

# Explanation of Changes to Trust Deed

## Introduction

1. The provisions of the Electra Trust Trust Deed may only be amended by an extraordinary resolution passed by beneficiaries. The trustees have previously proposed to beneficiaries that changes should be made to the provisions of the Trust Deed. On many of the previous occasions, changes have been considered appropriate to reflect changed circumstances, such as the sale of the retail business, or to provide clarity, or to avoid unnecessary costs being incurred in the administration of the Trust.
2. On this occasion, several changes are proposed by the trustees but with the exception of one of those changes (referred to in paragraph 13 below), they are all being suggested to ensure that the Trust Deed provisions are aligned with the requirements of the new Trusts Act 2019. That Act was passed last year, but its main provisions will not become operative until 30 January 2021.

## Description of proposed changes

### Definitional changes

3. There are some amendments to the definitions in the Trust Deed to reflect the new Trusts Act. There is a new provision to record the date upon which some of those changes will come into effect.

### Clause 10 - Powers of Investment

4. Parts of clause 10 were included in the Trust Deed address specific requirements of the Trustee Act at the time the Deed was drafted. These are deleted and the references to the particular provisions of the Trustee Act are updated to reflect the Trusts Act.
5. Trustees will still be obliged to act in accordance with the specific requirements of the Trusts Act when making investment decisions.

### Clause 12 - Duties of Trustees

6. Under the Trusts Act, there are some duties, called mandatory duties which the Trustees must comply with and there are also other duties which will apply to the trustees unless the Trust Deed alters them. These are called the default duties.
7. With the intention of ensuring that the future trustees are aware of the existence of these duties referred to in the Trusts Act it is considered appropriate to include specific reference to them in clause 12 to reduce the risk that they are inadvertently overlooked.

### New clause 14.13 - Documents to be retained by Trustees

8. The Trusts Act introduces new requirements for documents relating to the trust such as the trust deed, minutes of trustees' decisions, amendments to the trust deed, and financial statements for the trust. The new clause includes these requirements.

### New Clause 14.1 Information to Beneficiaries

9. New provisions relating to the provision of information to beneficiaries are included in the Trusts Act and these changes are reflected in new clause 14.1.

### Clause 18 - Liability

10. The Trusts Act prohibits a Trust Deed limiting trustees' liability for breach of trust deed except in certain circumstances. Currently the Trust Deed excludes liability for circumstances wider

than that permitted by the Trusts Act. Changes are being proposed to remove the liability limitations no longer permitted.

**Clause 19 - Indemnity**

11. The changes introduced to this clause are required for the same purpose as the changes which have been proposed for clause 18 referred to in paragraph 10 above.

**Clause 5 Schedule 1 - Delegation**

12. Under the Trusts Act, trustees are permitted to delegate their powers under certain limited circumstances. For example, temporary absence from New Zealand. Changes made to this clause update the references to refer to the Trusts Act.

**Clauses 2.3, 2.4, and 2.7 Schedule 1 - Election of Trustees**

13. Currently the Trust Deed provides for an election of trustees each year following the retirement of two trustees by rotation. The change proposed provides for an election of trustees every two years and for three Trustees to retire on each occasion.

All of these changes are marked on the copy of the Trust Deed on the Trust's website-  
electratrust.co.nz