



# Constitution of Financial Planning Association of Australia Limited

ABN 62 054 174 453

A Company Limited by Guarantee

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<b>Contents</b>			
<b>Constitution of Financial Planning Association of Australia Limited</b>	<b>1</b>		
<b>PART A - OBJECTS</b>	<b>3</b>		
1 Objects	3		
<b>PART B - HOW TO INTERPRET THE CONSTITUTION</b>	<b>3</b>		
2 Interpretation	3		
3 Definitions	4		
<b>PART C - MEMBERSHIP</b>	<b>7</b>		
4 Categories of Membership	7		
5 Membership Eligibility	7		
6 Change in Member Status and Details	8		
7 Members' Rights	9		
8 Application for Membership	9		
9 Membership Fees	9		
10 Change of Sub-categories of Membership	10		
11 Membership Register	11		
12 Disputes	11		
<b>PART D – CESSATION OF MEMBERSHIP</b>	<b>12</b>		
13 Resignation	12		
14 Suspension OF MEMBERSHIP	12		
15 Failure TO PAY FEES	14		
16 Automatic TERMINATION OF MEMBERSHIP	14		
17 Existing Investigations and proceedings	16		
<b>PART E – PROFESSIONAL CONDUCT OF MEMBERS</b>	<b>16</b>		
18 Handling Complaints and Disciplinary Procedures	16		
19 Compliance Reviews	17		
<b>PART F – GENERAL MEETINGS</b>	<b>18</b>		
20 Annual General Meetings	18		
21 Calling Of General Meetings Of Members	18		
22 notice of meeting	18		
23 Procedures at General Meetings	19		
24 Voting At Members' Meetings	20		
25 Proxies	21		
<b>PART G - POWERS OF THE BOARD</b>	<b>22</b>		
26 Role of the Board	22		
27 General Powers of the Board	22		
28 Power to Make Regulations	23		
		29 Delegation	23
		30 Power to Establish ADVISORY Committees	24
		<b>PART H – STRUCTURE OF THE BOARD</b>	<b>24</b>
		31 The Board Structure	24
		32 Alternate Directors	25
		33 Tenure	25
		<b>PART I – BOARD MEETINGS</b>	<b>28</b>
		34 Procedures for Board Meetings	28
		35 Board Meetings Using technology	28
		36 Voting at Board Meetings	29
		37 conflict of interests and voting restrictions	29
		<b>PART J – THE CHAIR</b>	<b>30</b>
		38 the Chair and chair elect	30
		<b>PART K – MINUTES</b>	<b>32</b>
		39 Minutes	32
		<b>PART L – THE CHIEF EXECUTIVE OFFICER</b>	<b>32</b>
		40 chief executive officer	32
		<b>PART M - CHAPTERS</b>	<b>33</b>
		41 Establishment of Chapters	33
		<b>PART N – EXECUTION OF CONTRACTS</b>	<b>33</b>
		42 Execution of Contracts	33
		<b>PART O – ACCOUNTS &amp; AUDIT</b>	<b>34</b>
		43 ACCOUNTING RECORDS	34
		<b>PART P - NOTICES</b>	<b>34</b>
		44 Service of Notices	34
		<b>PART Q - INDEMNITY &amp; INSURANCE</b>	<b>35</b>
		45 Indemnity	35
		46 Insurance	35
		<b>PART R - CONFIDENTIALITY</b>	<b>36</b>
		47 confidentiality	36
		<b>PART S – PUBLIC STATEMENTS</b>	<b>36</b>
		48 public statements	36
		<b>PART T – AMENDMENTS TO THE CONSTITUTION</b>	<b>36</b>
		49 amending the constitution	36
		<b>PART U – MEMBERS' LIABILITY &amp; APPLICATION OF PROPERTY UPON DISSOLUTION</b>	<b>36</b>
		50 Application	36
		51 LIMITATION of Liability	36



## PART A - OBJECTS

### 1 OBJECTS

1.1 The objects for which the FPA is established include to:

- (a) represent the professional interests of financial planners, who are our primary members, in their relations with governments, regulators, the community and other professional associations;
- (b) act in the public interest so that clients of Members and prospective clients obtain fair and competent financial planning advice and to suppress Malpractice;
- (c) enhance public awareness of, and confidence in, the financial planning profession;
- (d) promote and ensure compliance with high standards of professional and ethical conduct within the financial planning profession and by members of the FPA;
- (e) facilitate continuing professional development and CFP® certification and other professional designation programs for the financial planning profession;
- (f) provide opportunities for networking and discussion among members of the financial planning profession;
- (g) provide useful and cost effective services, facilities and benefits to members of the FPA; and
- (h) encourage debate and thought leadership relating to professional issues to advance the interests of financial planning and the profession.

## PART B - HOW TO INTERPRET THE CONSTITUTION

### 2 INTERPRETATION

2.1 Unless stated to the contrary, words and phrases in this Constitution and any Regulations have the same meaning as is given to those words and phrases in the Corporations Act.

2.2 In this Constitution:

- (a) references to the singular include the plural and conversely, references to one gender includes all genders and references to "it" includes (where applicable) all genders;
- (b) references to a statute extend to that statute as amended, modified and re-enacted from time to time and any orders, regulations or by-laws made under that statute;
- (c) words importing persons include corporations and other entities recognised by law;
- (d) reference to "writing" or "written" includes printing, lithography, photography and other modes of producing words in a visible and easily accessible form;



- (e) titles and paragraph headings contained in this Constitution are for reference purposes only and are not to be considered when interpreting this Constitution; and
- (f) reference to a clause or clauses shall be a reference to a clause or clauses of this Constitution.

2.3 The replaceable rules contained in the Corporations Act do not apply to the FPA except when they are expressly stated to apply.

### 3 DEFINITIONS

3.1 In this Constitution and any Regulations the following words and phrases have the following meanings unless the context otherwise requires:

<b>Additional Director</b>	means a director of the FPA appointed in accordance with clause 31.1(b).
<b>Advisory Committee</b>	means a committee established pursuant to clause 30.1.
<b>AFCA</b>	means the Australian Financial Complaints Authority, and any successor body or scheme.
<b>Affiliate Member</b>	has the meaning given to that term in clause 4.5.
<b>Alternate Director</b>	has the meaning given to that term in clause 32.1.
<b>Appointor</b>	has the meaning given to that term in clause 25.2.
<b>Approved External Dispute Resolution Scheme</b>	means an external dispute resolution scheme for the purposes of subsection 1050(1) of the Corporations Act, or such other external dispute resolution scheme approved by the Board from time to time.
<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>Auditor</b>	means the auditor of the FPA from time to time, as appointed by the Board.
<b>Authorised Representative</b>	has the same meaning as is given to that term in section 761A of the Corporations Act.
<b>Board</b>	means the board of Directors of the FPA.
<b>Breach</b>	has the same meaning as is given to that term in the Disciplinary Regulation.
<b>Chair</b>	means the chairperson of the Board, as appointed by the Board in accordance with clause 38.1.
<b>Chair-elect</b>	means the person elected to be the Chair of the FPA for the coming year, prior to that person assuming the office of Chair at the end of the annual general meeting.



<b>Chapter</b>	means a group of Members at metropolitan or regional level that has been established as a chapter of the FPA under Part M of this Constitution.
<b>Chief Executive Officer</b>	means the person appointed by the Board as chief executive officer of the FPA under clause 40.1.
<b>Code</b>	means the FPA's Professional Code of Practice and includes the: <ul style="list-style-type: none"><li>a) Code of Ethics;</li><li>b) Practice Standards;</li><li>c) Rules of Professional Conduct; and</li><li>d) any guidance issued in relation to the whole or any part of the Code of Professional Practice.</li></ul>
<b>Company Secretary</b>	means the person appointed as the company secretary of the FPA from time to time.
<b>Compliance Review</b>	means an investigation of the kind described in clause 19.
<b>Conduct Review Commission</b>	means the body established under the Disciplinary Regulation and any successor body from time to time.
<b>Constitution</b>	means the constitution of the FPA as amended from time to time and includes any Regulations made pursuant to it.
<b>Corporations Act</b>	means the Corporations Act 2001 (Cth) and regulations made under the Corporations Act from time to time.
<b>Deputy Chair</b>	means each deputy chairperson of the Board, as appointed by the Board in accordance with clause 38.3.
<b>Director</b>	means a person appointed as a director of the FPA, or who is appointed to the position of an Alternate Director and is acting in that capacity.
<b>Disciplinary Regulation</b>	means the Regulation made by the Board pursuant to clause 18.1.
<b>Election Regulations</b>	means the regulations made by the Board under this Constitution which set out how: <ul style="list-style-type: none"><li>a) Member Directors are elected to the Board;</li><li>b) Chapter management committees are elected; and</li><li>c) any other matters pertaining to the election of other representatives within the FPA.</li></ul>
<b>Eligibility Criteria</b>	means the criteria for membership of the FPA, and any Sub-Category, determined by the Board pursuant to clause 5.2 from time to time, which may be further specified in any Regulation or Code made and approved by the Board from time to time.
<b>Externally Administered Body Corporate</b>	has the same meaning as is given to that term in the Corporations Act.



<b>Fee</b>	has the meaning given to that term in clause 9.1(a), but does not include any Monetary Penalty.
<b>Financial Advisers Register</b>	means the financial advisers register managed by ASIC in accordance with section 922A of the Corporations Act and published on the MoneySmart website.
<b>FPA</b>	means the Financial Planning Association of Australia Limited ABN 62 054 174 453.
<b>Insolvent Under Administration</b>	has the same meaning as is given to that term in section 9 of the Corporations Act.
<b>Malpractice</b>	includes behaviour that is in contravention of the Code of Professional Practice or that is likely to cause harm to clients, the community or the financial planning profession.
<b>Member</b>	means a member of the FPA, and for the avoidance of doubt excludes Affiliate Members.
<b>Member Director</b>	means a Director elected by Members pursuant to clause 31.1(a).
<b>Members' Request</b>	means a request of the kind described in clause 21.2 or 21.3.
<b>Monetary Penalty</b>	means any monetary penalty that may be imposed on a Member pursuant to clause 18.1 and that is payable in accordance with the Disciplinary Regulation.
<b>Notice of Default</b>	means a notice issued to a Member pursuant to clause 15.1.
<b>Notice Period</b>	the 6 month period of time between a Member resigning from the FPA and the date the resignation becomes effective.
<b>Office Holder</b>	means those persons who hold an elected or appointed office in the FPA including members of the Board, the Conduct Review Commission; an individual in the management committee of a Chapter or an Officer of the FPA.
<b>Officer</b>	has the same meaning as is given to that term in section 9 of the Corporations Act.
<b>Register</b>	means the register of Members kept in accordance with clause 11.
<b>Regulations</b>	means any regulations, policies, procedures, charters or by-laws made and approved by the Board for the purposes of a provision of this Constitution.
<b>Representative</b>	has the same meaning as is given to that term in section 910A of the Corporations Act.
<b>State</b>	means any State or Territory of the Commonwealth of Australia.



**Sub-Category**

means a sub-category of membership of the FPA established under clause 4.1 and in respect of any Member, reference to a:

- a) 'higher Sub-Category' is a reference to a Sub-Category with greater or more onerous qualification requirements than that Member's current Sub-Category; and
- b) 'lower Sub-Category' is a reference to a Sub-Category with lesser or less onerous qualification requirements than that Member's current Sub-Category.

## **PART C - MEMBERSHIP**

### **4 CATEGORIES OF MEMBERSHIP**

- 4.1 The membership of the FPA is made up of the Members and such Sub-Categories of membership of the FPA as may be established from time to time by the Board.
- 4.2 The Board may, in its absolute discretion, determine the obligations of, and rights and privileges of, the Members and such Sub-Categories of Members from time to time (provided that such obligations and rights and privileges are not inconsistent with this Constitution) and may differentiate between such Sub-Categories.
- 4.3 The Board may, in its absolute discretion, make an award of life membership to a Member. Any person who has been awarded with life membership under this clause is entitled to have their Fees waived.
- 4.4 The Board may, in its absolute discretion, make an award of honorary membership to a non-Member for such period as the Board determines. Any such person that has been awarded with honorary membership under this clause may attend and speak at general meetings of the FPA, but is not entitled to vote.
- 4.5 Without limiting any of the powers of the Board set out in other provisions of this Constitution, the Board may:
  - (a) determine that the FPA will provide services similar to the services the FPA provides to Members, to persons who are not Members, for the purposes of discharging the objects set out in clause 1 (and such persons are referred to as **Affiliate Members**); and
  - (b) create one or more categories of Affiliate Members.

### **5 MEMBERSHIP ELIGIBILITY**

- 5.1 An applicant for admission to membership, re-admission or reinstatement to membership must:
  - (a) comply with this Constitution and agree to be bound by this Constitution, the Code and all Regulations that may apply to that applicant if they were to become a Member;
  - (b) establish that the applicant meets the Eligibility Criteria applicable to the relevant Sub-Category; and



- (c) establish, to the satisfaction of the Board, that the applicant is a fit and proper person to:
  - (i) become a Member; and
  - (ii) represent the financial planning profession in Australia.
- 5.2 The Board may, in its absolute discretion, determine from time to time the Eligibility Criteria for membership, and where there are Sub-Categories of membership, the Board may differentiate between the Eligibility Criteria of such Sub-Categories.
- 5.3 The Board may, from time to time and in its absolute discretion, determine the Eligibility Criteria by having regard to a range of matters, including but not limited to:
  - (a) an applicant's experience, academic qualifications, ongoing educational requirements, vocational requirements;
  - (b) an applicant's third party references; and
  - (c) the applicant's acceptance of the obligations of a Member as specified in the Code.
- 5.4 The Board will determine in its sole discretion whether a person is fit and proper person for the purposes of this Constitution.
- 5.5 The Board may, in its absolute discretion, determine from time to time such matters it considers relevant in determining whether a person is a fit and proper person.
- 5.6 Without limiting clause 5.4, in determining whether or not a person is a fit and proper person, the Board shall have regard to whether the person is of good fame, integrity and character.
- 5.7 In respect of any Member, compliance with this Constitution, the Code, all Regulations that may apply to that Member, the Eligibility Criteria and the fit and proper person requirements, are all ongoing requirements of membership.

## 6 CHANGE IN MEMBER STATUS AND DETAILS

- 6.1 A Member must notify the FPA of any changes in the following circumstances of the Member, within 28 days of the effective date of the change:
  - (a) address, email, telephone and other contact details;
  - (b) employment or status on the Financial Advisers Register;
  - (c) any other details which may affect the Member's standing as a fit and proper person;
  - (d) any other details concerning the Member's compliance with the Eligibility Criteria, or the Eligibility Criteria for a certain Sub-Category applicable to that Member (as the case may be); and
  - (e) any other details as may be necessary for the FPA to maintain the Register.





## 7 MEMBERS' RIGHTS

- 7.1 Subject to this Constitution and the Corporations Act, Members are entitled to:
- (a) receive notice of, attend and vote at general meetings of the FPA;
  - (b) vote in elections for Office Holders of the Chapter to which they belong;
  - (c) exercise such other rights as are granted by this Constitution or by law; and
  - (d) vote in elections of Member Directors to the Board.
- 7.2 The rights of Members are personal and are not transferable or transmissible by a Member to any person.
- 7.3 Each Member is bound by the terms of this Constitution and agrees to be bound by any Regulations made by the Board from time to time.

## 8 APPLICATION FOR MEMBERSHIP

- 8.1 Every applicant for membership of the FPA must submit to the FPA:
- (a) a completed and signed application in the form prescribed by the Board from time to time; and
  - (b) payment of the relevant Fees as the Board prescribes from time to time.
- 8.2 The Board may accept or reject an applicant for membership in its absolute discretion (including where there are any outstanding Monetary Penalties owing by the applicant to the FPA). The Board is not required to give any reason for the rejection of an applicant, however an applicant may submit a written request to the Board for the Board to reconsider their application for membership. The Board may, in its absolute discretion, determine to accept or reject the applicant's request for the Board to reconsider their application for membership. .
- 8.3 The FPA must notify an applicant in writing promptly after receipt of an application which has been appropriately completed to the satisfaction of the FPA whether the application was accepted or rejected. The FPA must promptly return to an unsuccessful applicant any money paid pursuant to clause 8.1(b).
- 8.4 An applicant becomes a Member upon the entry of the Member's name in the Register.
- 8.5 The Board may make Regulations which amend or prescribe additional procedures for the admission of Members.

## 9 MEMBERSHIP FEES

- 9.1 The Board is to determine:
- (a) the amount of any application fee, levies, subscription fees, or other fees, payable by applicants and Members respectively (**Fees**);



- (b) any discounts and programs for those Fees;
- (c) differing amounts of Fees for different Sub-Categories;
- (d) due dates for the payment of Fees.

9.2 A Member must pay the applicable Fees on the date(s) determined by the Board.

## 10 CHANGE OF SUB-CATEGORIES OF MEMBERSHIP

- 10.1 A Member may apply to the FPA at any time to change the Sub-Category to which the Member belongs. Any such application must be in a form as determined by the Board from time to time.
- 10.2 The procedure relating to an application for a change of Sub-Category is the same as if it were an application for membership by a new applicant. If the application is successful, the FPA must update the Register accordingly.
- 10.3 If the FPA considers, in its absolute discretion, that a Member has fulfilled the Eligibility Criteria for a higher Sub-Category (e.g. by having satisfied the applicable criteria), the FPA may request the Member to provide to the FPA within 7 days of request by the FPA either of the following:
- (a) a duly completed application form for the higher Sub-Category in the form determined by the Board from time to time; or
  - (b) evidence that the Member does not satisfy the Eligibility Criteria for the higher Sub-Category,

and the Member must comply with such request.

10.4 If the FPA considers, in its absolute discretion, that despite the evidence provided by a Member under clause 10.3(b) or the absence of a Member completing an application form in accordance with clause 10.3(a), the relevant Member satisfies the Eligibility Criteria for the higher Sub-Category referenced in the request made by the FPA in clause 10.3, then the FPA may after giving written notice to that Member transfer that Member into that higher Sub-Category by updating the Register.

10.5 If the FPA considers, in its absolute discretion, that a Member has ceased to fulfil the Eligibility Criteria for a Sub-Category (eg, by failing to satisfy the applicable criteria) but satisfies the Eligibility Criteria for a lower or equivalent Sub-Category, the FPA may request the Member to provide to the FPA within 7 days of request by the FPA either of the following:

- (a) a duly completed application form for the lower or equivalent Sub-Category in the form determined by the Board from time to time; or
- (b) evidence that the Member has not ceased to fulfil the Eligibility Criteria for the Member's current Sub-Category,

and the Member must comply with such request.

10.6 If the FPA considers, in its absolute discretion, that despite the evidence provided by a Member under clause 10.5(b) or the absence of a Member completing an application form in accordance



with clause 10.5(a), the relevant Member satisfies the Eligibility Criteria for the lower or equivalent Sub-Category referenced in the request made by the FPA in clause 10.5, then the FPA may after giving written notice to that Member transfer that Member into that lower or equivalent Sub-Category (as applicable) by updating the Register.

- 10.7 Upon receipt from a Member of an application form in accordance with clause 10.3(a) or 10.5(a) which has been appropriately completed to the satisfaction of the FPA within the required timeframe, the FPA may transfer the Member to the higher, lower or equivalent Sub-Category (as applicable) by updating the Register.
- 10.8 If a Member fails to comply with clauses 10.3 or 10.5, the FPA may elect to terminate that Member's membership under clause 16.1(i).
- 10.9 Where there is a change of Sub-Category of membership of a Member under clauses 10.1 to 10.8, there will be no adjustment to the Fees paid by the Member to reflect the change of Sub-Category in respect of the current Fee period in which the change occurs. The Member must pay the Fees relevant to the new Sub-Category when they are next due for payment by the Member.

## 11 MEMBERSHIP REGISTER

- 11.1 The FPA must record in the Register:
- (a) the full name and address of each Member;
  - (b) the Sub-Category to which each Member belongs;
  - (c) the date of admission to, and cessation of, membership of each Sub-Category; and
  - (d) such other information as required by the Corporations Act or as determined by the Board from time to time.
- 11.2 The FPA may keep the Register electronically at the registered office of the FPA and may keep a copy at such other places as the Board may approve, in accordance with the Corporations Act.

## 12 DISPUTES

- 12.1 If two or more Members are in dispute as to any matter concerning the administration or operation of the FPA, any one of the disputing Members may request the FPA to consider the dispute and attempt to resolve it. In the event that a dispute is referred to the FPA under this clause, the Board may determine to resolve the dispute by utilising any dispute resolution mechanism, rules or procedures, as it sees fit. Any dispute referred to the FPA for resolution under this clause must be addressed by the FPA as soon as reasonably practicable. Unless agreed by the parties to the dispute, the FPA will not act as an arbitrator of the dispute or otherwise make any binding determination in relation to the dispute.



## PART D – CESSATION OF MEMBERSHIP

### 13 RESIGNATION

- 13.1 Subject to clauses 13.2 to 13.9, a Member may resign from the FPA on 6 months prior notice in writing to the FPA, (**Notice Period**).
- 13.2 During the Notice Period, and except as specifically provided by this Constitution, all of the Member's rights of membership shall be suspended and the Member will not be obliged to pay any applicable Fees falling due in that period (which are waived for the duration of the Notice Period). Otherwise, the Member will remain bound by the provisions of this Constitution and any Regulations.
- 13.3 A resignation has no effect unless and until it is accepted by the FPA.
- 13.4 Subject to this Constitution and any applicable law, the FPA must accept a resignation as soon as reasonably practicable after the Notice Period has expired.
- 13.5 The FPA must not accept the resignation of a Member:
- (a) whose conduct is the subject of a current investigation or proceedings under the FPA's Disciplinary Regulation; or
  - (b) who is the subject of a current claim under an Approved External Dispute Resolution Scheme.
- 13.6 The FPA may decline to accept the resignation of a Member where the FPA is of the reasonable opinion that the Member's conduct will become:
- (a) the subject of an investigation or disciplinary proceedings under the FPA's Disciplinary Regulation; or
  - (b) the subject of a claim under an Approved External Dispute Resolution Scheme.
- 13.7 The FPA may decline to accept the resignation of a Member who is liable to pay outstanding Fees or Monetary Penalties to the FPA.
- 13.8 A Member who resigns is not entitled to any refund of any Fees and remains liable for the amount not exceeding \$100.00 pursuant to clause 51.1.
- 13.9 Any Member who resigns remains liable for any Fees and Monetary Penalties which were due from the Member to the FPA at the time of the service of the Member's notice of resignation on the FPA.

### 14 SUSPENSION OF MEMBERSHIP

- 14.1 Subject to clause 16.1(d), a Member's membership is automatically suspended (which suspension takes immediate effect without any act on the part of the FPA) where the Member is a Representative of an Australian financial services licensee and the Member is dismissed or the Member's authorisation as an Authorised Representative is revoked by the Member's authorising



Australian financial services licensee and the Australian financial services licensee advises the FPA in writing:

- (a) of the fact of the Member's dismissal or revocation of the Member's authority;
- (b) of the date such dismissal or revocation became effective; and
- (c) that in the licensee's opinion, the facts and circumstances giving rise to the dismissal or revocation amount to a breach of the Code.

14.2 Upon the FPA becoming aware that a Member's membership has been suspended under clause 14.1, the FPA must promptly advise the Member of the suspension, and provide the Member with 21 days' notice to show cause why the Member's membership should not be terminated for the alleged breaches of the Code.

14.3 A Member who is advised of the automatic suspension of their membership under clause 14.2 may apply in writing to the FPA within the 21 day period to show cause why the Member's membership should not be automatically terminated. Failure to apply within the period will result in the automatic termination of the Member's membership.

14.4 The Disciplinary Regulation may make provision for the determination of any application to show cause under clause 14.3.

14.5 Where the Board has reasonable grounds to suspect that a Member:

- (a) has ceased to meet the Eligibility Criteria applicable to that Member's Sub-Category; or
- (b) may no longer be able to satisfy the Board that they are a fit and proper person;

(collectively, the **Suspension Criteria**),

the Board may suspend the Member's membership and provide the Member with 21 days' notice to show cause why the Member's membership should not be automatically terminated.

14.6 A Member who is given notice of the suspension of their membership under clause 14.5 may apply in writing to the Board within the 21 day period to show cause why that Member does not meet the Suspension Criteria or why that Member's membership should not be automatically terminated as a result of meeting the Suspension Criteria.

14.7 The Board will review any application submitted to it by the Member under clause 14.6 and may determine in its absolute discretion whether to accept or reject that application. If the Board determines:

- (a) that the Member's application should be accepted, the Member's membership will not be subject to automatic termination and the Member's membership will no longer be suspended; or
- (b) that the Member's application should be rejected, then the Member's membership will be automatically terminated in accordance with clause 16.1(k). For the avoidance of doubt, the Board will not be required to provide that Member with any reason for the rejection of the Member's application.



- 14.8 A Member whose membership is suspended under this clause loses all rights and privileges of membership for the duration of the suspension period. During any period in which a Member's membership is suspended, the Member remains liable to the FPA and must continue to comply with the Code, this Constitution and any Regulations, as if the suspension had not occurred.

## 15 FAILURE TO PAY FEES

- 15.1 The FPA may send to any Member whose Fees are unpaid for a period of two calendar months after they fall due for payment, a Notice of Default advising the Member that the Member's membership may be terminated automatically, unless the amount owing is paid within one month of the date of the Member's receipt of the Notice of Default.
- 15.2 The FPA may immediately remove from the Register any Member who does not pay the amount owing within the period referred to in a Notice of Default given under clause 15.1.
- 15.3 In the event that a Member has been removed from the Register due to non-compliance with a Notice of Default, the Board may, but is not obliged, to re-admit the person as a Member in accordance with clause 16.3 upon receipt by the FPA of the full amount owing from the Member, as set out in a Notice of Default.
- 15.4 A Member who is removed from the Register in accordance with clause 15.2 is not entitled to a refund of any Fees and remains liable for:
- (a) the amount not exceeding \$100 pursuant to clause 51.1; and
  - (b) any Fees and Monetary Penalties which were due from the Member to the FPA at the time of the Member's removal from the Register.

## 16 AUTOMATIC TERMINATION OF MEMBERSHIP

- 16.1 A Member's membership will be automatically terminated (which termination takes immediate effect without any act on the part of the FPA, unless such termination is given an effective date otherwise determined by the Board) if:
- (a) the Member is sentenced to a term of imprisonment;
  - (b) the Member becomes an Insolvent Under Administration;
  - (c) the Member provides false information to the FPA, or otherwise fails to disclose any material information that is required to be provided by the Member to the FPA in connection with any application or form that is required to be provided by the Member to the FPA from time to time pursuant to this Constitution, the Code or the Regulations;
  - (d) the Member is a Representative of an Australian financial services licensee, and the Member has been dismissed or has had the Member's authorisation as an Authorised Representative revoked by the Member's authorising Australian financial services licensee because of breach of the law;
  - (e) the Member is the subject of a banning order under the Corporations Act;



- (f) the Member was subject to disciplinary procedures under the Disciplinary Regulation and:
    - (i) the Member fails to pay a Monetary Penalty imposed by the relevant body established under clause 18.1 within 42 days from the date of the body's determination; or
    - (ii) the relevant body established under clause 18.1 has determined that that Member's membership should be terminated.
  - (g) the Member's membership is suspended under clause 14.1 and the Member fails to show cause why the Member's membership should not be terminated under clause 14.3;
  - (h) the Member ceases to satisfy the relevant Eligibility Criteria for the Member's Sub-Category and the membership is not transferred to a lower or equivalent Sub-Category under clause 10;
  - (i) the Member fails to comply with clauses 10.3 or 10.5 and the FPA elects to terminate that Member's membership;
  - (j) the Member's membership is suspended under clause 14.5 and the Member fails to apply in writing under clause 14.6 to show cause why the Member's membership should not be automatically terminated; or
  - (k) the Board rejects the Member's application under clause 14.7(b).
- 16.2 Upon the FPA becoming aware that a Member has had their membership automatically terminated under clause 16.1, the FPA must promptly advise the Member of the termination. Except where the Board determines otherwise, the FPA must publish the name of the Member and the reasons for the termination of the Member's membership in the official publication of the FPA, either by publication on the website of the FPA or by other notification to Members determined by the Board.
- 16.3 Notwithstanding the termination of a Member's membership pursuant to clause 15 or this clause 16, the Board may in its discretion agree to re-admit such person to membership, and potentially reinstatement of their professional designation status, without requiring the Member to make a fresh application for membership or professional designation status. If the Board determines to re-admit any such person, the Board may impose such terms and conditions on that Member's membership as the Board thinks fit.
- 16.4 A Member whose membership is terminated under clause 16.1 is not entitled to any refund of any Fees, and remains liable for:
- (a) the amount not exceeding \$100 pursuant to clause 51.1; and
  - (b) any Fees and Monetary Penalties which were due from the Member to the FPA prior to the termination of membership.



## 17 EXISTING INVESTIGATIONS AND PROCEEDINGS

- 17.1 With respect to any complaint, claim, investigation or proceedings received or commenced in respect of a Member prior to the cessation of a Member's membership for any reason, that Member remains bound by and must comply with this Constitution and any Regulations after cessation of the Member's membership, for the purposes of allowing the FPA to investigate and take any action necessary in respect of any such complaint, claim, investigation or proceedings.
- 17.2 The FPA may undertake and continue any investigation or other action with respect to any such complaint, claim, investigation or proceedings described in clause 17.1 as if the Member was still a member of the FPA.

## PART E – PROFESSIONAL CONDUCT OF MEMBERS

### 18 HANDLING COMPLAINTS AND DISCIPLINARY PROCEDURES

- 18.1 Without limiting the generality of the Board's ability to make Regulations, the Board may make and adopt a Disciplinary Regulation setting out the FPA's disciplinary procedures, including in relation to:
- (a) the investigation, handling and resolution of complaints against Members, regulation of the professional conduct of Members including in relation to breaches of the Code, this Constitution, any Regulations and such other matters as determined by the Board from time to time, together with the imposition of sanctions (including Monetary Penalties) against a Member and/or the summary disposal of proceedings involving a Member, with the aim of meeting the high ethical standards expected of Members by the public and other stakeholders;
  - (b) the identification, investigation, handling and resolution of academic transgressions by Members;
  - (c) establishing one or more bodies to which the Board delegates responsibility for administering the FPA's disciplinary procedures, as determined by the Board from time to time (including but not limited to the Conduct Review Commission);
  - (d) actions required of Members to assist the FPA in discharging its objects as set out in clause 1; and
  - (e) the production of documents, access to documents and premises and the provision of information for the purposes of the FPA's compliance, investigation and disciplinary proceedings including regulations for the disclosure of such documents and information (other than those subject to legal professional privilege) during and for the purposes of the conduct of disciplinary proceedings.
- 18.2 The Board may enter into a memorandum of understanding or other agreement with an Approved External Dispute Resolution Scheme with respect to the hearing and determination of complaints against Members and for the exchange of information between the FPA and the Approved External Dispute Resolution Scheme, and such other matters considered appropriate by the Board.





- 18.3 The Board may, from time to time, make Regulations with respect to any Approved External Dispute Resolution Scheme, including without limitation AFCA.
- 18.4 The Disciplinary Regulation may include provisions as to the publication of details (including the name of any Member currently or previously involved in disciplinary proceedings) of any disciplinary proceedings conducted in accordance with the Disciplinary Regulation. Such Regulations may include provisions for the publication of details of any disciplinary proceedings as a sanction to a Member, and for educational and professional interest purposes.
- 18.5 The Disciplinary Regulation may include provisions regarding the notification or referral of any disciplinary proceedings conducted by the FPA to any regulatory or enforcement authority, as the FPA determines appropriate, in its absolute discretion.

## 19 COMPLIANCE REVIEWS

- 19.1 The FPA may, at any time for the purposes of a Compliance Review, request a Member to supply such information and material as the FPA considers reasonably necessary to assist it to discharge its objects and to ensure that a Member is complying with the relevant Eligibility Criteria, this Constitution, the Disciplinary Regulation, the Regulations, the Code or such other obligations or standards of conduct required by the FPA, the Corporations Act, all relevant statutes and the law generally.
- 19.2 The FPA may request the Member to produce documents, provide access to documents and premises and supply such additional information and material as the FPA deems reasonably necessary if the FPA considers, in its absolute discretion, that the information and material originally provided pursuant to clause 19.1 warrants further investigation.
- 19.3 A Member must assist the FPA in the conduct of a Compliance Review or an investigation into the Member's conduct. Any member that is the subject of such investigation or Compliance Review must request that relevant third parties make available such information as the FPA reasonably requires. The FPA may require a Member to submit a report with regard to such matters as determined by the FPA for the purposes of FPA's investigation or Compliance Review.
- 19.4 A Member's failure to fully and fairly comply with the FPA's requests under this clause 19 or any obstruction by, or on behalf of, a Member (as determined by the FPA) of any Compliance Review will be grounds for escalation of the Compliance Review to disciplinary proceedings under the Disciplinary Regulation.
- 19.5 Subject to this Constitution, any Regulation and applicable law, the FPA must keep confidential all information obtained in respect of a Compliance Review, except for the purposes of any disciplinary proceedings.
- 19.6 The Member is responsible for any costs, charges or expenses incurred by the Member in respect of the conduct of a Compliance Review or investigation carried out under this clause 19.



## **PART F – GENERAL MEETINGS**

### **20 ANNUAL GENERAL MEETINGS**

20.1 An annual general meeting of the FPA must be held in accordance with the provisions of the Corporations Act.

### **21 CALLING OF GENERAL MEETINGS OF MEMBERS**

21.1 A majority of the Directors may, at any time, call a general meeting of the Members.

21.2 The Directors must call and arrange to hold a general meeting on the request of Members made in accordance with section 249D of the Corporations Act.

21.3 Members may call a general meeting in accordance with section 249F of the Corporations Act.

21.4 A general meeting may be called or held, and a Member may participate in any general meeting, using any form of technology approved by the Board. Any reference made in this Constitution to a Member being present at a meeting includes a reference to that Member being present by technological means.

### **22 NOTICE OF MEETING**

22.1 Subject to the provisions of the Corporations Act as to short notice, at least 21 days' notice of a general meeting must be given.

22.2 A notice of a meeting of the Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (d) contain a statement that:
  - (i) a Member entitled to attend and vote is entitled to appoint a proxy; and
  - (ii) a proxy need not be a Member of the FPA.

22.3 A Member wanting to introduce any matter for discussion at an annual general meeting must give notice in writing to the Board before the notice convening that meeting has been sent out to the Members.

22.4 The Board may determine that a matter is not to be discussed at an annual general meeting in which case the Board is not required to give any reasons for its determination.



- 22.5 No meeting and no proceedings at any meeting including any resolution passed at such meeting is invalid or able to be made or declared invalid by the accidental omission to give notice to any Member entitled to receive notice or the failure to receive notice by any Member so entitled.

## 23 PROCEDURES AT GENERAL MEETINGS

- 23.1 No business is to be conducted at any general meeting unless a quorum is present at the commencement of the meeting. The quorum for a general meeting is twenty (20) Members present in person or by their proxy or attorney and entitled to vote at the meeting.
- 23.2 A meeting convened by Members or following a Members' Request must be dissolved if a quorum is not present within thirty (30) minutes of the time appointed for the commencement of the meeting.
- 23.3 Any other general meeting must be adjourned to the same place, day and hour in the next week if a quorum is not present within thirty (30) minutes of the time appointed for the commencement of the meeting. Such adjourned meeting may proceed and the Members present (whether in person or by their proxy or attorney) and entitled to vote at such adjourned meeting are deemed to constitute a quorum.
- 23.4 The Chair is to be the chair at every general meeting of the FPA.
- 23.5 If the Chair cannot or will not chair a general meeting, or is not present at the meeting within fifteen (15) minutes of the time appointed for the commencement of the meeting, the Directors present may elect a Director present at the meeting to be the chair, but if they do not do so, the Members present (whether in person or by their proxy or attorney) and entitled to vote may elect a Director present at the meeting to be the chair. The chair of the general meeting is entitled to be the chair at the adjourned meeting if the meeting is adjourned.
- 23.6 The chair of the meeting may, and must if so directed by a resolution of the meeting, adjourn the meeting from time to time and from place to place. No business is to be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 23.7 Notice of:
- (a) any adjournment;
  - (b) the holding of an adjourned meeting; or
  - (c) any business to be transacted at an adjourned meeting,

is not required to be given unless the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting is to be given as if the adjourned meeting were an original meeting.



## 24 VOTING AT MEMBERS' MEETINGS

- 24.1 No Member is entitled to vote at any general meeting unless any outstanding Fees and Monetary Penalties due and payable to the FPA by that Member as at the date of the meeting have been paid.
- 24.2 A Member who is of unsound mind or whose person or estate may be dealt with in any way under the law relating to mental health may only vote by his trustee, his committee or such other person as properly has the management of his estate and any such trustee, committee or other person may vote by proxy or attorney.
- 24.3 At any general meeting, each Member entitled to vote may vote in person, by proxy, or by attorney.
- 24.4 On a show of hands, each Member entitled to vote has one vote.
- 24.5 On a poll, each Member entitled to vote has one vote.
- 24.6 Subject to this Constitution and the Corporations Act, a resolution put to the vote at a general meeting must be passed on a show of hands, unless a poll is demanded in accordance with clause 24.9.
- 24.7 Before a vote is taken, the chair of the meeting must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- 24.8 Unless a poll is demanded, a declaration by the chair of the meeting that a resolution on a show of hands has been:
- (a) passed; or
  - (b) passed unanimously; or
  - (c) passed by a particular majority; or
  - (d) not passed,
- and an entry to that effect in the FPA's minute book kept in accordance with clause 39.1, is prima facie evidence of the fact, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair of the meeting, nor the minutes, need to state without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 24.9 A poll must be taken if it is demanded before a vote is taken or before or immediately after the declaration of the result of the show of hands by:
- (a) the chair of the meeting; or
  - (b) at least five (5) Members entitled to vote on the resolution present in person, proxy or attorney; or
  - (c) Members with at least 5% of the votes that may be cast on the resolution on a poll.



- 24.10 A demand for a poll may be withdrawn at any time prior to the announcement of the result of the poll.
- 24.11 A poll must be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chair of the meeting directs. The result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a chair of the meeting or a question of adjournment must be taken immediately.
- 24.12 The chair of the meeting is entitled to a second or casting vote if the vote is tied, whether on a show of hands or on a poll.
- 24.13 A challenge to a right to vote at a general meeting:
- (a) may only be made at the meeting or an adjourned meeting; and
  - (b) must be determined by the chair of the meeting, whose decision is final.

## 25 PROXIES

- 25.1 A Member who is entitled to attend and vote at a general meeting of the Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- 25.2 The appointment of a proxy must be in writing signed or otherwise authenticated in a manner prescribed by the Corporations Act, by the Member appointing the proxy (**Appointor**) or the Appointor's attorney. The document appointing a proxy is deemed to confer authority to demand or join in demanding a poll. A Member is entitled to instruct his proxy to vote in favour of, or against, any proposed resolution. Unless otherwise instructed by the Member, the proxy may vote as the proxy thinks fit.
- 25.3 The instrument appointing a proxy may be in the form prescribed by the Board in the relevant notice of meeting or any other form which complies with the Corporations Act.
- 25.4 For an appointment of a proxy for a general meeting of the Members to be effective, the following must be provided to the FPA:
- (a) notice of the proxy's appointment in the form of the instrument required by clause 25.3; and
  - (b) if the appointment is signed or otherwise authenticated in a manner prescribed by the Corporations Act by the Appointor's attorney, the authority (or a certified copy of the authority) under which the appointment was signed,
- not less than (48) forty-eight hours before the relevant meeting or adjourned meeting is due to commence, or in the case of a poll, not less than twenty-four (24) hours before the time appointed for the holding of the poll.
- 25.5 An instrument of proxy is not valid if it is not received by the FPA within the time limits set out in this Constitution.
- 25.6 For the purposes of this clause 25, the FPA receives an appointment or an authority, or a notice in respect of an appointment or authority, when it is received at any of the following:



- (a) the FPA's registered office;
- (b) a fax number at the FPA's registered office; or
- (c) a place, fax number or electronic address specified for the purpose in the notice of meeting,

and if the notice of meeting specifies other electronic means by which the Member may give the appointment or authority, then the FPA receives an appointment or authority when the appointment or authority given by those means is received by the FPA as prescribed by the Corporations Act.

25.7 A vote in accordance with the terms of an instrument of proxy is valid notwithstanding the:

- (a) previous death of the Appointor;
- (b) unsoundness of mind of the Appointor;
- (c) revocation of the proxy's appointment; or
- (d) revocation of the authority under which the instrument was executed by a third party;

where no notice in writing of such death, unsoundness of mind or revocation was received by the FPA in accordance with clause 25.6 before the commencement of the meeting or adjourned meeting at which the instrument of proxy is exercised.

25.8 To the extent permitted by law, the Board's decision as to the validity of an instrument of proxy, in respect of whether that instrument has been prepared and provided to FPA in accordance with this clause 25, will be final and binding.

## **PART G - POWERS OF THE BOARD**

### **26 ROLE OF THE BOARD**

26.1 The business of the FPA must be managed by or under the direction of the Directors, who may exercise all the powers of the FPA except any powers that are required by this Constitution or by the Corporations Act to be exercised by the FPA in general meeting. No resolution made by the FPA in general meeting invalidates any prior act of the Directors which would have been valid if the resolution had not been made.

### **27 GENERAL POWERS OF THE BOARD**

27.1 Without limiting any of the powers of the Board set out in other provisions of this Constitution, the Board may:

- (a) do all such things as are in the opinion of the Board incidental to or conducive to the complete fulfilment of the objects of the FPA;
- (b) do all things necessary to give effect to the powers contained in this Constitution and at law;



- (c) borrow money and mortgage or charge the property of the FPA or any part of it and issue debentures and other securities whether outright or as security for any debt, liability or obligation of the FPA;
- (d) determine the strategic priorities and activities of the FPA;
- (e) direct the manner of execution or endorsement for all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the FPA;
- (f) appoint one or more of the Directors to control and be responsible for one or more areas of management of the business of the FPA from time to time;
- (g) notwithstanding any other provisions in this Constitution setting out a method of voting for Directors, institute procedures for voting electronically, in such manner, and at such times, as it determines;
- (h) authorise persons to act as a spokesperson of and for the FPA and to express the view of and for the FPA in or to the general public; and
- (i) unless otherwise provided, if the Board is given a power or discretion under this Constitution, subject to law, the Board may exercise the power or discretion in any manner that the Board, in its absolute discretion, thinks fit.

## 28 POWER TO MAKE REGULATIONS

- 28.1 The Board may from time to time prescribe Regulations pursuant to this Constitution as it sees fit. The Board may amend or cancel any Regulation at any time as it sees fit.
- 28.2 Any Regulations made by the Board must not be inconsistent with this Constitution or the Corporations Act.
- 28.3 Any Regulation may be disallowed by a majority of not less than sixty-five per cent (65%) of the Members at a general meeting.
- 28.4 A Regulation cannot invalidate any prior act of the Board, which would have been otherwise valid if that Regulation had not been passed or made.
- 28.5 Any act or omission undertaken pursuant to a Regulation made by the Board from time to time shall not be invalid by virtue of the Regulation subsequently being disallowed pursuant to clause 28.3.

## 29 DELEGATION

- 29.1 The Board may delegate any of their powers to:
- (a) a committee of Directors; or
  - (b) a Director; or



(c) an employee of the FPA; or

(d) any other person.

29.2 The delegate must exercise the powers delegated in accordance with any directions of the Board.

29.3 The exercise of the power by the delegate is as effective as if the Board had exercised it.

29.4 The meetings and proceedings of a committee must be carried out in accordance with the provisions of this Constitution relating to the meetings and proceedings of the Board, subject to any necessary changes and any directions made by the Board.

29.5 If the Board delegates a power under clause 29.1, a Director is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board itself, unless exonerated under section 190(2) of the Corporations Act.

### 30 **POWER TO ESTABLISH ADVISORY COMMITTEES**

30.1 The Board may authorise the establishment of Advisory Committees, as the Board from time to time determines.

30.2 An Advisory Committee may advise the Board on subjects affecting the FPA, as the Board from time to time determines.

30.3 Each Advisory Committee will comprise such persons (who may or may not be Members) and follow such procedures as the Board determines.

30.4 Notwithstanding the power of the Board to establish Advisory Committees, the Board may, from time to time, authorise Members to establish or form any other group, committee or council as the Board considers appropriate subject to, and in accordance with, such terms, conditions and rules as the Board determines.

## **PART H – STRUCTURE OF THE BOARD**

### 31 **THE BOARD STRUCTURE**

31.1 The Board will consist of:

(a) six (6) Members elected by Members in accordance with the FPA's Election Regulations of which at least four (4) must be practicing Certified Financial Planners; and

(b) up to three (3) Additional Directors (who need not be Members) appointed at the discretion of the Board.

31.2 The Board may make such Regulations setting out the FPA's procedures for the nomination and election of Member Directors to the Board, and the qualifications, skills and experience of candidates, as it considers appropriate.





- 31.3 The Board may also determine the procedures and rules pertaining to the appointment and removal of any Additional Director and any Additional Director's position on the Board.
- 31.4 Nothing in this clause 31 requires the Board to appoint any Additional Directors to the Board.
- 31.5 The Directors may:
- (a) be paid such annual remuneration determined by the Members in general meeting, divided between them in such proportions as the Directors determine; and
  - (b) be reimbursed for all expenses properly incurred in attending general meetings of Members, meetings of the Board and meeting of committees of Directors.
- 31.6 In addition to the remuneration referred to in clause 31.5(a), a Director may receive a special remuneration and expense reimbursement for performing extra services in and about the FPA business as determined by the Directors.

## 32 ALTERNATE DIRECTORS

- 32.1 A Director may nominate to the Board (by notice in writing signed by the Director), and the Board may appoint, a Member to be an alternate for the nominating Director during such period as the Board thinks fit, which must not be longer than the period commencing on the date of effect of the appointment (as determined under clause 32.4) until the conclusion of the following annual general meeting (**Alternate Director**).
- 32.2 Unless otherwise determined by the Board, an Alternate Director is entitled:
- (a) to exercise all of the powers of the nominating Director;
  - (b) receive notice of, attend and vote at meetings of Directors in the absence of the nominating Director, and
  - (c) to be paid the expenses payable to the nominating Director for acting as a director provided for in this Constitution, but is not entitled to receive director's fees.
- 32.3 An Alternate Director vacates that office if the nominating Director vacates office, is removed as Director or advises the Board that they no longer require the appointment of an Alternate Director, if the Board withdraws or cancels the appointment of the Alternate Director or upon expiry of the period of appointment.
- 32.4 The appointment of an Alternate Director must be approved by the Board and takes effect following such approval at a time nominated by the Board.

## 33 TENURE

- 33.1 Member Directors hold office as follows:
- (a) each Member Director holds office commencing from the conclusion of the annual general meeting immediately following the Director's election through to the conclusion of



the fourth annual general meeting following the Director's election and, subject to clauses 33.1(b), 33.1(c) and 33.1(d), may submit themselves for re-election;

- (b) no Member Director is entitled to hold office in their elected capacity for more than two consecutive terms of three (3) years (or such slightly longer or shorter period depending on the dates of the relevant annual general meetings) each;
- (c) any term for which a Member Director holds office to fill a casual vacancy under clauses 33.4 to 33.6 is not counted for the purposes of clause 33.1(b); and
- (d) any Member Director who has held office for two consecutive terms will be eligible to stand for election again after a period of three (3) years out of office.

33.2 Additional Directors hold office as follows:

- (a) each Additional Director holds office for the period determined by the Board, not exceeding three (3) years; and
- (b) the Board may appoint an Additional Director for one or more consecutive terms of up to three (3) years (irrespective of how many terms the Additional Director has already served).

33.3 The office of a Director automatically becomes vacant immediately if the Director:

- (a) becomes bankrupt or makes any arrangement or composition with his creditors generally or becomes an Insolvent Under Administration;
- (b) is prohibited from being a director of a company by reason of any order made under the Corporations Act;
- (c) is of unsound mind or is a person whose estate or person is liable to be dealt with in any way under the law relating to mental health;
- (d) holds any office of profit in the FPA, except as a Director in receipt of director's remuneration;
- (e) does not attend (whether in person or by Alternate Director) more than two consecutive board meetings without permission from the Board and the Board resolves that the person should cease to be a Director;
- (f) fails to declare that they are or may be directly or indirectly interested in any contract or any proposed contract with the FPA and the Board resolves that the person should cease to be a Director;
- (g) in the case of a Member Director, ceases to be a Member;
- (h) resigns as a Director by notice in writing to the FPA;
- (i) is convicted of an offence involving fraud or dishonesty punishable by a term of imprisonment of at least three months;



- (j) is removed from office by a resolution of Members in accordance with section 203D of the Corporations Act; or
  - (k) subject to any disciplinary procedures by the FPA pursuant to the Disciplinary Regulation.
- 33.4 Where a casual vacancy occurs in respect of the office of a Director and the remainder of the term of the Director who has vacated that office is less than twelve (12) months, the Board may fill that casual vacancy by appointing its own nominee to serve the remainder of the term.
- 33.5 Where a casual vacancy occurs in respect of the office of a Director and the remainder of the term to be served is equal to or greater than twelve (12) months, then:
- (a) in respect of an Additional Director, the Board may elect a replacement Additional Director for the remainder of the term; and
  - (b) in respect of a Member Director:
    - (i) the Board may appoint its own nominee to serve until the conclusion of the next annual general meeting;
    - (ii) at such next annual general meeting, an election must be held in accordance with the provisions of the Constitution applicable to the election of Member Directors; and
    - (iii) a Member Director elected under clause 33.5(b)(ii) will hold office until the conclusion of the last annual general meeting of the term of the Member Director in respect of which the vacancy occurred, at which a further election must be held in accordance with the provisions of the Constitution applicable to the election of Member Directors.
- 33.6 Where a Director has given notice that they will resign in the future pursuant to clause 33.3(h) but the resignation has not yet come into effect, and the remainder of the term to be served after the resignation becomes effective is equal to or greater than twelve (12) months, then:
- (a) the provisions of clause 33.5 apply as if the resignation was already effective; and
  - (b) the start date for any Director appointed under clause 33.5 will not be any earlier than the date that the resignation of the Director resigning becomes effective.
- 33.7 Subject to clause 33.8, if, and for as long as, the number of Directors on the Board is reduced below the number fixed as a necessary quorum for meetings of the Board, the continuing Directors may act for the purpose only of increasing the number of Directors to that number or for summoning a general meeting of the FPA and for no other purpose.
- 33.8 For the avoidance of doubt, nothing in clause 33.7 restricts, or purports to restrict, the Directors from doing any act or thing to the extent that they are required in order to ensure that the Directors are not in breach with their duties under the Corporations Act, this Constitution or any other obligation at law which the Directors must comply with while acting in their capacity as a Director.



## PART I – BOARD MEETINGS

### 34 PROCEDURES FOR BOARD MEETINGS

- 34.1 The Board must meet at least twice each year, and may otherwise meet as required for the transaction of ordinary business.
- 34.2 A quorum for a meeting of the Board is constituted by at least fifty percent (50%) of Directors entitled to vote at the meeting, at least one of whom is a Member Director.
- 34.3 A meeting of the Board must be adjourned to the same time and place on the following day if a quorum is not present within thirty (30) minutes of the time appointed for the Board meeting. Those present at the adjourned meeting constitute a quorum and may transact the business of the Board.
- 34.4 The Chair is to be the chair of all meetings of the Board which the Chair attends. If the Chair is not present within fifteen (15) minutes after the time appointed for holding the meeting or unwilling to so act, the Directors may elect a person from their number to act as chair of the meeting or part of the meeting.
- 34.5 The Chair, or any three Directors, may at any time convene a meeting of the Board. Not less than seven (7) days' notice of any proposed meeting must be given to all those entitled to attend Board meetings, unless such persons each agree in writing to a meeting of the Board being held on shorter notice.

### 35 BOARD MEETINGS USING TECHNOLOGY

- 35.1 A meeting of the directors may be held using any technology consented to by all the participating directors (**Approved Technology**) and the consent may be a standing one. The contemporaneous linking together by Approved Technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by Approved Technology.
- 35.2 A director participating in a meeting by Approved Technology is to be taken to be present in person at the meeting.
- 35.3 A meeting by Approved Technology is to be taken to be held at the place determined by the chairperson of the meeting as long as at least one of the directors involved was at that place for the duration of the meeting.
- 35.4 If, before or during the meeting, any technical difficulty occurs as a result of which one or more directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.



## 36 VOTING AT BOARD MEETINGS

- 36.1 Resolutions of the Board must be passed by a simple majority of votes cast by Directors present and entitled to vote on the resolution. Each Director present at a meeting of the Board entitled to vote on the resolution has one vote.
- 36.2 A declaration by the chair of the meeting that a Board resolution has been:
- (a) passed; or
  - (b) passed unanimously; or
  - (c) passed by a particular majority; or
  - (d) not passed,
- and an entry to that effect in the Board's minute book kept in accordance with clause 39.1, is prima facie evidence of the fact, without proof, of the number or proportion of the votes recorded in favour of or against the resolution.
- 36.3 In the case of an equality of votes, the chair of the Board meeting is entitled to a second or casting vote.
- 36.4 The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution will not be invalidated if a Director has not signed the document in circumstances where that Director is on a leave of absence from the Board, provided that all other Directors sign the document as required to otherwise pass the resolution. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

## 37 CONFLICT OF INTERESTS AND VOTING RESTRICTIONS

- 37.1 At the start of any Board meeting, a Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter being considered by the Board at that meeting. If such matter is proposed to be considered by way of circular resolution under clause 36.4, the Director must disclose the nature and extent of their actual or perceived material interest prior to that circular resolution being passed.
- 37.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of meeting kept in accordance with clause 39. The entry and exit of a Director from the meeting who has a conflict of interest must be recorded in the minutes of meeting.
- 37.3 Unless where expressly permitted by clause 37.4:
- (a) a Director must not vote in respect of any contract, proposed contract, or other matter in which they have a material personal interest, and must not be present at any meeting while the matter is being discussed; and
  - (b) if the Director does vote, the Director's vote must not be counted,



and except for clause 37.4, no other provision of this Constitution or any rule of law or equity to the contrary affects the operation of this clause.

- 37.4 A Director with a material personal interest in a matter may still be present and vote if:
- (a) their interest arises because they are a Member, and other Members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the FPA, where such insurance is maintained in accordance with clause 46 ;
  - (c) their interest relates to a payment by the FPA under clause 45.1, or any contract relating to an indemnity that is allowed under the Corporations Act; or
  - (d) the other Directors (who do not have a material personal interest in the matter) pass a resolution that identifies the Director, the nature and extent of the Director's interest and clearly states that the other Directors are satisfied that the interest should not disqualify the Director concerned from voting on the matter or being present at the meeting.
- 37.5 The Board may establish and adopt additional Regulations for the management of any conflict of interest arising in respect of a Director, Officer or Office Holder (whether in a Board charter, Code or otherwise).

## **PART J – THE CHAIR**

### **38 THE CHAIR AND CHAIR ELECT**

- 38.1 The Board must elect a Director as Chair and may determine the procedure pertaining to such election from time to time.
- 38.2 The Chair:
- (a) holds office as Chair from the conclusion of the annual general meeting at which the Chair takes up the position of Chair for a term of two years, or until the Chair ceases to be a Director, whichever is the earlier; and
  - (b) is entitled to be Chair for a maximum of four years within any ten year period.
- 38.3 The Board may appoint one or more of the Directors to act as Deputy Chair who will, in circumstances where the Chair is not present or not willing to act as Chair, act as Chair with all the powers given by this Constitution to the Chair, and if more than one Deputy Chair then such powers must be exercised jointly unless otherwise unanimously decided by the Deputy Chairs.
- 38.4 Each Deputy Chair will cease to hold office as Deputy Chair upon the earlier of:
- (a) being appointed as Chair to fill a casual vacancy in accordance with clause 38.9; and
  - (b) the serving Chair ceasing to hold office as Chair as a result of the expiry of their term as Chair; and



- (c) the Board appointing one or more replacements to the role of Deputy Chair.
- 38.5 Within twelve months prior to, but in any case no later than the annual general meeting following the conclusion of which a serving Chair's current term of office is due to expire, the Board must elect a Director as the Chair-elect and may determine the procedure pertaining to the election of a Chair-elect from time to time. The Chair-elect may be, but is not required to be, a Deputy Chair.
- 38.6 Subject to clause 38.2(b), the Board may in its absolute discretion invite a serving Chair to serve an additional consecutive term as Chair in which case the Chair shall also be the Chair-elect.
- 38.7 The Chair-elect automatically becomes the Chair at the conclusion of the annual general meeting immediately following their election.
- 38.8 The Chair:
- (a) exercises such powers and performs such duties as customarily are exercised and performed by the office of the chair;
  - (b) serves as a member *ex officio* with the right to attend and vote at meetings of all Committees, Councils and Chapters of the FPA. The Chair is entitled to attend any meeting of any 'Conduct Review Commission Panel' but not to vote at any such meeting unless the Chair is a formal member of the relevant Conduct Review Commission Panel;
  - (c) subject to this Constitution, presides as Chair at all meetings of the Board and all general meetings of the FPA; and
  - (d) performs such other duties and has such other powers as may be prescribed from time to time by the Board.
- 38.9 If the Chair vacates the office of chair for any reason whatsoever, then:
- (a) if a Chair-elect has been elected prior to the date of the vacancy, the Chair-elect is automatically appointed as Chair to fill the casual vacancy; or
  - (b) if a Chair-elect has not been elected as at the date of the vacancy, or the Chair-elect was also the serving Chair, then each Deputy Chair is automatically appointed as Chair to fill the casual vacancy;
  - (c) if a Chair-elect has not been elected as at the date of the vacancy, or the Chair-elect was also the serving Chair, and no Deputy Chair has been appointed, the Board must as soon as reasonably practicable thereafter elect a new Chair and in so doing the Board may determine the procedure pertaining to such election from time to time, subject to any requirements specified in this Constitution for election of the Chair.
- 38.10 Any Chair appointed to fill a casual vacancy in accordance with this clause holds office only until the conclusion of the next annual general meeting, unless such person is also appointed as Chair-elect after his appointment as Chair to fill the casual vacancy, in which case he may continue as Chair.



## **PART K – MINUTES**

### **39 MINUTES**

- 39.1 The Directors (and Office Holders, as the case may be) will cause minutes of:
- (a) all proceedings and resolutions of meetings of Members;
  - (b) all proceedings and resolutions of meetings of the Directors, including meetings of committees of Directors;
  - (c) all proceedings and resolutions of meetings of any Chapter committee or Advisory Committee; and
  - (d) all resolutions passed by the Directors without a meeting, to be duly entered in books kept for that purpose in accordance with the Corporations Act.
- 39.2 The Directors will cause the minutes referred to in clauses 39.1(a) and 39.1(b) to be signed (including by electronic means) by:
- (a) the chair of the meeting at which the proceedings took place or at which the resolutions were proposed; or
  - (b) the chair of the next succeeding meeting.
- 39.3 Where the minutes referred to in clauses 39.1(a) and 39.1(b) are signed in accordance with clause 39.2, those minutes will be presumed to be an accurate record of the relevant proceedings and resolutions unless the contrary is proved.
- 39.4 Books containing the minutes of proceedings of meetings of Members will be open for inspection by any Member, without charge.

## **PART L – THE CHIEF EXECUTIVE OFFICER**

### **40 CHIEF EXECUTIVE OFFICER**

- 40.1 The Board may appoint a Chief Executive Officer for such period and upon such terms and conditions as the Board may from time to time determine.
- 40.2 The Chief Executive Officer will report to the Board.
- 40.3 The Board may delegate and confer on the Chief Executive Officer any of the powers that Directors can exercise.
- 40.4 The Board may revoke or vary:
- (a) any appointment of a Chief Executive Officer; or
  - (b) any of the powers delegated to, or conferred on, the Chief Executive Officer.





## **PART M - CHAPTERS**

### **41 ESTABLISHMENT OF CHAPTERS**

41.1 The Board may authorise Members to form Chapters in order:

- (a) to provide local meeting facilities for Members;
- (b) to enable Members to exchange ideas;
- (c) to further the educational role of the FPA; and
- (d) to further and promote the Code and other standards of conduct of the FPA.

41.2 The Board may from time to time:

- (a) determine the criteria for establishing a Chapter;
- (b) determine the powers, functions and duties of a Chapter;
- (c) determine the minimum standards required to maintain Chapter status;
- (d) determine the rules and regulations regarding the administration of Chapters and proceedings at Chapter meetings;
- (e) prescribe benefits to be provided by Chapters to Members;
- (f) issue approvals for the establishment of Chapters;
- (g) withdraw approvals for the establishment of Chapters given pursuant to clause 41.2;
- (h) terminate and dissolve Chapters at its discretion and without giving reasons; and
- (i) remove the Office Holders or management committees of Chapters at its discretion and without giving reasons.

41.3 Except as otherwise set out in this Constitution, the Board may from time to time determine all procedural matters relating to Chapters including procedures of Chapter meetings, election of Chapter Office Holders, procedures at Chapter management committee meetings and generally matters relating to a Chapter.

41.4 All cheques and other negotiable instruments and all receipts for money paid to the Chapter must be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Board may from time to time determine.

## **PART N – EXECUTION OF CONTRACTS**

### **42 EXECUTION OF CONTRACTS**

42.1 In accordance with section 127(1) of the Corporations Act, the FPA may execute a document if the document is signed by two Directors or a Director and Company Secretary.



- 42.2 Chapters and Committees (including Office Holders on behalf of a Chapter or Committee) have no authority to contractually bind the FPA, under any circumstance whatsoever.

## **PART O – ACCOUNTS & AUDIT**

### **43 ACCOUNTING RECORDS**

- 43.1 The Board must cause the FPA to keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance of the FPA; and
  - (b) would enable true and fair financial statements to be prepared and audited,
- and must allow a Director to inspect those records at all reasonable times.
- 43.2 If required by Part 2M.3 of the Corporations Act, the Board must cause the FPA to prepare a financial report and a directors' report that comply with the requirements of the Corporations Act and must report to Members in accordance with section 314 of the Corporations Act no later than the deadline set by section 315 of the Corporations Act.
- 43.3 The Board must cause to be tabled at each annual general meeting a copy of each report prepared in accordance with clause 43.2, and any auditors report prepared in accordance with clause 43.6.
- 43.4 The Board may from time to time determine whether and at what times and place and under what conditions or regulations the accounting and other records of the FPA are to be open for inspection of Members, subject to this Constitution and the Corporations Act.
- 43.5 The Board may from time to time, subject only to clause 43.2 and any other relevant law, determine the manner in which the accounting and other financial reports of the FPA will be provided to Members, and without limitation, may institute procedures for the electronic distribution of any such reports.
- 43.6 The accounting and other records of the FPA must be examined and a report prepared by a registered company auditor in accordance with the Corporations Act.
- 43.7 The appointment, removal, remuneration, functions, rights, duties and liabilities of such registered company auditor are to be regulated by and be subject to the provisions of the Corporations Act.

## **PART P - NOTICES**

### **44 SERVICE OF NOTICES**

- 44.1 Any notice required by law or by or under this Constitution or the Regulations to be given to any Member (including notice of a general meeting of Members) may be given:
- (a) personally;



- (b) by sending it by post or delivering it to the address for the Member in the Register or the alternative address (if any) as nominated by the Member; or
  - (c) by sending it to the fax or email address (if any) nominated by the Member; or
  - (d) by any other means consented to by the Member.
- 44.2 Where a notice is sent by post, service of the notice is deemed:
- (a) effected by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) received three days after the date of its posting.
- 44.3 A notice sent by fax is taken to be given on the day on which the sender obtains acknowledgment of successful transmission.
- 44.4 A notice sent by email is taken to be given when the email is sent, unless the sender has been notified, by a system or person involved in the delivery of the email to the addressee, that the email has not been successfully delivered.
- 44.5 Notice of every general meeting of the FPA must be given:
- (a) to every Member and Director;
  - (b) to the Auditor; and
  - (c) to the Chief Executive Officer.
- 44.6 Notice of a general meeting of a Chapter must be given to every member of that Chapter and to the Chief Executive Officer.

## **PART Q - INDEMNITY & INSURANCE**

### **45 INDEMNITY**

- 45.1 To the maximum extent permitted under the Corporations Act, every person who is or has been a Director, Company Secretary, treasurer and other officer or Officeholder for the time being of the FPA or of any of its related bodies corporate, Committees or Chapters, excluding any Auditor (together referred to as "Officers"), is indemnified out of the assets of the FPA against a liability (including a liability for legal costs) incurred by that person as an Officer of the FPA.
- 45.2 The Board may, from time to time, resolve that the indemnity in clause 45.1 is not to apply to a specified person or class of persons.

### **46 INSURANCE**

- 46.1 To the maximum extent permitted under the Corporations Act, the FPA may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an Officer against a liability (including a liability for legal costs) incurred by the person as an Officer.



## **PART R - CONFIDENTIALITY**

### **47 CONFIDENTIALITY**

47.1 Subject to the Constitution, the Disciplinary Regulation and to the law, every person who by reason of his office in the FPA or connection with the FPA is exposed to, learns of or has access to information or knowledge concerning Members or the FPA must keep confidential all such information and knowledge and is not entitled to communicate or divulge those affairs or any part of them in such a way that the name of the Member concerned is identified unless with the prior consent in writing of that Member.

## **PART S – PUBLIC STATEMENTS**

### **48 PUBLIC STATEMENTS**

48.1 The only persons authorised to act as spokesperson of and for the FPA and to express the view of and for the FPA in or to the general public are those persons or Office Holders nominated by the Board from time to time.

## **PART T – AMENDMENTS TO THE CONSTITUTION**

### **49 AMENDING THE CONSTITUTION**

49.1 Subject to the Corporations Act, to be effective a resolution to amend modify or repeal this Constitution or provision of this Constitution, must be passed by a seventy-five percent (75%) majority at a general meeting of Members.

## **PART U – MEMBERS’ LIABILITY & APPLICATION OF PROPERTY UPON DISSOLUTION**

### **50 APPLICATION**

50.1 The income and property of the FPA is to be applied solely towards the promotion of the activities of the FPA and no portion thereof is to be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members.

50.2 Notwithstanding clause 50.1, payment in good faith of remuneration to any officers or employees of the FPA or to any Member in return for any services actually rendered to the FPA or for goods or services supplied in the ordinary and usual way of business is permitted.

### **51 LIMITATION OF LIABILITY**

51.1 Every Member of the FPA agrees to contribute an amount as may be required, not exceeding one hundred dollars (\$100.00), to the property of the FPA if the FPA is wound up while they are a Member, or within one year after they cease to be a Member, for payment of:

- (a) the debts and liabilities of the FPA (contracted before they ceased to be a Member);



- (b) the costs, charges and expenses of winding up; and
  - (c) the adjustment of the rights of the contributories among themselves.
- 51.2 If, after the winding up or dissolution of the FPA, and after satisfaction of all its debts and liabilities, there remains any property of the FPA whatsoever, that property is not to be paid to or distributed among the Members.
- 51.3 Such property must be given or transferred to some other institution or institutions having objects or activities similar to the activities of the FPA and whose memorandum of association or constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the FPA under or by virtue of this clause.
- 51.4 For the purpose of clause 51.3, the institution or institutions is to be determined by the Members at or before the time of the dissolution. If the Members do not make any such determination by the time required, then an application is to be made to the Supreme Court of New South Wales for the determination of the institution or institutions.