

DATED 27 JANUARY 2009

BY

**AUSTRALIAN ETHICAL SUPERANNUATION**

**PROPRIETARY LIMITED**

A.C.N. 079 259 733

---

DEED ESTABLISHING THE  
AUSTRALIAN ETHICAL RETAIL SUPERANNUATION FUND  
AND POOLED SUPERANNUATION TRUST

---



# CONTENTS

<b>1</b>	<b>THIS DEED .....</b>	<b>7</b>
1.1	Definitions .....	7
1.2	Interpretation .....	10
1.3	Amendment .....	11
1.4	Inspection of Deed .....	11
<b>2</b>	<b>TRUSTS .....</b>	<b>11</b>
2.1	Establishment .....	11
2.2	Duration .....	11
2.3	Termination .....	11
2.4	Strategies .....	12
2.5	Pensions .....	13
<b>3</b>	<b>INTERESTS AND MEMBERS .....</b>	<b>13</b>
3.1	Applications and Application Money .....	13
3.2	Opening of Accounts .....	14
3.3	Transfers in .....	14
3.4	Redemption .....	14
3.5	Death of Member .....	15
3.6	Total and Permanent Disablement .....	16
3.7	Temporary Disablement .....	16
3.8	Member's interest in Trust assets .....	16
3.9	Provision of information .....	17
<b>4</b>	<b>UNITS .....</b>	<b>17</b>
4.1	Application of Clause .....	17
4.2	Units .....	17
4.3	Issue .....	17
4.4	Redemption .....	17
<b>5</b>	<b>INVESTMENT .....</b>	<b>18</b>
5.1	Investment and the Ethical Charter .....	18
5.2	Valuation .....	19
5.3	Change of Valuation Method .....	19
<b>6</b>	<b>INCOME OF THE TRUST .....</b>	<b>19</b>
<b>7</b>	<b>ACCOUNTS .....</b>	<b>19</b>
7.1	Accounts .....	19
7.2	Register .....	19
7.3	Expenses .....	20
<b>8</b>	<b>TRUSTEE .....</b>	<b>20</b>
8.1	Constitutional Corporation .....	20
8.2	Appointment .....	20
8.3	Powers of Trustee .....	20

8.4	Borrowing power.....	21
8.5	Duties of Trustee.....	21
8.6	Trustee meetings, quorum and decisions.....	22
8.7	Retirement and replacement of Trustee .....	22
8.8	Remuneration of Trustee .....	22
8.9	Trustee's indemnity and limitation of liability.....	24
8.10	Liability to Members.....	24
8.11	Indemnity of directors.....	24
8.12	Commission.....	24

**SCHEDULE 1..... 26**

1	Name.....	26
2	Trust to comply with SIS .....	26

**SCHEDULE 2..... 26**

1	Name.....	26
2	Trust to comply with SIS .....	26
3	Transfer of taxable contributions .....	26

**THIS DEED** is made on the 27<sup>th</sup> day of January, 2009 at 10.00 pm (Australian Eastern Standard Time).

**BY Australian Ethical Superannuation Pty Limited**, ACN 079 259 733 of Trevor Pearcey House, 34 Thynne Street, Block E, Traeger Court, Bruce in the Australian Capital Territory, ( the “Trustee”)

## RECITALS

**A** On the 15<sup>th</sup> day of July 1998 the Trustee entered into a deed (the ‘1998 trust deed’) whereby the Australian Ethical Retail Superannuation Fund and Pooled Superannuation Trust were established.

**B** On the 10<sup>th</sup> day of August 2005 the Trustee executed a supplemental deed which amended the 1998 trust deed (the ‘2005 trust deed’).

**C** Clause 1.3 of the 2005 trust deed states:

### 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 a Trust without the written consent of that Member if so required by SIS.’

**D** The Trustee has determined that the 2005 trust deed should be amended by this deed (the ‘Trust Deed’).

**E** The Trustee has determined that the amendment to the 2005 trust deed follows the requirements of clause 1.3 of the 2005 trust deed and that any modification, variation, or amendment represented in this Deed:

(a) continues to provide that the Trustee must be a Constitutional Corporation;

(b) does not have the effect of altering the main purpose of the trust deed; and

(c) does not have the effect of reducing or otherwise adversely affecting the right of any

Member to an accrued benefit in a Trust without the written consent of that Member if so required by SIS.

- F** The Trustee has determined that this Trust Deed is to be executed after the close of normal business hours so that the fundamental trust relationship continues and the Trustee, Trust assets and Trust membership remain the same prior to and following execution of this Deed.
- G** The Trustee consents to act in the capacity of Trustee of any fund established pursuant to the 1998 trust deed, the 2005 trust deed and to this Trust Deed, while the Trustee is authorised by the Australian Prudential Regulation Authority to act as trustee of a superannuation fund or pooled superannuation trust.

# 1 THIS DEED

## 1.1 Definitions

In this Deed unless the context otherwise requires:

"**Account**" means in respect of a Trust, the account established by the Trustee in the name of a Member under paragraph 3.2(a);

"**Application**" means a request for the issue of Interests to a person in circumstances permitted by SIS, in a form acceptable to the Trustee, providing at least the information required to be kept in the Register;

"**Application Money**" means the Cash or any other assets not prohibited by SIS or any other law to be contributed to the Trust, tendered in accordance with sub-clause 3.1 in respect of an Application or regular contribution;

"**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 and the Superannuation Holding Account Reserve;

"**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 Clause 3.5;

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

"**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 a Trust in respect of:

- (i) the establishment, operation or termination of the Trust including costs relating to

this Deed, and any amendment to this Deed, establishment and maintenance of the Register, regulatory lodgements, administrative computer hardware and software, and any cost or expense incurred in administering the Trust 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 Trust 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 Trust;
- (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 Trust 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 Trust (as the case may be);

**"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 a benefit to a Member in the event of Death, Total and Permanent Disablement or Temporary Disablement;

**"Interest"** means a beneficial interest in a Trust and includes a Unit;

**"ISC"** means the Insurance and Superannuation Commissioner and any delegate or its successor including APRA;

**"Member"** means a person by or on behalf of whom an Application is made and accepted who is entitled to an Interest in a Trust;

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

**"Policy"** means an insurance policy taken out by the Trustee so it may arrange for the payment of a benefit to a Member in the event of Death, Total and Permanent Disablement

or Temporary Disablement;

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

**"Register"** means the principal and any branch register kept under sub-clause 7.2;

**"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 determinations made under that Act;

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

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

**"Successor Fund"** has the meaning given by SIS;

**"Superannuation Law"** means any legislation applying to the Trustee including but not limited to *SIS*, the *Corporations Act 2001*, *Family Law Act 1975*, *Financial Sector (Collection of Data) Act 2001*, *Income Tax Assessment Act 1936*, *Income Tax Assessment Act 1997*, *Retirement Savings Account Act 1997*, *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003*, *Superannuation Guarantee (Administration) Act 1992*, *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* and any regulations made under those or other Acts;

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

**"Total and Permanent Disablement":**

- (i) means, if any part of the benefit payable on such disablement is insured under a Policy arranged in respect of a Member at the relevant time, total and permanent disablement as defined in that policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or
- (ii) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the same meaning as the term permanent incapacity has for the purposes of SIS;

**"Temporary Disablement"** has the meaning defined in any Policy taken out by the Trustee for the purpose of providing a benefit to Members in that event or as agreed by the Trustee and insurer for the purposes of that Policy;

**"Trust"** means a trust fund to be established under this Deed, the rules of that fund being the provisions of this Deed (including those incorporated by reference) and a Schedule which names and is specific to that Trust;



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

**"Unit"** means an equal undivided beneficial interest in a Trust to which Clause 4 applies;

**"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 relevant Trust allocated to that Strategy, including accrued and contingent liabilities;

**"Value of [the] Trust"** 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 a Trust, less the value of the liabilities of that Trust 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 and numberings 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; and
- (e) **(proper law)** this Deed is governed by the laws of the State of New South Wales.

### 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 a Trust without the written consent of that Member if so required by SIS.

### 1.4 Inspection of Deed

A copy of this Deed will be available for public inspection at the registered office of the Trustee at any time that office is open for business, and the Trustee will provide a copy of this Deed for a fee not exceeding any amount prescribed by law.

## 2 TRUSTS

### 2.1 Establishment

Each Trust to be governed by this Deed will be named in a Schedule to this Deed which is specific to that Trust, which Schedule will set out supplementary or replacement rules to govern the operation of that Trust. Once so identified, a Trust will be established upon acceptance by the Trustee of the first Application Money in respect of that Trust and the consequent issue of Interests. Upon establishment of a Trust, the Trustee will notify the ISC of its election that the Trust is to be a regulated superannuation fund, unless the Trust is to be a pooled superannuation trust, or an approved deposit fund.

### 2.2 Duration

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

### 2.3 Termination

Where a Trust 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 Trust 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 (including a Trust) irrespective of any association that it may have with that other trust.

- (c) **(costs)** After the Termination Date, the liabilities of the Trust will be recovered from the Trust prior to any final distribution to Members under paragraph (e). The Trustee may retain for as long as it thinks fit Trust assets, converted into Cash or otherwise, for the purpose of meeting any actual or contingent liabilities of the Trust. 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 Trust 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 Trust. 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 Trust 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 Units being equal to the proportion that Unit holding bears in relation to all Units 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 clause 2.3(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 nominated by the Member. If the Member fails to nominate a Successor Fund, the provisions of Clause 3.4(a) apply.
- (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 Trust. 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

A Trust 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 that Trust requested by the Member.

## 2.5 Pensions

The Trustee may pay Pensions to Members of and from any Trust 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.

## 3 INTERESTS AND MEMBERS

### 3.1 Applications and Application Money

- (a) **(Applicant)** Any person wishing to be issued, or to cause to be issued, Interests must submit an Application to the Trustee. Unless otherwise required by SIS, the Trustee may regard the Application of a Standard Employer Sponsor as a separate Application in respect of each person nominated for Membership by that Standard Employer Sponsor. The Trustee subsequently may issue Interests to a Member without further Application in accordance with paragraph 3.2.
- (b) **(retention)** The original or a copy (which may be electronic if permitted by law) of all accepted forms of Application will be retained by the Trustee for at least 10 years or any longer period required by law after receipt.
- (c) **(accept or refuse)** The Trustee has absolute discretion to accept or refuse any Application without giving any reason and may accept an Application but only a part of the relevant Application Money. The Trustee promptly will notify an applicant of any refusal. Any Application not accepted within 30 days of receipt will be deemed to be refused.
- (d) **(Application Money to accompany)** An Application should be accompanied by any Application Money not required by law to be paid directly to the Trustee by the trustee of another superannuation fund or approved deposit fund or the issuer of a deferred annuity. The subsequent dishonouring of any cheque, or the frustration of attempts by the Trustee to take legal title to any Application Money, automatically will revoke acceptance with respect to that (or that part of the) Application.
- (e) **(part of Trust)** All accepted Application Money will form part of the assets of the relevant Trust upon the issue of an Interest in respect of that Application Money.
- (f) **(regular contributions)** The Trustee may offer applicants and Members a regular contribution facility whereby the Trustee will debit a specified amount from an account nominated by, or otherwise receive a specified amount from or on behalf of, the Member and apply that amount to the purchase of Interests in accordance with the instructions of the Member.
- (g) **(other contributions)** The Trustee may accept any contributions made on behalf of a Member under Superannuation Law and treat those contributions as if they were made in accordance with Clause 3.3(f).
- (h) **(contributions made in mistake)** If the Trustee finds after accepting contributions



that it should not have done so, it will, if Superannuation Law permits, repay an appropriate amount to the person making the contribution. That amount must be calculated on a fair and reasonable basis. and

- (i) **(defective contributions)** If an amount is initially recorded as having been contributed or transferred to the Trust but that amount is not actually received (for example where a cheque is dishonoured), the contribution or transfer will be deemed to have never been made.

### 3.2 Opening of Accounts

Upon accepting an Application and associated Application Money, the Trustee will deduct from the Application Money any fee applicable under sub-clause 8.7 and an amount (if any) determined by the Trustee being no greater than its estimate of the cost of investing the Application Money. The Trustee will apply the balance of the Application Money to the issue of Interests to the applicant. The Trustee will then:

- (a) **(Account)** establish an Account in the name of the Member if one does not already exist in the relevant Trust;
- (b) **(registration)** make entry in the Register in accordance with sub-clause 7.2; and
- (c) **(notify Member)** notify the Member of the date and number of Units issued and at what price per Unit, but a certificate of Interest or Unit holding (as may be the case) as such need not be provided.

### 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 Redemption

- (a) **(redemption)** The Trustee will within a reasonable period redeem Interests from the Trust on and in accordance with the written (in a form the Trustee approves) request of a Member. The Trustee may redeem Interests by way of transfer as follows:
  - (i) The Trustee may transfer the whole or part of any amount held in the Trust in respect of a Member to another Benefit Arrangement;
  - (ii) The Trustee may make such a transfer without the Member's consent where SIS permits (including to a Successor Fund or an Eligible Rollover Fund).
  - (iii) The Trustee may make such inquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with SIS (or in the case of a retirement savings account, the Retirement Savings Act 1997) and that any Preserved Benefits must continue to be preserved in accordance with the requirements of Superannuation Law.
  - (iv) A transfer of an amount under this Clause 3.4 is a complete discharge to the Trustee in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred.

- (b) **(minimum redemption)** Subject to SIS, the Trustee may refuse to redeem an Interest if the request is in respect a redemption or repurchase with a value of less than \$500. Where permitted by SIS, the Trustee may treat a redemption request which, if satisfied, would result in the relevant Member holding Units worth less than \$500 as a request for a complete redemption.
- (c) **(redemption)** No redemption will be satisfied other than by payment in Cash, except in the absolute discretion of the Trustee.
- (d) **(value of Interest upon redemption)** The redemption value of an Interest will be the next determined value of that Interest under paragraph 5.2(c).
- (e) **(deductions)** The Trustee will deduct from any redemption any fees due upon that redemption.
- (f) **(Trustee's discretion)** Unless provided to the contrary in SIS, the Trustee has an absolute discretion to terminate a person's Membership in a Trust and redeem that person's Interest in accordance with this sub-clause 3.4.

### 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 Trust and any Insured Benefit in accordance with the remaining provisions of this 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 Trust 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 Clause 3.5 applies must, subject to the remaining provisions of this 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 Clause 3.5.4, but unless 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 the legal personal representative, the benefit may be paid to any other person that the Trustee chooses or in any other manner.

3.5.4 For the purposes of this 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 Total and Permanent Disablement**

Upon the Trustee being satisfied that the Member is totally and permanently disabled and in addition to redeeming a Member's Interest in accordance with clause 3.4, the Trustee will also pay any Insured Benefit.

### **3.7 Temporary Disablement**

Upon the Trustee being satisfied the member is temporarily disabled in addition to redeeming a Member's interest in accordance with clause 3.4, the Trustee may pay the insured benefit during the period of the Member's Temporary Disablement.

### **3.8 Member's interest in Trust 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 any Trust or any Strategy or those of the Trustee. No Member will have a divisible interest in any asset of any Trust.

### **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 a Trust or to remain a Member, as and when reasonably requested, or required under this Deed.

## **4 UNITS**

### **4.1 Application of Clause**

This Clause 4 will apply to a Trust only if so stated in the Schedule naming that Trust, and its provisions will prevail over inconsistent provisions in Clause 3.

### **4.2 Units**

- (a) **(Units)** The entire beneficial interest of a Trust to which Clause 4 applies will be divided into Units. The Trustee may elect to issue fractions of Units, and may combine fractional Units issued to the same Member. The issue and redemption prices of each class of Units will be determined under sub-clauses 4.3 and 4.4, respectively, at intervals (which may vary between classes) not to exceed 30 days.
- (b) **(Units and Strategies)** In a Trust which has more than one Strategy there will be a different class of Units for each such Strategy. All Units of a class ("Units in a Strategy") will be of equal value. The issue and redemption price, as well as the ongoing value of a Unit, will be determined by reference to the Value of the Strategy to which the Unit relates.
- (c) **(Unit split)** The Trustee may declare that the number of Units in a Strategy is a multiple (the "Multiple"), which may be less than 1.00, of the number of Units existing prior to the declaration. Each Unit holding following that declaration will be adjusted accordingly. The Trustee will, following its declaration of a Unit split or consolidation, promptly issue notices to Members of their Units held after the Unit split or consolidation.

### **4.3 Issue**

Units will be issued at the issue price next to come into force on or after both the receipt of the Application Money and the acceptance of the Application by the Trustee, when that Unit price comes into force. The issue price of a Unit will be determined by dividing the Value of the relevant Strategy by the number of Units then on issue in respect of that Strategy, rounding to at least the third decimal place. The issue price may also include an amount (if any) determined by the Trustee being no greater than its estimate of the cost of investing the Application Money. A Unit price comes into force at a time determined by the Trustee.

### **4.4 Redemption**

The redemption price of a Unit will be determined by dividing the Value of the relevant Strategy by the number of Units on issue in respect of that Strategy, rounding to at least the third decimal place and will come into force at a time determined by the Trustee. The

redemption price may be reduced by an amount (if any) determined by the Trustee being no greater than its estimate of the cost of realising assets to meet the requested redemption. A redemption will be effected at the redemption price next to come into force on or after the day the relevant request is received by the Trustee when that Unit price comes into force.

## 5 INVESTMENT

### 5.1 Investment and the Ethical Charter

The Trustee will from time to time invest the assets of each Trust. When allocating assets among Strategies of a Trust the Trustee will act consistently with the investment strategy of each Strategy. The Trustee may invest a Trust'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:

- (i) pollute land, air or water;
- (ii) destroy or waste non recurring resources;
- (iii) extract, create, produce, manufacture or market materials, products, goods or services which have a harmful effect on humans, non human animals or the environment;
- (iv) market, promote or advertise products or services in a misleading or deceitful manner;
- (v) create markets by the promotion or advertising of unwanted products or services;
- (vi) acquire land or commodities primarily for speculative gain;
- (vii) create, encourage or perpetuate militarism or engage in the manufacture of armaments;
- (viii) entice people into financial over-commitment;
- (ix) exploit people through the payment of low wages or the provision of poor working conditions;
- (x) discriminate by way of race, religion or sex in employment, marketing or advertising practices; or
- (xi) contribute to the inhibition of human rights generally.

## 5.2 Valuation

- (a) **(Trust)** At least once in every month during the continuance of a Trust the Trustee will determine the Value of that Trust. 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 a Trust, the Trustee will determine the proportion of the total Value of that Trust attributable to each Strategy of that trust, and will separately determine the Value of each such Strategy;
- (c) **(Account)** When valuing a Trust, 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 Trust referable to the Member's Account, transfers of Interest between Strategies, and any provision against that Account to meet any Trust 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 TRUST

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

## 7 ACCOUNTS

### 7.1 Accounts

The Trustee will keep in respect of each Trust the Register and proper accounting records that document the transactions and financial position of the Trust, including the assets, liabilities, income and expenditure and any other accounts that may be required by law. The accounts will be kept in a way that will enable the preparation of true and fair accounts of the Trust and the convenient audit of those accounts. The audit will be conducted in accordance with the requirements of SIS.

### 7.2 Register

The Trustee will maintain in respect of each Trust a Register, and may maintain in other locations a branch register, which will record:

- (a) **(name and address)** the name and most recently advised address of each Member;
- (b) **(Interests and Units)** the date of issue of Interests, their class and most recently determined value, and if Units then the number of such Units issued to that Member,

and date of redemption or other disposal of any Interest; and

- (c) **(other)** any other detail required by law or which the Trustee may think appropriate.

### 7.3 Expenses

The Trustee may operate an expense reserve account within a Trust to meet Expenses. The Trustee may meet Expenses from its own resources and then recover them from the Trust, or Expenses may be met directly from the Trust.

## 8 TRUSTEE

### 8.1 Constitutional Corporation

The Trustee of the Trust must be a Constitutional Corporation.

### 8.2 Appointment

The Trustee is appointed as trustee of each Trust and agrees to, and declares that it will, hold the corpus of each such Trust 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 under Superannuation Law and retains all the powers and rights over the assets of a Trust as if it were the beneficial owner, and without limiting this generality:

- (a) **(buy and sell)** the power to buy and sell Trust 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 Trust; 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 Trust;
- (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 Trust assets on behalf of the Trustee domestically and overseas, and the power to appoint a clearing and settlement agent in respect of the Trust;
- (i) **(remuneration)** the power to revise the remuneration received as long as the total remuneration would not be greater than that provided for under clause 8.8; and
- (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.

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 Clause 3.5 and SIS.

#### 8.4 **Borrowing power**

The Trustee will not have the power to borrow money on behalf of the Trust in any situation prohibited by SIS.

#### 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 Trust in safe custody;
- (b) **(pay outgoings)** a duty to pay Trust outgoings which may be met either directly from Trust assets or recovered from Trust 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 Trust;
- (c) **(act as Trustee)** a duty to act continuously as Trustee of the Trust 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 Trust;
- (d) **(dealers licence)** a duty to, if required by law in order to act as Trustee, obtain and

maintain a securities dealers licence and comply with its terms;

- (e) **(other licences)** a duty to apply for any licence under Superannuation Law to enable the Trustee to discharge its duties under this deed;
- (f) **(manage)** a duty to manage Trust 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**

- 8.6.1 The Trustee will meet at least three times per year and cause minutes to be made of all meetings held.
- 8.6.2 The quorum for meetings of the Trustee shall be the presence of a majority of the directors.
- 8.6.3 If required under SIS, for a decision to be valid, two-thirds or more of the Trustee directors must have voted for it.
- 8.6.4 Trustee meetings can be held by the use of electronic means (for example by teleconference).
- 8.6.5 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 a Trust 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 that Trust. The Trustee will on the date of retirement vest the Trust in the New Trustee and deliver to it all books and records however constituted relating to the Trust and costs incurred by any party pursuant to the operation of this sub-clause will be met from the assets of the Trust. The Trustee may not be removed by any party save in accordance with section 60A of SIS.

## **8.8 Remuneration of Trustee**

Subject to compliance with the member-protection Standards under SIS, the Trustee for its services will be due from each Trust in each Financial Year until its retirement or the final

distribution of assets under paragraph 2.3(e) a fee:

- (a) **(new member)** equal to \$25 when the Trustee accepts a new member (adjusted annually by the index number, see (c) below).
- (b) **(applications)** equal to 6% of the amount of Application Money as and when accepted during that year, and subject to a minimum of \$30 (adjusted annually as per (c) below);
- (c) **(annual percentage)** equal to:

	*	3%	*	Number of days since the last unit price for the Strategy was determined
Value of each Strategy				
Number of days in the year				

The annual percentage amount will be paid monthly in arrears. The annual percentage is subject to a minimum fee calculated and deducted on an account by account basis at \$30 per annum (adjusted annually by the "index number" as that phrase is defined in section 160ZJ of the *Income Tax Assessment Act 1936* (Commonwealth));

- (d) **(annual flat)** equal to 1/12 of \$100 on the last Business Day of each month paid in arrears (the \$100 figure adjusted annually by the "index number" as that phrase is defined in section 160ZJ of the *Income Tax Assessment Act 1936* (Commonwealth));
- (e) **(withdrawal or pension payment)** equal to 6% of the amount payable in respect of any redemption of an Interest, with a minimum fee of \$100 on any withdrawal other than a pension payment, where the minimum fee is \$20 (each adjusted by the "index number" referred to in paragraph (b));
- (f) **(regular contribution)** of \$4 (adjusted annually by the index number referred to in paragraph (b)) per contribution made under any regular contribution facility offered by the Trustee under paragraph 3.1(f);
- (g) **(switch)** equal to 3% of any amount moved at the request of the Member between Strategies; and
- (h) **(special)** which the Trustee may set, to offer additional services to Members.

All such remuneration, unless otherwise specified in this Deed, will be received by the Trustee out of the assets of the Trust. The Trustee may reduce, defer, or spread over time collection of its fee, and may offer investors the choice of payment of the fee listed in paragraph (a) in periodic instalments. Where assets of one Trust are invested in another Trust, the Trustee will charge fees in respect of those assets not to exceed the fees which

could be charged were they assets of only one Trust.

#### **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 a Trust 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 that Trust, except:

- (a) **(failure to act)** where the Trustee:
  - (i) fails to act honestly in a matter concerning the Trust; or
  - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the Trust, 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).

#### **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 a Trust in respect of any liability incurred, in relation to a matter concerning the Trust, 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 Trust; or
  - (ii) intentionally or recklessly fails to exercise, in a matter relating to the Trust, 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 in accordance with the requirements of SIS. It will pay all brokerage and commission which is not an Expense but is paid in respect of a Trust out of its fees or other of its own resources.

EXECUTED AS A DEED on the 27 day of JANUARY, 2009.

This Deed is executed as a Deed Poll pursuant to section 127 of the Corporations Act 2001.

J.C. Pender Director

H. PENDER Name in print

P.J. George Director/Secretary

PHILIP JOHN GEORGE Name in print

## SCHEDULE 1

### 1 Name

The Trust to be governed by this Schedule and the Deed will be known as the Australian Ethical Retail Superannuation Fund.

### 2 Trust to comply with SIS

The Australian Ethical Retail Superannuation Fund will be a regulated superannuation fund and the Trustee will strive to ensure that the Trust 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.

### 3 Clause 4

Clause 4 of the Deed will apply to the Trust.

## SCHEDULE 2

### 1 Name

The Trust to be governed by this Schedule and the Deed will be known as the Australian Ethical Pooled Superannuation Trust.

### 2 Trust to comply with SIS

The Australian Ethical Pooled Superannuation Trust will be a pooled superannuation trust and the Trustee will strive to ensure that the Trust operates at all times as a complying pooled superannuation trust. 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.

### 3 Transfer of taxable contributions

The Trustee may make agreements to receive taxable contributions in accordance with section 275 of the *Income Tax Assessment Act 1936* (Cth).

2