

**CONSTITUTION OF THE
AUSTRALIAN ETHICAL INVESTMENT FUNDS**

**Australian Ethical Income Fund
Australian Ethical Balanced Fund
Australian Ethical Australian Shares Fund
Australian Ethical Diversified Shares Fund
Australian Ethical International Shares Fund**

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1 INTERPRETATION

1.1 Definitions

In this Constitution, unless the context otherwise requires:

“Accrual Period”, in respect of a Fund, means a period ascertained as follows:

- (a) in respect of Funds in existence at the date of adoption of this Constitution, the period specified in the Schedule relevant to those Funds;
- (b) in respect of new Funds, the dates set out in the supplemental deed constituting each such Fund;
- (c) where the determination of a Fund occurs during an Accrual Period, the last Accrual Period in respect of that Fund shall end on the date of determination; and
- (d) in respect of all Funds, the Responsible Entity may determine that an Accrual Period in respect of a Fund should end on a date other than that then in force but before doing so the Responsible Entity must notify all Unitholders in that Fund in writing of the new date.

"AMIT" means a trust which is an attribution managed investment trust for an income year within the meaning of sections 995-1(1) and 276-10 of the Tax Act.

"AMMA statement" or "AMIT member annual statement" has the meaning given by sections 995-1(1) and 276-460 of the Tax Act.

“Application” means a request for the issue of Units to a person, in a form acceptable to the Responsible Entity and providing at least the applicant’s name, date of birth and address or alternatively a unique identifier provided by the Responsible Entity to the person, or otherwise recognisable by the Responsible Entity, that enables the Responsible Entity to determine that information.

“Application Money” means the Cash or any other assets that may be contributed to a Fund, tendered in accordance with sub-clause 3.1 in respect of an Application or regular contribution.

“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 (or other approved financial institution) situated in Australia and

denominated in Australian currency or an electronic transfer of Australian currency (as appropriate).

“Commission” means the Australian Securities and Investments Commission or any delegate and includes every successor body to the Australian Securities and Investments Commission.

“Constitution” means this deed, including any schedules.

“Corporations Law” means the Corporations Act 2001 (Cth) as amended by the Commission in relation to the Fund, including by class order, and includes the Corporations Regulations.

"Determined Member Component" is a Member's Member Component as reflected in an AMMA statement for that Member for an income year, and has the same meaning as "determined member component", as that term is defined in sections 995-1(1) and 276-205 of the Tax Act.

"Determined Trust Component" is an amount of a character relating to assessable income, exempt income, non-assessable non-exempt income or a tax offset of an AMIT, that is stated in a document of the AMIT to be an amount of that character, and has the same meaning as "determined trust component", as that term is defined in sections 995-1(1) and section 276-255 of the Tax Act.

“Expense” means any cost, charge or expense incurred in relation to a Fund in respect of:

- (a) the acquisition, valuation, registration, custody, disposal of or other dealing (including any proposed dealing or other proposed transaction of whatsoever nature) with investments, including commission, bank charges and stamp duty, but excluding any incidental expense which is not an out-of-pocket expense or disbursement incurred by the Responsible Entity;
- (b) the Fund or Compliance Plan Auditor or any registered company Auditor appointed in accordance with the Constitution or the Compliance Plan;
- (c) all income tax, stamp duties, financial institutions duties and bank account debit taxes or any other duty, tax or impost or any amount in bona fide reimbursement of any such duty, tax or impost properly charged to or payable by the Responsible Entity (whether by any taxing authority or any other person) in connection with a Fund on any account whatsoever;
- (d) postage, electronic funds transfer, stamp duty on all cheques (other than distribution cheques) accounts, statements, certificates, notices and other documents sent to Unitholders in accordance with the provisions of this Constitution or the Compliance Plan;

- (e) preparation, printing and postage of accounts, any distribution statements, cheques and certificates;
- (f) the keeping of the registers and of accounting records;
- (g) preparation, execution, stamping, lodgement and registration (as applicable) of this deed, any further supplemental deed, the Compliance Plan and any revision and any subsequent issue of Units in a Fund (including legal, accounting, tax and financial advice and services);
- (h) postage and stamp duty on distribution cheques;
- (i) convening and holding meetings of Unitholders;
- (j) any action, suit or proceeding taken on behalf of a Fund (including costs of obtaining advisory opinions) and all costs and disbursements incurred by the Responsible Entity in obtaining any legal advice or opinions concerning or relating to the interpretation and construction of this Constitution or the Compliance Plan or any provision hereof;
- (k) the amount of any reimbursement to the Responsible Entity for payments made by it under indemnities lawfully granted by it or on account of compliance committee members or other service providers; and
- (l) Fund reimbursement or similar insurance taken out by the Responsible Entity (to the extent permitted by law).

PROVIDED THAT the combined total amount in respect of those items specified in paragraphs (d), (e), (f) and (g) referable to any Financial Year shall not exceed one point five percent (1.5%) of the average of the Value of a Fund (but before making any deduction as required in the definition of that expression) on the last day of each month during the Financial Year PROVIDED FURTHER THAT in respect of the first Financial Year of a Fund, the Value of the Fund (but before making any deduction as aforesaid) shall not be averaged but shall be taken as being such Value on the last day of the last month in that Financial Year.

“Financial Year” means each period beginning on the date a 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 Responsible Entity, or the date of termination of the Fund (as the case may be);

“Fund” means one of the funds referred to in Clause 2, the rules of that fund being the provisions of this Constitution (including those incorporated by reference) and a schedule which names and is specific to that Fund.

"Member" means a member of a Fund where the Fund is an AMIT and has the same meaning as, and may be used interchangeably with, the term Unitholder.

"Member Component" is so much of an AMIT's Determined Trust Component as is attributed to a Member's Units on a fair and reasonable basis in accordance with the constituent documents of the AMIT, and has the same meaning as "member component", as that term is defined in sections 995-1(1) and 276-210 of the Tax Act.

"Over" means an over, of a particular character, that has the meaning given by sections 995-1(1) and 276-345 of the Tax Act.

"Redemption Price Calculation Date" means the date upon which the redemption price of a Unit is required to be calculated and, subject to Clause 3.3(f), is the date upon which the request to redeem is received by the Responsible Entity in accordance with Clause 3.3(d) provided that where a request to redeem is received later than 3.00p.m. Sydney time on a business day (or later than such other time as determined by the Responsible Entity and notified to Unitholders), or on a day which is not a business day, the "Redemption Price Calculation Date" shall be the next following business day.

"Register" means the principal and any branch register kept under sub-clause 8.2.

"Responsible Entity" means the company for the time being appointed as Responsible Entity under this Constitution.

"Tax Act" means the Income Tax Assessment Act 1936 (Cth) and/or the Income Tax Assessment Act 1997 (Cth), as applicable, and where appropriate, includes the Taxation Administration Act 1953 (Cth), applicable imposition and/or collection legislation, and any subordinate legislation in relation to those Acts or that legislation.

"Termination Date" means the date a Fund terminates under clause 2.3.

"Under" means an under, of a particular character, that has the meaning given by sections 995-1(1) and 276-345 of the Tax Act.

"Unit" means an equal undivided beneficial interest in a Fund.

"Unitholder" means a person by or on behalf of whom an Application is made and accepted or who is otherwise entitled to a Unit in a Fund.

"Value of the Fund" means the amount determined by the Responsible Entity in accordance with sub-clause 5.2 as the total of the market values of all assets of a Fund, less the value of the distribution account and less the value of any other liabilities of that Fund.

1.2 Interpretation

In this Constitution:

- (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 Constitution), agreement, regulation or statute is to be construed as a reference to the same as amended substituted or reenacted;
 - (iv) **(Corporations Law definitions)** words defined in Corporations Law the initial letter of which is a capital will, unless also defined in this Constitution, have the meaning given in Corporations Law;
 - (v) **(successors)** a reference to a person in this Constitution (including a party to this Constitution) 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 Constitution;
 - (c) **(covenants in this Constitution)** each covenant made by the Responsible Entity is made severally to each Unitholder, so that each covenant in this Constitution may be enforced by any Unitholder;
 - (d) **(benefits and obligations)** this Constitution will be construed, except as otherwise provided, to bind the Responsible Entity, each Unitholder and any person claiming through either; and
 - (e) **(proper law)** this Constitution is governed by the laws of the Australian Capital Territory.

1.3 Amendment

The Responsible Entity may by supplemental deed amend this Constitution in any way permitted by law.

1.4 Inspection of Constitution

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

2 FUNDS

2.1 Existing Funds and Establishment of New Funds

From the date that it is registered by the Australian Securities and Investments Commission (“the Commission”) as the Constitution for the Australian Ethical Funds to replace the former Fund Deed dated 3 August 1989 (as amended) for those Funds, this Constitution regulates the following Funds:

- (a) Australian Ethical Balanced Fund;
- (b) Australian Ethical Income Fund;
- (c) Australian Ethical Australian Shares Fund;
- (d) Australian Ethical Diversified Shares Fund;
- (e) Australian Ethical International Shares Fund; and
- (f) such other Funds as may be established in accordance with this Constitution.

The Responsible Entity may establish additional Funds to be governed by this Constitution by Deed Poll expressing that intention and setting out any supplementary or replacement clauses to govern the operation of that Fund. Once so identified, a Fund will be established upon acceptance by the Responsible Entity of the first Application Money in respect of that Fund and the consequent issue of Units.

The Funds referred to in (a) to (d) (inclusive) are governed both by the general terms in the body of this Constitution as well as by the specific terms applicable to each Fund as set out in the Schedule for that Fund. Provisions specific to a Fund as set out in a Schedule will prevail over inconsistent provisions in the body of the Constitution.

2.2 Duration

Each of the Funds referred to by name in clause 2.1 commenced on the day of the first Prospectus issued in respect of that Fund. Any Fund created pursuant to Clause 2 will commence as set out in that Clause. Each Fund shall continue until the date being one day before the 80th anniversary of the commencement of that Fund unless otherwise terminated in accordance with this Constitution or by operation of law.

2.3 Termination

Where a Fund is to be determined:

- (a) **(termination notice)** The Responsible Entity will give prior notice to each Unitholder of the Termination Date.
- (b) **(liquidate)** The Responsible Entity 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 Responsible Entity considers is in the best interest of the Unitholders. The Responsible Entity in doing so may transfer any asset to the trustee of another fund (including a Fund) irrespective of any association that it may have with that other fund.
- (c) **(costs)** After the Termination Date, the liabilities of the Fund will be recovered from the Fund prior to any final distribution to Unitholders under paragraph (e). The Responsible Entity 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 Unitholder liability)** If the liabilities of the Fund exceed its assets the Unitholder will not be liable to satisfy the deficiency.
- (e) **(distribution)** Subject to the other provisions of this Clause, within 180 days of the Termination Date, the Responsible Entity will endeavour to complete the liquidation of the assets of the Fund. Subject to paragraph (h) of this sub-clause, after the liquidation, the Responsible Entity will divide the proceeds of liquidation, less all proper expenses (including the expenses of Termination and distribution) among the Unitholders in that Fund in proportion to the number of Units in respect of which they are registered as the Unitholder. The Responsible Entity may require from each Unitholder a receipt or discharge in respect of any amount distributed to that Unitholder.
- (f) **(statement)** Within 8 weeks after the final distribution in relation to the termination, the Responsible Entity will send to each Unitholder a statement setting out the proceeds of liquidation and related costs and the calculation by the Responsible Entity of the amount distributed to the Unitholder.
- (g) **(discharge of Responsible Entity)** Upon dispatch of the statements described in paragraph (f) the Responsible Entity will be discharged and released from further obligations in respect of the Fund. The discharge will not apply to claims by former Unitholders based on fraud, negligence, breach of duty or trust, or failure to exercise the required degree of care or diligence.
- (h) **(retention)** The Responsible Entity may retain in its hands or under its control for as long as it thinks fit, such part of the assets of that Fund as in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of that Fund. But any part of that Fund so retained, to the extent that it is ultimately found not to be so required, shall remain subject to the Fund for conversion and distribution contained in paragraph (e) of this Clause.

- (i) **(distribution in specie)** The Responsible Entity and any Unitholder may agree that a Unitholder's entitlement on distribution shall be satisfied in part or whole by the transfer to the Unitholder of investments of that Fund at their market value.
- (j) **(Audit)** The Responsible Entity must procure an independent audit by a registered company auditor of the final accounts of the relevant Fund after completion of the winding up.

3 UNITHOLDERS

3.1 Applications and Application Money

- (a) **(Applicant)** Any person wishing to be issued, or to cause to be issued, Units must submit an Application to the Responsible Entity. The Responsible Entity subsequently may issue Units to a Unitholder without further Application in accordance with paragraph 3.1(f).
- (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 Responsible Entity for at least 1 year or any longer period required by law after receipt.
- (c) **(accept or refuse)** The Responsible Entity 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 Responsible Entity promptly will notify any 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 the relevant Application Money. The subsequent dishonouring of any cheque, or the frustration of attempts by the Responsible Entity 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 Fund)** All accepted Application Money will form part of the assets of the relevant Fund upon the issue of Units in respect of that Application Money.
- (f) **(regular contributions)** The Responsible Entity may offer applicants and Unitholders a regular contribution facility whereby the Responsible Entity will debit a specified amount from an account nominated by, or otherwise receive a specified amount from or on behalf of, the Unitholder and apply that amount to the purchase of Units in accordance with the instructions of the Unitholder.

3.2 Acceptance of Applications

Upon accepting an Application and receiving the associated Application Money, the Responsible Entity will deduct from the Application Money any application fee (as set out in clause 9.5) payable in respect of the Application and an amount (if any) determined by the Responsible Entity being no greater than its estimate of the cost of investing the Application Money. The Responsible Entity will apply the balance of the Application Money to the issue of Units to the applicant. The Responsible Entity will then:

- (a) **(register)** make an appropriate entry in the Register; and
- (b) **(notify Unitholder)** notify the Unitholder of:
 - (i) the effective date of the issue of the units (which will be a date on or after the receipt of the Application, but may be a date that is prior to the processing of the Application by the Responsible Entity);
 - (ii) the number of Units issued; and
 - (iii) at what price per Unit,

but a certificate of Unit Holding as such need not be provided.

- (c) **(Issue Units)** issue units at the issue price on the date of receipt of the Application Money or the date of acceptance of the Application by the Responsible Entity (whichever is the later). The issue price of a Unit will be determined by dividing the Value of the relevant Fund by the number of Units then on issue in respect of that Fund, rounding to at least the fourth decimal place. The issue price may also include an amount (if any) determined by the Responsible Entity being no greater than its estimate of the cost of investing the Application Money.

3.3 Redemption of Units

- (a) **(redemption allowed)** The Unitholders have the right to withdraw from a Fund. While the Fund is liquid (as defined in Section 601KA of the Corporations Law) the Responsible Entity will within 21 days of the Redemption Price Calculation Date (unless otherwise provided in a Schedule) satisfy a redemption request from the Fund on and in accordance with the request (in a form acceptable to the Responsible Entity) of a Unitholder. The balance of the terms of this sub-clause define the provisions applicable to such a redemption. While the Fund is not liquid (as defined in Section 601KA of the Corporations Law) the right to withdraw must be exercised in accordance with Part 5C.6 of the Corporations Law.
- (b) **(minimum redemption)** The Responsible Entity may refuse to satisfy a redemption request if the request is in respect of a redemption or repurchase with a value of less than \$500. The Responsible Entity may treat a redemption request

which, if satisfied, would result in the relevant Unitholder holding Units worth less than \$500 as a request for a complete redemption.

- (c) **(redemption in Cash)** No redemption will be satisfied other than by payment in Cash, except in the absolute discretion of the Responsible Entity.
- (d) **(value of Unit upon redemption)** The redemption price of a Unit will be determined on the Redemption Price Calculation Date by dividing the Value of the relevant Fund by the number of Units on issue in respect of that Fund, rounding to at least the fourth decimal place. The redemption price may then be reduced by an amount (if any) determined by the Responsible Entity being no greater than its estimate of the sum of the cost of realising assets to meet the requested redemption and the amount of the redemption fee set out in clause 9.5.
- (e) **(Responsible Entity's discretion)** Unless provided to the contrary at law, the Responsible Entity has an absolute discretion to terminate a person's Unit Holding in a Fund and redeem that person's Units in accordance with this sub-clause 3.3.
- (f) **(Postponement of calculation of redemption price)** The Redemption Price Calculation Date may be postponed to a date not more than 14 days from the date on which it would otherwise have fallen if the Responsible Entity is of the opinion that earlier calculation would be prejudicial to the interests of the Unitholders during any period when the Value of the Fund may not reflect the true and fair value of that Fund including but not limited to:
 - (i) the destruction or suspension of the normal operation or trading of any of the markets in which the assets of the Fund are invested;
 - (ii) a breakdown in the means of communication by which correct information is available concerning the normal operation or trading of any of the markets in which the assets of the Fund are invested; or
 - (iii) an expected revaluation of any asset or assets of the Fund which revaluation would cause a substantial change in the Value of the Fund.

On cessation of postponement, redemptions shall be satisfied in accordance with clauses 3.3(a) and 3.3(d).

- (g) **(Suspension of rights)** The rights of a Unitholder under this Deed (other than the right, pursuant to this clause, to receive the redemption proceeds) in relation to Units which are the subject of a redemption request shall be suspended as at the Redemption Price Calculation Date. A Unitholder may not withdraw a redemption request unless the Responsible Entity agrees. The Responsible Entity will determine a Redemption Price Calculation Date as soon as practicable after cessation of the circumstances which resulted in a Redemption Price Calculation Date being postponed under clause 3.3(f).
- (h) **(notify Unitholder)** The Responsible Entity will notify the Unitholder of:

- (i) The Redemption Price Calculation Date for the Units redeemed;
- (ii) the number of Units redeemed; and
- (iii) at what price per Unit.

3.4 Recognition of Unitholder as absolute Owner

The Responsible Entity shall recognise the Unitholder, his executors or administrators, as the absolute owner of the Units in respect of which the Unitholder is registered. The Responsible Entity need not take notice of any trust or equity affecting a Unit unless ordered to do so by order of a Court of competent jurisdiction or required to do so by statute. The receipt of the Unitholder or of the executors or administrators of the Unitholder, for any money payable in respect of the Units of that Unitholder shall be a good discharge for the Responsible Entity. Where a unitholder dies, the survivor or survivors, where the deceased was a joint holder shall be the only persons recognised by the Responsible Entity as having any title to the Units registered in that name.

3.5 Unitholder's interest in Fund assets

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

3.6 Provision of information

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

3.7 Unitholders bound by Constitution

The terms and conditions of this Constitution are binding on the Responsible Entity and each Unitholder and all persons claiming through them respectively as if such Unitholder and other persons had been party to this Constitution.

3.8 Transfer and Transmission of Units

Units may be transferred in accordance with the Corporations Law. Upon the death or legal disability of a Unitholder, the Units of that Unitholder may be dealt with in accordance with the Corporations Law.

4 UNITS

4.1 Units

- (a) **(Beneficial interests in a Fund divided into Units)** The entire beneficial interest of a Fund will be divided into Units. The Responsible Entity may elect to issue fractions of Units, and may combine fractional Units issued to the same Unitholder.
- (b) **(Classes of Units)** The Responsible Entity may issue different classes of Units in a Fund with such special rights or restrictions on such rights as the Responsible Entity shall determine. All Units of a class 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 assets to which the Unit relates. The Responsible Entity may at any time create, consolidate, divide or reclassify Units of a class provided that the Responsible Entity reasonably considers that such creation, consolidation, division or reclassification will not adversely affect Unitholders' rights.
- (c) **(Unit Split)** The Responsible Entity may declare that the number of Units in a Fund is a multiple (the "Multiple"), which may be less than one, of the number of Units existing prior to the declaration. Each Unit holding following that declaration will be adjusted accordingly. The Responsible Entity will, following its declaration of a Unit split or consolidation, promptly issue notices to Unitholders of their Units held after the Unit split or consolidation.

5 INVESTMENT

5.1 Investment and the Australian Ethical Charter

The Responsible Entity will from time to time invest the assets of each Fund consistently. The Responsible Entity may invest a Fund's asset 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 Responsible Entity shall seek out investments which provide for and support:

- (a) the development of workers' 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 Responsible Entity shall avoid any investment which it considers 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 the 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 Determining Value

At least once in every month during the continuance of a Fund the Responsible Entity will determine the Value of that 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 Responsible Entity may value certain assets more frequently as it considers appropriate. Wherever the Value of a Fund is ascertained on the last day of an Accrual Period, the same shall be determined before appropriation of Unitholders' income entitlement on that day.

5.3 Valuation Method

The Responsible Entity 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.

5.4 Limitation on Investments

The following limitations apply to investments of each Fund:

- (a) the value of shares, debentures and deposits in any one company comprised in a Fund (other than a financial institution referred to in Clause 5.5 shall not exceed 10% of the Value of the Fund;
- (b) the total equity interest in any one trading company comprised in a Fund shall not be such that the Fund would be treated as a trading trust for the purposes of section 102 N of the Income Tax Assessment Act;
- (c) the aggregate of deposits paid and margins called in respect of traded derivative contracts outstanding in respect of a Fund at any time shall not exceed 5% of the Value of the Fund (before making any deduction as required by the definition of that term).

5.5 Temporary Investment of Cash

The Responsible Entity is entitled to place Cash with a bank, or any managed investment scheme or prescribed interest investing in government or bank backed securities (the

securities not individually screened by the Responsible Entity) for such time as the Responsible Entity shall consider desirable in the interests of the Unitholders.

6 INCOME WHERE A FUND IS NOT AN AMIT

6.1 Application of this clause 6

This clause 6 applies to a Fund in respect of an income year in which the Fund is not an AMIT.

6.2 Calculation of Income where a Fund is not an AMIT

- (a) Unless otherwise specified in a Schedule for a Fund or in the Deed Poll constituting a new Fund pursuant to Clause 2, income is notionally allocated to each Unitholder on a daily basis and each Unitholder shall be presently entitled to such income when it is allocated. The income shall be distributed within two calendar months of the end of each Accrual Period unless otherwise specified in a Schedule for a Fund or in the Deed Poll constituting a new Fund pursuant to Clause 2 pro rata to Unitholders as at the end of the Accrual Period (unless otherwise specified in a Schedule for a Fund or in the Deed Poll constitution a new Fund pursuant to Clause 2) but the Responsible Entity need not distribute funds equating to the amount of unrealised amounts and imputation rebates, foreign tax credits and other tax credits included in the income or included in the net income of the Fund determined in accordance with section 95(1) of the Income Tax Assessment Act, 1936 (the "tax income") of the Fund. For this purpose "income" shall be the amount which constitutes the net accounting income of the Fund for a Financial Year determined in accordance with generally accepted accounting principles PROVIDED THAT:
- (i) the Unitholders presently entitled to the income direct that the Responsible Entity capitalise for their benefit so much of the income as constitutes unrealised amounts;
 - (ii) where the tax income of the Fund exceeds the income, the Responsible Entity may in its discretion distribute to Unitholders either:
 - (A) the tax income; or
 - (B) some other amount not less than the income.
- (b) The income of each Fund which has arisen in respect of each Accrual Period shall, at the end of such Accrual Period, be credited to a distribution account and shall be distributed to Unitholders in that Fund in proportion to the number of Units held by them on the last day of the Accrual Period provided that where the Responsible Entity is liable to pay any withholding or other tax or duty in respect

of a Unitholder's income entitlement or any part thereof, the same shall be deducted before such distribution is effected.

- (c) Where Units are issued on the last day of an Accrual Period, the holder of such Units on that day shall participate in the distribution of the net income of the relevant Fund for such period, but a holder of Units whose Units have been issued and redeemed on such day, shall not so participate.

6.3 Deferral of Income where a Fund is not an AMIT

Notwithstanding sub-clause 6.2, the Responsible Entity may, in its discretion, determine to distribute less than the whole of the income of a Fund for any Accrual Period if money is required to meet any Expenses authorised by this Constitution to be paid out of the relevant Fund.

6.4 Fixed Amount Payments where a Fund is not an AMIT

A Unitholder may, in such a form as the Responsible Entity approves, nominate a specific amount to be paid out of the Fund to the Unitholder at specified regular intervals acceptable to the Responsible Entity. If the Responsible Entity agrees to make such payments, the amounts required will be distributed first out of accrued income of the Unitholder and secondly out of the capital value of the Unitholder's Units. In the latter case the Unitholder will be deemed to have requested redemption of Units of the Unitholder to the extent required to meet the payment. Payments will cease once all income and the capital value of all of the Unitholder's Units have been paid out.

7 INCOME WHERE A FUND IS AN AMIT

7.1 Application of this clause 7

This clause 7 applies to a Fund in respect of an income year in which the Fund is an AMIT and the Responsible Entity has elected for the Fund to be an AMIT under the Tax Act for an income year (and subsequent income years).

7.2 Calculation of Income where a Fund is an AMIT

- (a) Unless otherwise specified in a Schedule for a Fund or in the Deed Poll constituting a new Fund pursuant to Clause 2, the Distributable income of the Fund for an income year is notionally allocated to each Unitholder on a daily basis. The Distributable income of the Fund for an income year or such lesser amount as constitutes the Determined Trust Components that are attributed to the Unitholders under sub-clause 7.5 shall, subject to sub-clause 7.3, be distributed within two calendar months of the end of each Accrual Period, but the Responsible Entity need not distribute funds equating to the amount of unrealised amounts and imputation rebates, foreign tax credits and other tax

credits of the Fund. For this purpose, "Distributable income of the Fund for an income year " shall be the amount which constitutes the net accounting income of the Fund for an income year determined in accordance with generally accepted accounting principles.

- (b) The Distributable income of the Fund for an income year which has arisen in respect of each Accrual Period shall, at the end of such Accrual Period, be credited to a distribution account and shall be distributed to Unitholders in the Fund in proportion to the number of Units held by them on the last day of the Accrual Period, provided that where the Responsible Entity is liable to pay any withholding or other tax or duty in respect of a Unitholder's distributable income entitlement or any part thereof, the same shall be deducted before such distribution is effected.
- (c) Where Units are issued on the last day of an Accrual Period, the holder of such Units on that day shall participate in the distribution of the Distributable income of the Fund for an income year which has arisen in such period, but a holder of Units whose Units have been issued and redeemed on such day, shall not so participate.

7.3 Deferral of Income where a Fund is an AMIT

Notwithstanding sub-clause 7.2, the Responsible Entity may, in its absolute discretion, determine to distribute less than the whole of the Distributable income of a Fund for an income year within two calendar months of the end of each Accrual Period, and defer the distribution until 6months after the Accrual Period.

7.4 Fixed Amount Payments where a Fund is an AMIT

A Unitholder may, in such a form as the Responsible Entity approves, nominate a specific amount to be paid out of a Fund to the Unitholder at specified regular intervals acceptable to the Responsible Entity. If the Responsible Entity agrees to make such payments, the amounts required will be distributed first out of the Distributable income of the Fund for an income year that is accrued to the Unitholder and secondly out of the capital value of the Unitholder's Units. In the latter case, the Unitholder will be deemed to have requested redemption of Units of the Unitholder to the extent required to meet the payment. Payments will cease once all income and the capital value of all of the Unitholder's Units have been paid out.

7.5 Member Components - attribution of Determined Trust Components where the Fund is an AMIT

- (a) The Responsible Entity must attribute the Determined Trust Components of each particular character of a Fund for an income year to Members as at the end of the income year and any person who was a Member during the income year,

on the basis that the amount of any Determined Trust Component that is attributed to a Member (or former Member) is calculated as follows:

$$\frac{A \times C}{B}$$

where:

A is the total of the distributions received or entitled to be received by the Member (or former Member) in the Fund in respect of an income year under this clause 7

B is the total distributions received or entitled to be received by all Members (or former Members) in the Fund in respect of an income year under this clause 7

C is the amount of a Determined Trust Component of a particular character for the Fund for the income year

- (b) For the avoidance of doubt, if the total assessable income of the Fund does not exceed its total deductions for an income year, the amount of each Determined Trust Component of a character relating to assessable income for the income year is nil, and no amount of such Determined Trust Components may be attributed to Members or Former Members as at the end of the income year.
- (c) The Responsible Entity in its absolute discretion may allocate an Under or Over of the Scheme for the purposes of this clause, to:
 - (i) the income year it is discovered; or
 - (ii) the income year for the base year to which the variance relates.
- (d) The Responsible Entity may make an allocation of an Under or Over under this clause notwithstanding that a Member at the time of the allocation was not a Member for the income year to which the Under or Over relates.

8 ACCOUNTS

8.1 Keeping of Accounts

The Responsible Entity will keep, in respect of each Fund, the Register and proper accounting records that record the transactions and financial position of the Fund, 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 Fund and the convenient audit of those accounts.

8.2 Register

The Responsible Entity will maintain in respect of each Fund 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 Unitholder;
- (b) **[Units]** The date of issue of Units, their class, most recently determined value and the number of such Units issued to that Unitholder, and date of redemption or other disposal of any Units; and
- (c) **[Other]** Any other detail required by law or which the Responsible Entity may think appropriate.

8.3 Expenses

The Responsible Entity may operate an expense reserve account within a Fund to meet Expenses. The Responsible Entity may meet Expenses from its own resources and then recover them from the Fund, or Expenses may be met directly from the Fund but, in either case, the Expenses may be paid from the Fund only to the extent that they relate to the proper performance by the Responsible Entity of its duties.

9 RESPONSIBLE ENTITY

9.1 Powers of Responsible Entity

Subject to the provisions of this Constitution, the Responsible Entity has all the powers and rights over the assets of a Fund as if it were the beneficial owner, and without limiting this generality:

- (a) **(buy and sell)** the power to buy and sell assets in accordance with the provisions of this Constitution;
- (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 Responsible Entity to be subject, in the exercise of any of the Responsible Entity's powers under this Constitution, 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 Responsible Entity under this Constitution having regard to the best interests of Unitholders;
- (f) **(agent)** the power to, if it sees fit, appoint in writing any agent or attorney with any authority the Responsible Entity thinks appropriate, to act for or on behalf of the Responsible Entity in any respect and the Responsible Entity will be liable for the acts and omissions of any agent or attorney to the extent that the general law makes the Responsible Entity so liable;
- (g) **(exclude personal liability)** the power to refuse to enter into transactions as Responsible Entity unless the terms of the transaction are satisfactory to the Responsible Entity 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 Responsible Entity domestically and overseas, and the power to appoint a clearing and settlement agent in respect of the Fund;
- (i) **(guarantee and indemnity)** the power to guarantee any liability or other obligation of a third party and to grant indemnities on account of any third party, provided the Responsible Entity considers that the guarantee or indemnity is for the benefit of a Fund, such guarantee or indemnity to be considered a borrowing and hence subject to the limitation in sub-clause 9.2.

9.2 Borrowing

The Responsible Entity has the power, where it is considered by the Responsible Entity to be in the best interests of Unitholders, to borrow, raise money or procure other financial accommodation (including, without limitation, the issuing of convertible notes on such terms as the Responsible Entity determines) either unsecured or secured on the investments of a Fund provided that the total liabilities of a Fund do not, at the time of borrowing, exceed 40% of the Value of the Fund.

9.3 Duties of Responsible Entity

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

- (a) **(hold)** a duty to hold or cause to be held 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 Unitholder then charged against that Unitholder's Units) if met by the Responsible Entity from its own resources, and, if necessary, to pay those outgoings, the Responsible Entity 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 Constitution and the law generally, until the Responsible Entity is discharged and released from this duty consequent to the resignation of the Responsible Entity or the termination of the Fund;
- (d) (licence) a duty to, if required by law in order to act as trustee, obtain and maintain any necessary licence and comply with its terms;
- (e) (manage) a duty to manage Fund assets in accordance with the provisions of this Constitution; and
- (f) (accounts and payments) a duty, to the extent necessary, to operate accounts at financial institutions.

9.4 Retirement and Replacement of Responsible Entity

The Responsible Entity may retire from the Fund in accordance with the procedures specified in section 601FL of the Act. The Responsible Entity will on the date of retirement vest the Fund in the new responsible entity or in a temporary responsible entity, and deliver to that entity all books and records however constituted relating to the Fund. Costs incurred by any party pursuant to the operation of this sub-clause will be met from the assets of the Fund. The Responsible Entity will retire when required to do so in accordance with the Act.

9.5 Remuneration of Responsible Entity

The Responsible Entity for its services will be due from each Fund in each Financial Year until its retirement or the final distribution of assets under paragraph 2.3(e) a fee:

- (a) **(applications)** equal to 6% of the amount of Application Money as and when accepted during that year, and subject to the discretion of the Responsible Entity;
- (b) **(annual percentage)** equal to:

$$\frac{\text{Value of the Fund plus the value of the distribution account} \times \text{the annual percentage fee} \times \text{Number of days since the last unit price for the Fund was determined}}{\text{Number of days in the year}}$$

The annual percentage fee is the fee payable to, and determined by, the Responsible Entity at its discretion (but no greater than 5.00%). The annual percentage amount will be paid monthly in arrears or at the discretion of the Responsible Entity;

- (c) **(redemption fee)** equal to 3% of the amount payable in respect of any redemption of Units (at the discretion of the Responsible Entity);

- (d) **(special)** which the Responsible Entity may set at its discretion, to offer additional services to Unitholders, but not to exceed 0.5% of the value of a Unitholder's holding at the time any such fee is charged. The fee is payable by the Unitholder and will be paid through redemption of a Unitholder's Units on the last Business Day of each month or at the discretion of the Responsible Entity. The unit price applicable to the redemption will be the unit price for the last Business Day of the month.

All such remuneration, unless otherwise specified in this Constitution, will be received by the Responsible Entity out of the assets of the relevant Fund. The Responsible Entity 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 Fund are invested in another Fund, the Responsible Entity will charge fees in respect of those assets not to exceed the fees which could be charged were they assets of only one Fund.

All remuneration payable under this clause 9.5 will only be payable in relation to the proper performance by the Responsible Entity of its duties.

9.6 Responsible Entity's Indemnity and Limitation of Liability

Without limiting the Responsible Entity's powers, duties or rights under this Constitution or any law, the Responsible Entity will not incur any liability and will be able to be indemnified out of the assets of a 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 that Fund, except where the Responsible Entity:

- (a) fails to act honestly in a matter concerning the Fund; or
- (b) is otherwise in breach of its duties under the Corporations Law; or
- (c) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care or diligence that the Responsible Entity was required to exercise.

9.7 Liability to Members

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

9.8 Commission

The Responsible Entity may pay brokerage and commission in respect of Applications subject to any requirements of the Corporations Law. It will pay all brokerage and commission which is not an Expense but is paid in respect of a Fund out of its fees or other of its own resources.

9.9 Power to make AMIT election

Without limiting the effect of this clause 9, the Responsible Entity may in its capacity as responsible entity and trustee of the Fund elect that a Fund be an AMIT for an income year (and subsequent income years) and for this purpose the Responsible Entity is authorized on its own behalf and on behalf of each Unitholder to do all things necessary to effect this election.

9.10 Power to reissue AMMA Statements

- (a) For the avoidance of doubt, the Responsible Entity may, in accordance with the Tax Act, reissue AMMA Statements to Members to reconcile variances, or may use the 'unders and overs' system to make adjustments to Determined Trust Components, Member Components and Determined Member Components in the discovery year.
- (b) The Responsible Entity will not be liable to any Unitholder for any liability or cost borne by a Unitholder as a result of a re-issued AMMA Statement.

10 MEETINGS OF UNITHOLDERS

10.1 Quorum

No business shall be transacted at any meeting of Unitholders unless a quorum is present when a meeting proceeds to business. Subject to the Corporations Law, the quorum necessary for a meeting at which an Ordinary Resolution only is to be proposed shall be at least 5 persons holding or representing by proxy at least ten percent (10%) of the number of Units in Issue in the relevant Fund and for a meeting at which any Special Resolution is to be proposed shall be persons holding or representing by proxy at least twenty five percent (25%) of the number of Units in Issue in the relevant Fund. If within fifteen (15) minutes from the time appointed for any meeting a quorum is not present, the meeting shall:

- (a) if called for the purpose of passing an Ordinary Resolution stand adjourned to the same day, in the next week or, if a non-working day to the next working day thereafter and in either event at the same time and the same place; and
- (b) if called for the purpose of passing a Special Resolution stand adjourned for such period as the chairperson shall direct and provided notice of the proposed Special Resolution and of the fact that those present in person or by proxy will constitute a quorum at an adjourned meeting and the place, day and hour of such adjourned meeting shall have been given to the Unitholders by the Responsible Entity, and

at an adjourned meeting the Unitholders present in person or by proxy (whatever their numbers and the number of Units held by them) shall form a quorum and shall have power to pass such Ordinary Resolution or Special Resolution.

10.2 Resolutions Binding on the Unitholders

An Ordinary Resolution or Special Resolution passed at a meeting of the Unitholders of a Fund duly convened and held in accordance with this Constitution shall be binding upon all the Unitholders in that Fund whether present or not present at such meeting and each of the Unitholders shall be bound to give effect thereto accordingly.

10.3 Ordinary Resolution

The expression "Ordinary Resolution" where used in this Constitution means a resolution passed at a meeting of the Unitholders of a Fund duly convened and held in accordance with the provisions herein contained by a majority of the persons voting thereat upon a show of hands and if a poll is demanded then by a majority of the votes given on such poll.

10.4 Special Resolution

The expression "Special Resolution" where used in this Constitution has the same meaning as in the Corporations Law.

11 COMPLAINTS HANDLING

The Responsible Entity must, having regard to Section 601GA(1)(c) of the Corporations Law:

- (a) designate at least one officer of the Responsible Entity as having responsibility for receiving and dealing with any complaint received from a Unitholder ("Complaint");
- (b) acknowledge any Complaint within 5 Business Days of receipt of the Complaint;
- (c) within no more than 21 Business Days after receipt of the Complaint, investigate, properly consider and decide what action (if any) to take or offer, regarding the Complaint and then communicate its decision to the Unitholder, at the same time informing the Unitholder of any available avenue of appeal against the decision to an external industry complaints tribunal or other body;
- (d) at the same time as communicating its decision under sub-clause 11(c) advise the Unitholder of remedies that may be available to the Unitholder such as an apology, issue of additional units in the Fund or compensation; and

- (e) include in any Product Disclosure Statement an explanation of its procedures for handling Complaints.

12 PAYMENTS

- (a) Money payable by the Responsible Entity to a Unitholder may be paid in any manner the Responsible Entity decides.
- (b) Where the Responsible Entity attempts to make a payment to a Unitholder by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be reinvested in Units at the unit price prevailing at the next Valuation Date after that failure or paid in another manner that the Responsible Entity determines.
- (c) Cheques issued by the Responsible Entity that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Unitholder, the money may be reinvested in Units at the unit price prevailing at the next Valuation Date after the cheque is cancelled or dealt with in such other manner as the Responsible Entity considers appropriate.
- (d) A payment to any one of joint Unitholders will discharge the Responsible Entity in respect of any payment required under this Constitution.
- (e) The Responsible Entity may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder, any amount of tax (or an estimate of it) or any other amount owed by the person to the Responsible Entity.

FIRST SCHEDULE

AUSTRALIAN ETHICAL BALANCED FUND

(FIRST PROSPECTUS DATED 6 OCTOBER 1989)

The following variations, modifications and additions apply to the Australian Ethical Balanced Fund:

1. For the purposes of the definition of “Accrual Period” in clause 1:
 - (a) the first Accrual Period ended on 30 June or 31 December (as the case required) next following the date of commencement of the Fund;
 - (b) each subsequent Accrual Period ends on 31 December and 30 June (as the case may require) next following the end of the previous Accrual Period.
2. Without in any way limiting the powers of the Responsible Entity, the Fund shall be invested principally in a diversified portfolio of asset types and markets. Asset classes include Australian and international equities, property, fixed interest securities and cash.

SECOND SCHEDULE

AUSTRALIAN ETHICAL INCOME FUND

(FIRST PROSPECTUS DATED 24 OCTOBER 1997)

The following variations, modifications and additions apply to the Australian Ethical Income Fund:

1. For the purposes of the definition of “Accrual Period” in clause 1:
 - (a) the first Accrual Period ended on 30 June or 31 December (as the case required) next following the date of commencement of the Fund;
 - (b) each subsequent Accrual Period ends on 31 December and 30 June (as the case may require) next following the end of the previous Accrual Period.
2. Without in any way limiting the powers of the Responsible Entity, the Fund shall be invested principally in a diversified portfolio of interest-bearing investments generating income including short-dated deposits, high grade mortgage-backed securities, State and Commonwealth Government Bonds, bank and other corporate bonds.

THIRD SCHEDULE

AUSTRALIAN ETHICAL AUSTRALIAN SHARES FUND

(FIRST PROSPECTUS DATED 25 OCTOBER 1995)

The following variations, modifications and additions apply to the Australian Ethical Australian Shares Fund:

1. For the purposes of the definition of “Accrual Period” in clause 1:
 - (a) the first Accrual Period ended on 30 June or 31 December (as the case may require) next following the date of commencement of the Fund;
 - (b) each subsequent Accrual Period ends on 31 December and 30 June (as the case may require) next following the end of the previous Accrual Period.
2. Without in any way limiting the nature or ambit of the powers of the Responsible Entity, the Fund shall be invested principally in a portfolio of Australian equities predominantly listed on the ASX, on the basis of their social, environmental and financial credentials.

FOURTH SCHEDULE

AUSTRALIAN ETHICAL DIVERSIFIED SHARES FUND

(FIRST PROSPECTUS DATED 24 OCTOBER 1997)

The following variations, modifications and additions apply to the Australian Ethical Diversified Shares Fund:

1. For the purposes of the definition of “Accrual Period” in clause 1:
 - (a) the first Accrual Period ended on 30 June or 31 December (as the case required) next following the date of commencement of the Fund;
 - (b) each subsequent Accrual Period ended on 31 December and 30 June (as the case may require) next following the end of the previous Accrual Period.
2. Without in any way limiting the nature or ambit of the powers of the Responsible Entity, the Fund shall be invested principally in a diversified share portfolio of Australian and international companies, on the basis of their social, environmental and financial credentials.

FIFTH SCHEDULE

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SIXTH SCHEDULE

AUSTRALIAN ETHICAL INTERNATIONAL SHARES FUND

The following variations, modifications and additions apply to the Australian Ethical International Shares Fund:

1. For the purposes of the definition of “Accrual Period” in clause 1:
 - (a) the first Accrual Period ended on 30 June or 31 December (as the case required) next following the date of commencement of the Fund;
 - (b) each subsequent Accrual Period ended on 31 December and 30 June (as the case may require) next following the end of the previous Accrual Period.
2. Without in any way limiting the nature or ambit of the powers of the Responsible Entity, the Fund shall be invested principally in a portfolio of international companies, on the basis of their social, environmental and financial credentials.