and preservation of appropriate human buildings and landscapes, and that the Trustee shall avoid any investment which is considered to unnecessarily:
- m) pollute land, air or water;
- n) destroy or waste non recurring resources;
- o) extract, create, produce, manufacture or market materials, products, goods or services which have a harmful effect on humans, non human animals or the environment;
- p) market, promote or advertise products or services in a misleading or deceitful manner;
- q) create markets by the promotion or advertising of unwanted products or services;
- r) acquire land or commodities primarily for speculative gain;
- s) create, encourage or perpetuate militarism or engage in the manufacture of armaments;
- t) entice people into financial over-commitment;
- u) exploit people through the payment of low wages or the provision of poor working conditions;
- v) discriminate by way of race, religion or sex in employment, marketing or advertising practices; or
- w) contribute to the inhibition of human rights generally.

5.2 Valuation

- a) **(Fund)** At least once in every month during the continuance of the Fund the Trustee will determine the Value of the Fund. In doing so it may seek opinions from valuers as it considers necessary or appropriate, and may rely upon a written valuation of real estate for no more than 18 months. The Trustee may value certain assets more frequently as it considers appropriate.
- b) **(Strategy)** When valuing the Fund, the Trustee will determine the proportion of the total Value of the Fund attributable to each Strategy of the Fund, and will separately determine the Value of each such Strategy;
- c) **(Account)** When valuing the Fund, the Trustee will determine the value of each Member's Account by reference to its most recently established value, changes in asset values since that time, any contributions, payments out of the Fund referable to the Member's Account, transfers of Interest between Strategies, and any provision against that Account to meet any Fund liability.

5.3 Change of Valuation Method

The Trustee will adopt valuation policies (and may from time to time adopt new ones) which it considers likely to produce an accurate determination of the market value of particular types of assets.

6 INCOME OF THE FUND

At the end of each Financial Year and at any other time required by SIS, the Trustee will prepare the accounts for the Fund in accordance with generally accepted accounting principles and determine the taxable income (as that term is defined in the *Income Tax Assessment Act 1936* (Cth)) of the Fund.

7 [Deleted]

8 TRUSTEE

8.1 Constitutional Corporation

The Trustee of the Fund must be a Constitutional Corporation.

8.2 Appointment

The Trustee is appointed as trustee of the Fund and agrees to, and declares that it will, hold the corpus of the Fund for the benefit of its Members according to their entitlements to the same from time to time.

8.3 Powers of Trustee

Subject to the provisions of this Deed, the Trustee has the power to do anything permitted, or required, under Superannuation Law and retains all the powers and rights over the assets of the Fund as if it were the beneficial owner, and without limiting this generality:

- a) **(buy and sell)** the power to buy and sell Fund assets in accordance with the provisions of this Deed;
- b) **(agreements)** the power to enter into and enforce agreements relating to the operation or assets of the Fund; however, the terms of any such agreement must not cause the Trustee to be subject, in the exercise of any of the Trustee's powers under this Deed, to direction by any other person;
- c) **(accounts and payments)** the power to transfer assets and to operate accounts at financial institutions;
- d) **(advice)** the power to seek professional advice whether as to law, actuarial considerations, valuation of assets or other topics relevant to the operation of the Fund;
- e) **(voting)** except as provided by law, the power to exercise the voting rights attaching to any shares or other assets held by the Trustee under this Deed having regard to the best interests of Members;
- f) **(agent)** the power to, if it sees fit, appoint in writing any agent or attorney with any authority the Trustee thinks appropriate, to act for or on behalf of the Trustee in any respect and the Trustee will be liable for the acts and omissions of any agent or attorney to the extent that the general law makes the Trustee so liable; however, the terms of any such appointment must not cause the Trustee to be subject, in the exercise of any of the Trustee's powers under this Deed, to direction by any other person;
- g) **(exclude personal liability)** the power to refuse to enter into transactions as Trustee unless the terms of the transaction are satisfactory to the Trustee and unless, in the absence of its own fraud, negligence breach of duty or breach of trust, it is satisfied that its personal liability thereunder is excluded or limited in such manner as it reasonably may require;
- h) **(custody and agent)** the power to appoint a custodian to hold Fund assets on behalf of the Trustee domestically and overseas, and the power to appoint a clearing and settlement agent in respect of the Fund;
- i) **(remuneration)** the power to revise the fees that the Trustee charges to the Fund under clause 8.8 for the services it provides to the Fund;
- j) **(policy committee)** if required by SIS, the power to appoint one or more Policy Committees representing Members or groups of Members on a basis determined by the Trustee in accordance with SIS;
- k) **(Member accounts)** the power to open Member accounts and determine the amount standing to the credit of each Account;
- l) **(reserves)** the power to establish and maintain one or more reserves of the Fund, including an operational risk reserve;
- m) **(Policies)** the power to take out one or more Policies that provide insurance cover in respect of Members, as required or permitted by SIS; and

- n) (**other insurance policies**) the power to take out such other insurance policies as the Trustee considers appropriate for the operation of the Fund.

The Trustee will not be subject, in the exercise of its powers, to direction by any other person except in circumstances set out in section 58(2) of SIS or where a Member has provided to the Trustee a Binding Death Benefit Nomination in accordance with sub-clause 3.5 and SIS.

8.4 [Deleted]

8.5 Duties of Trustee

In addition to any duty imposed by law, the Trustee will have:

- a) (**hold**) a duty to hold the assets of the Fund in safe custody;
- b) (**pay outgoings**) a duty to pay Fund outgoings which may be met either directly from Fund assets or recovered from Fund assets (and if referable to a particular Member then charged against that Member's Interest) if met by the Trustee from its own resources, and if necessary to pay those outgoings the Trustee may sell assets of the Fund;
- c) (**act as Trustee**) a duty to act continuously as Trustee of the Fund upon the terms of this Deed and the law generally, until the Trustee is discharged and released from this duty consequent to the resignation of the Trustee or the termination of the Fund;
- d) [deleted]
- e) (**licences**) a duty to apply for any licence or authorisation under Superannuation Law to enable the Trustee to discharge its duties under this Deed;
- f) (**manage**) a duty to manage Fund assets in accordance with the provisions of this Deed;
- g) (**accounts and payments**) a duty, to the extent necessary, to operate accounts at financial institutions;
- h) (**inquiries and complaints**) a duty to establish arrangements for dealing with inquiries and complaints; and
- i) (**fit and proper**) a duty to ensure that SIS fit and proper requirements are met.

8.6 Trustee meetings, quorum and decisions

- a) The Trustee will meet at least three times per year and cause minutes to be made of all meetings held.
- b) The quorum for meetings of the Trustee shall be the presence of a majority of the directors.
- c) If required under SIS, for a decision to be valid, two-thirds or more of the Trustee directors must have voted for it.
- d) Trustee meetings can be held by the use of electronic means (for example by teleconference).
- e) The Trustee can make decisions outside of meetings of the Trustee (for example by way of circular).

8.7 Retirement and replacement of Trustee

The Trustee may retire as Trustee of the Fund upon giving 3 month's written notice to Members. Upon the retirement of the Trustee, it will appoint another Constitutional Corporation (the "New Trustee") to assume the duties of Trustee under this Deed. The New Trustee will take office upon execution of a deed under which the New Trustee agrees to assume the obligations of the Trustee, which deed will set out in full the rules which thenceforth will govern the operation of the Fund. The Trustee will on the date of retirement vest the Fund in the New Trustee and deliver to it all books and records however

constituted relating to the Fund and costs incurred by any party pursuant to the operation of this sub-clause will be met from the assets of the Fund. The Trustee may not be removed by any party save in accordance with section 60A of SIS.

8.8 Remuneration of Trustee

Subject to Superannuation Law, the Trustee may charge the Fund for the services it provides to the Fund in such amount as the Trustee determines.

8.9 Trustee's indemnity and limitation of liability

Without limiting the Trustee's powers, duties or rights under this Deed or any law, the Trustee will not incur any liability and will be able to be indemnified out of the assets of the Fund in respect of any loss, cost, expense or other liability which may arise in the performance of its duties or the exercise of its powers in respect of the Fund, except:

- a) **(failure to act)** where the Trustee:
 - i. fails to act honestly in a matter concerning the Fund; or
 - ii. intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care or diligence that the Trustee was required to exercise; or
- b) **(civil penalty)** the liability relates to a monetary penalty under a civil penalty order (as that term is defined in section 10 of SIS); or
- c) **(operational risk)** where it is:
 - i. for any amount expended out of capital of the Trustee that is managed and maintained by the Trustee to cover the operational risk of the Fund; or
 - ii. to indemnify itself out of any assets of the Fund that do not form part of the operational risk reserve, for any amount that relates to that risk, without first exhausting any other reserve or financial resources managed and maintained by the Trustee to cover that risk.

8.10 Liability to Members

Except in the case of its own fraud, negligence, breach of duty or breach of trust, in no event will the Trustee be liable to a Member to any greater extent than the investments, cash and other property vested in the Trustee or actually received by it in accordance with the provision of this Deed.

8.11 Indemnity of directors

The directors of the Trustee may be indemnified out of the assets of the Fund in respect of any liability incurred, in relation to a matter concerning the Fund, while acting as a director of the Trustee except:

- a) **(failure to act)** a liability that arises because the director:
 - i. fails to act honestly in a matter concerning the Fund; or
 - ii. intentionally or recklessly fails to exercise, in a matter relating to the Fund, the degree of care and diligence that the director is required to exercise; or
- b) **(civil penalty)** the liability relates to a monetary penalty under a civil penalty order (as that term is defined in section 10 of SIS).

8.12 Commission

The Trustee may pay brokerage and commission in respect of applications for membership in accordance with the requirements of Superannuation Law. Where permitted under Superannuation Law, it will pay all brokerage and commission which is not an Expense but is paid in respect of the Fund out of its fees or other of its own resources.

9 MYSUPER

9.1 MySuper Product Characteristics

In relation to a class of beneficial interest in the Fund which is a complying superannuation fund, that the Trustee is authorised, or applying for authority, to offer as a MySuper Product:

- a) a single diversified investment strategy must be adopted in relation to assets of the Fund, to the extent that they are attributed to that class of beneficial interest in the Fund;
- b) all Members who hold a beneficial interest of that class in the Fund are entitled to access the same options, benefits and facilities, except to the extent that a benefit is provided by taking out risk insurance;
- c) amounts must be attributed to Members in relation to their beneficial interest of that class in the Fund in a way that does not stream gains or losses that relate to any assets of the Fund to only some of those Members, except to the extent permitted under a Lifecycle Exception in accordance with sub-clause 9.2;
- d) the same process must be adopted in attributing amounts to Members in relation to their beneficial interest of that class in the Fund, except to the extent that a different process is necessary to allow for fee subsidisation by employers;
- e) if fee subsidisation by employers is permitted, that subsidisation must not favour one Member who holds a beneficial interest of that class in the Fund and is an employee of a subsidising employer over another such Member who is an employee of that employer;
- f) the only limitations imposed on the source or kind of contributions made by or on behalf of persons who hold a beneficial interest of that class in the Fund are any limitations that are both permitted under Superannuation Law and determined by the Trustee;
- g) a beneficial interest of that class in the Fund must not be replaced with a beneficial interest of another class in the Fund unless:
 - i. the person who holds the interest consents in writing to that replacement no more than 30 days before it occurs; or
 - ii. the person who holds the interest has died and the interest is replaced with a beneficial interest of another class in the Fund of a kind, and in the circumstances, prescribed by the *Superannuation Industry (Supervision) Regulations 1994*; and
- h) a beneficial interest of that class in the Fund (the old interest) must not be replaced with a beneficial interest (the new interest) in another superannuation entity unless:
 - i. the replacement is permitted, or is required, under a law of the Commonwealth; or
 - ii. the person who holds the old interest consents in writing to the replacement with the new interest no more than 30 days before it occurs;
- i) to the extent that assets of the Fund are attributed to beneficial interests of that class, the Trustee must not pay a pension out of those assets, unless the payment is derived from a benefit payable when a person ceases work due to ill-health that is provided to the Fund by the insurer;

- j) no Member who holds a beneficial interest of that class in the Fund is precluded from holding a beneficial interest of another class in the Fund because of that fact; and
- k) no Member is precluded from holding a beneficial interest of that class in the Fund because the Member holds a beneficial interest of another class in the Fund.

9.2 Lifecycle Exception

In accordance with sub-paragraph 9.1(c), the Trustee may allow gains and losses from different classes of assets of the Fund to be streamed to different subclasses of Members of the Fund who hold a MySuper Product:

- a) on the basis, and only on the basis, of the age of those Members; or
- b) on the basis of the age of those Members and other prescribed factors; or
- c) on the basis of the age of those Members and other prescribed factors in prescribed circumstances, as permitted or prescribed under Superannuation Law.

9.3 Inconsistency between Clauses

This Clause 9 prevails over any other provision of this Deed which is inconsistent with it, except Clause 10, which prevails over all of the provisions of this Deed.

10 COMPLIANCE RULE

10.1 Matters required under Superannuation Law

All covenants and any other matters required by Superannuation Law to be included in the governing rules of a relevant superannuation fund form part of the governing rules of the Fund, whether or not they are explicitly stated in this Deed. In the event of any inconsistency or conflict between those requirements and the governing rules of the Fund, the Trustee must act, or refrain from acting, in order to comply with Superannuation Law.

10.2 Application

Sub-clause 10.1 applies notwithstanding anything to the contrary elsewhere in the governing rules of the Fund. However, if:

- a) a covenant or any other matter is no longer required to be included; or
- b) the Superannuation Authority does not require it to be complied with,
- c) the covenant or any other matter ceases to be included by sub-clause 10.1.

10.3 Matters required for a MySuper Product

All requirements regarding governing rules of superannuation funds that must be satisfied to obtain an authority to offer a MySuper Product, form part of the governing rules of the Fund, whether or not they are explicitly stated in this Deed, but apply only to a class of beneficial interest in the Fund that the Trustee is authorised, or applying for an authority, to offer as a MySuper Product.