



MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

CONSTITUTION

As at 26 July 2018

CONSTITUTION

MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA ACN 006 085 552

1. Defined meanings

Words used in this Constitution and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Constitution.

2. Objects

2.1 The objects for which the Association is established are:

- (a) to support and promote the profession of mortgage and financial services intermediaries;
- (b) to support and promote the establishment and development of the mortgage industry, mortgage market and financial services industry in Australia;
- (c) to inform Members of existing and proposed legislation and regulations affecting the mortgage industry, mortgage market and financial services industry in Australia;
- (d) to encourage amendments to legislation and regulations affecting the mortgage industry, mortgage market and the financial services industry in Australia;
- (e) to undertake research on any matters relevant to the mortgage industry, mortgage market and financial services industry in Australia to inform Members of means to improve individual roles and practices;
- (f) to foster and promote sound and ethical business practices in the mortgage industry, mortgage market and financial services industry in Australia;
- (g) to support and sponsor educational programs, meetings and seminars with a view to informing Members and the public of all aspects of the mortgage industry, mortgage market and financial services industry;
- (h) to publish information and content dealing with the mortgage industry, mortgage market and financial services industry in Australia;
- (i) to provide membership benefits and services; and
- (j) to do all such other lawful things as are incidental or convenient to the pursuit of the above objects.

2.2 **Association's powers not limited by objects**

The objects of the Association referred to in clause 2.1 do not restrict or prohibit the exercise of any power or capacity available to the Association at law.

3. Limited liability

3.1 Members' Liability

The liability of the Members is limited.

3.2 Members' Contributions

Every Member undertakes to contribute to the assets of the Association if it is wound up while the Member is a Member, or within one year after the Member ceases to be a Member, for:

- (a) the payment of the debts and liabilities of the Association, contracted before the Member ceased to be a Member;
- (b) the expenses of winding up the Association; and
- (c) the adjustment of the rights of the contributories among themselves.

3.3 Amount of Members' Contributions

The amount of the contribution under clause 3.2 must not exceed \$10.00 per Member in any circumstances.

4. Use of the property by the Association

4.1 Conduit Policy

It is the Association's policy that any allocation of funds or property to any other institutions, bodies, entities, organisations, government departments or persons will be, as best able, made in accordance with the objects of the Association and not be influenced by the expressed preference or interest of a particular donor to the Association.

4.2 Application of Association Property

The Association will, as best as it is able, apply its income and property for the objects of the Association. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to any Member.

4.3 Payments of Association Expenses

Nothing in clause 4.2 prevents the payment in good faith of reasonable and proper:

- (a) remuneration to any of the officers or employees of the Association or to any Member in return for any services actually rendered by them to the Association;
- (b) interest on money borrowed from any Member for any of the purposes of the Association (provided the interest rate does not exceed the rate charged by the Association's bank on similar borrowings);
- (c) rent for premises let by any Member to the Association; or
- (d) payment for any goods supplied to the Association by any Member.

4.4 Remuneration Payments

The following payments may be paid or given by the Association to a Director:

- (a) reasonable remuneration to a Director for their services as a Director as determined by the Board from time to time;
- (b) the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director (including travel expenses in connection with attendance at Board, Committee or general meetings); and
- (c) remuneration for any service rendered to the Association in a professional or technical capacity, where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the Board.

5. Use of property on winding up

5.1 Surplus

If upon the winding up of the Association and after the satisfaction of all its debts and liabilities, any property remains (**surplus**), the surplus must not be paid or distributed among the Members.

5.2 Transfer of Surplus

The surplus must be given or transferred to an institution, body, entity, or organisation (**Transferee Entity**) whose constitution has similar objects as the Association and prohibits the distribution of its income and property among its members to at least the same extent as is imposed on the Association's members.

5.3 Choice of Transferee Entity

The Transferee Entity must be chosen by the Board (as the Board was constituted at the commencement of the winding up). If the Board does not choose a Transferee Entity within a reasonable time, any Member at the commencement of the winding up or the liquidator may apply to the Supreme Court of New South Wales to choose the Transferee Entity.

6. Members

6.1 General

The Members consist of:

- (a) Life Members and Honorary Members;
- (b) Full Members;
- (c) Student Members; and
- (d) all other persons admitted to Membership in accordance with this Constitution.

6.2 Life Members and Honorary Members

- (a) Any Full Member or a Nominated Representative, who has given extensive and meritorious service to the Association will be eligible to be elected as a Life Member. A Nomination for Life Membership must be in writing and submitted to the Board by a current Member. Election as a Life Member will be at the absolute discretion of the Board.
- (b) Life Members will be entitled to receive all publications and communications distributed to Full Members and will be entitled to vote and play a role in the governance of the Association.
- (c) Membership as an Honorary Member may be bestowed at the absolute discretion of the Board on any person not eligible to be a Full Member who has given, in the view of the Board, extensive and meritorious service to the Association.
- (d) Honorary Members will be entitled to receive all publications and communications distributed to Full Members but are not entitled to vote or play any role in the governance of the Association.
- (e) The Board may cancel the Membership of a Life Member or Honorary Member:
 - (i) if that Honorary Member or Life Member, being an individual, is or becomes a bankrupt or subject to control under the *Bankruptcy Act 1966*;
 - (ii) if that Life Member or Honorary Member, being a corporation, is or becomes an externally-administered body corporate as that expression is defined in the Act;
 - (iii) if any individual principal of that Honorary Member or Life Member, being a firm, is or becomes a bankrupt or subject to control under the *Bankruptcy Act 1966*;
 - (iv) if a licence or authorisation held by that person or by the licensee on whose behalf that person is authorised to engage in activities or otherwise act under their authorisation is cancelled or suspended for misconduct, or for engaging in conduct which the Board, acting reasonably, considers might bring the Association into disrepute; or
 - (v) if the person, being an individual, is found to have committed an offence that is punishable on conviction by imprisonment or which the Board, acting reasonably, considers warrants exclusion from Membership.

6.3 Full Members

6.3.1 A person cannot become a Full Member unless the person:

- (a) is engaged, or intending to be engaged, in the business of:
 - (i) credit origination, credit provision or management of credit; or
 - (ii) issuing, purchasing, marketing or investing in mortgage loans or mortgage related securities; or
 - (iii) insuring or otherwise enhancing the credit quality of mortgage loans and/or mortgage related securities; or

- (iv) acting as an intermediary in the issuing, purchasing, marketing, or managing of other financial products; or
- (v) providing support, consultancy or professional services to the mortgage industry or financial services industry;
- (b) applies to become a Full Member in the form and manner prescribed by the Board from time to time;
- (c) satisfies the applicable educational and other criteria established by the Board and published via the Association's website or in Membership materials from time to time;
- (d) is at all times during the currency of their Membership covered by professional indemnity insurance on such terms and for such sum as is determined from time to time by the Board or in the opinion of the Board has net tangible assets satisfactory to the Board to be able to cover professional indemnity risk;
- (e) if an individual, is over 18 years of age;
- (f) is not a bankrupt or subject to control under the *Bankruptcy Act 1966*;
- (g) being a firm, every individual who is a principal of the firm is not a bankrupt or subject to control under the *Bankruptcy Act 1966*, and every corporation that is a member of the firm is not an externally-administered body corporate as that expression is defined in the Act;
- (h) being a corporation, is not an externally-administered body corporate as that expression is defined in the Act;
- (i) being a corporation, every director is not a bankrupt or subject to control under the *Bankruptcy Act 1966*; and
- (j) if involved in credit activities as defined in the *National Consumer Credit Protection Act 2009* (Cth) is a member of, or is covered by a membership of a Qualifying EDR Scheme.

6.3.2 The Board may from time to time prescribe other provisions relating to the criteria which must be satisfied before any person becomes or remains a Full Member.

6.3.3 Membership Structure

Subject to clauses 6.3.1 and 6.3.2, the membership of the Association will comprise:

- (a) individuals operating as loan writers, being either employees of, or contractors to, broking or mortgage management businesses;
- (b) individuals (other than loan writers) engaged as employees by any Full Member;
- (c) Broking Businesses. It is a condition of membership of a Broking Business, that each loan writer employed by, or contracted to, the Broking Business, is a Full Member;
- (d) broking or aggregator groups;

- (e) mortgage managers. It is a condition of membership of mortgage managing businesses dealing directly with the public, that each loan writer employed by, or contracted to, the business, is a Full Member;
- (f) lenders/funders;
- (g) mortgage insurers;
- (h) other businesses supplying support services;
- (i) Student Members; and
- (j) such other categories as determined from time to time by the Board.

6.4 Student Members

- (a) An individual is eligible to be admitted as a Student Member if the individual:
 - (i) is at least 16 years of age;
 - (ii) is a fit and proper person (as defined in the MFAA Code of Practice);
 - (iii) is not engaged in any of the activities set out in clause 6.3.1(a); and
 - (iv) satisfies all other applicable criteria established from time to time by the Board.
- (b) A Student Member is
 - (i) not a Voting Member; and
 - (ii) not permitted to hold him/herself out to be a Full Member or use any of the Association's logos.

6.5 Accreditation and Recognition

6.5.1 Accreditation

The Board may bestow an appropriate accreditation upon individuals who are Full Members or Nominated Representatives, subject to those individuals satisfying the relevant criteria established from time to time by the Board.

6.5.2 Recognition

The following recognitions may be bestowed upon individuals who are Full Members or Nominated Representatives, subject to those individuals satisfying the relevant criteria established from time to time by the Board:

- (a) Associate of Mortgage & Finance Association of Australia (AMFAA); and
- (b) Fellow of Mortgage & Finance Association of Australia (FMFAA).

6.5.3 The Board, from time to time, may determine other accreditations or recognitions applicable to Members or any category of Members, or cease any accreditations or recognitions.

6.6 Affiliated Associations

The Board may admit as Affiliated Associations, any other association with similar objects as the Association, whether operating in Australia, or in other countries. Such admission will be on terms as decided by the Board from time to time. An Affiliated Association is entitled to receive all publications and communications distributed to Full Members but is not entitled to vote or play any role in the governance of the Association.

6.7 Categories of Members

The Board may from time to time establish other categories or sub-categories of Membership and may determine the requirements which must be satisfied before a person is admitted to each such category or sub-category of Membership and the rights, privileges and obligations of Members in each such category or sub-category of Membership.

7. Application for, and renewal of, Membership

7.1 Form of Application

An application for Membership or for renewal of Membership must be made to the Association in writing in the form determined by the Board from time to time.

7.2 Applications for Membership and Renewal of Membership

Subject to clause 7.1, an application form to be completed by a person making an application to become a Member or to renew their Membership, must:

- (a) identify the category of Membership for which application is made;
- (b) state that the applicant agrees to be bound by this Constitution, the Disciplinary Rules, the MFAA Code of Practice, and, if the applicant is conducting any credit activities as defined in the *National Consumer Credit Protection Act 2009* (Cth), is or will be a member of, or be covered by a membership of, a Qualifying EDR Scheme;
- (c) in the case of an applicant for Full Membership that is a corporation or firm, identify who is to be the Nominated Representative of the applicant;
- (d) state that the Application Fee is to be paid at the time the application is made; and
- (e) specify such information that is required by the Association to enable the Board to determine whether the criteria for admission or renewal of Membership (as the case may be) in the category of Membership for which application is made are satisfied.

7.3 Approval of Application for new Membership and renewal of Membership

- (a) Upon application to become a Member or to renew a Membership being made to the Association, the Board will consider the application or may defer consideration of the application from time to time as it sees fit.
- (b) The Board may:
 - (i) refuse to admit a person as a Member;

- (ii) refuse to renew a person's Membership;
 - (iii) admit a person as a Member or renew a Membership if that person is eligible to be or remain as a Member including imposing conditions on that Membership not inconsistent with this Constitution; or
 - (iv) request further information, including requesting an interview with the applicant or, in the case of a corporation or firm, its Nominated Representative, in respect of the application for Membership or renewal of Membership.
- (c) If the Board refuses to admit a person as a Member or to renew a person's Membership, the Board must advise the applicant and the reasons for the refusal in writing as soon as practicable after it makes its decision.
- (d) Any person whose application for Membership or renewal of Membership is refused may appeal the refusal to the Tribunal in accordance with the Disciplinary Rules (for the purposes of the Disciplinary Rules, if the notice of refusal is given by the Board it is taken to have been given by the Membership Secretary).
- (e) If an application is approved, the applicant must be informed in writing as soon as practicable after the Board makes its decision and accordingly entered onto the Register subject to any conditions imposed.
- (f) The Board may impose conditions on any Membership or on any renewal of Membership not inconsistent with this Constitution.

7.4 Delegation

The Board may, at any time, delegate, on such terms as it thinks fit, to such persons as it may determine, the authority to:

- (a) admit persons as Members;
- (b) renew the Membership of existing Members; or
- (c) refuse applications for Membership or the renewal of Membership.

7.5 Register of Members

- (a) The Association will maintain a Register of all persons admitted as Members in any class or category.
- (b) The Register will identify each Member by reference to:
 - (i) the category of Membership held and any accreditations held pursuant to clause 6.5.1, clause 6.5.2 or clause 6.5.3;
 - (ii) in the case of a Full Member which is a firm or a corporation, the name of its Nominated Representative from time to time;
 - (iii) the address to which notices are to be sent;
 - (iv) the full name or in the case of a corporation, its Australian Company Number and Australian Business Number or in the case of a business that is not a corporation, its full name and Australian Business Number;

- (v) the date on which the Member's application was approved; and
 - (vi) such other information as is deemed appropriate by the Board.
- (c) The Register will constitute the official roll for the purposes of identifying Members eligible to vote at general meetings, to nominate for positions on the Board and to vote for the election of Directors. The Register will be conclusive evidence of the status of each Member.

8. Fees to be paid by Members

8.1 Application Fee

- (a) The Application Fee payable by Members in each category or sub-category of Membership is such amount as is determined by the Board from time to time.
- (b) The Application Fee is payable to the Association.

8.2 Annual Subscription

- (a) The Annual Subscription payable by Members in each category or sub-category of Membership is such amount as determined by the Board from time to time.
- (b) All Annual Subscriptions must be paid annually in advance for the period commencing on such date or dates as is determined by the Board from time to time, and on such date as is determined by the Board from time to time.
- (c) All Annual Subscriptions must be paid to the Association.

8.3 Waiver

The Board may at any time fix, at different rates, suspend or waive payment of the Application Fee or Annual Subscription or any other fee in favour of any Member or category or sub-category of Member.

8.4 Annual Subscription in arrears

Despite anything in this Constitution, if any Member fails to pay that Member's Annual Subscription within two months after it becomes due and payable, that Member is not entitled to:

- (a) nominate a Member as a candidate for election as a Director;
- (b) be nominated as a candidate for election as a Director;
- (c) vote in any ballot for the election of Directors;
- (d) receive notices of meetings of Members or any other publications or communications to Members;
- (e) requisition, attend, be counted in forming a quorum for, or exercise any vote at, any general meeting; or

- (f) nominate any Member (including themselves) for any Association Awards or similar;

while the Annual Subscription and any other outstanding fees or charges remain due and unpaid.

9. Obligations of Members

9.1 Conduct

Each Member must not engage in Misconduct as defined in the MFAA Code of Practice or in breach of the Disciplinary Rules or any Qualifying EDR Scheme Rules.

9.2 Obligations

Each Member:

- (a) must be a fit and proper person as defined in the MFAA Code of Practice;
- (b) must conduct their business in a professional manner, ensuring that they and their associates and staff are thoroughly knowledgeable in all areas and aspects of the mortgage and finance industry in which they participate and that they are acting in compliance with sound business practices;
- (c) must act in compliance with all laws and co-operate with all government bodies and responsible authorities to achieve the objectives of the Association in the course of the conduct of their own business (including reporting to the Association any Member that has acted in a manner prejudicial to the reputation or interests of the Association);
- (d) must always act in a manner which recognises that integrity and responsibility are essential to achieve and maintain confidence in all aspects of the mortgage and finance industry;
- (e) must respect and preserve the confidentiality of any credit application, credit appraisal and property valuation report except as required by law;
- (f) must make full disclosure of all pertinent facts to all relevant parties, including any interest that they may have in a loan, project, or property;
- (g) must comply with all requirements of the Act with respect to disclosure of information to ASIC;
- (h) is bound by this Constitution and must comply with all directions, policies, codes and rulings related to ethics, standards, and professional conduct which are promulgated by the Association from time to time; and
- (i) if involved in credit activities as defined in the *National Consumer Credit Protection Act 2009* (Cth), is a member of, or be covered by a membership of, a Qualifying EDR Scheme.

10. Rights of Members

10.1 Membership Rights

- (a) Full Members and Life Members are entitled to all rights of Members under this Constitution, including to exercise voting rights at general meetings and for the election of Directors and to participate in the governance of the Association.
- (b) Honorary Members and Affiliated Associations are entitled to receive notice of meetings of Members but will not be entitled to exercise voting rights at any general meetings or for the election of Directors or to participate in the governance of the Association.
- (c) Members whose Membership is suspended or cancelled and Members who are expelled are not entitled to exercise voting rights at general meetings or for the election of Directors nor are they entitled to participate in the governance of the Association.

10.2 No joint Members

Joint Memberships of the Association are not permitted.

10.3 Right to use Association logo

Members may use the logos of the Association in the course of their business in accordance with the Board's policy from time to time as to the use of the logos. The Board may at its discretion prevent a Member from using any logo in a particular manner.

11. Representation

11.1 Nominated Representative

If a Full Member is a firm or corporation and wishes to participate in meetings and proceedings of the Association (including for the election of Directors), the Full Member must, by notice in writing to the Board, appoint a representative to act for the Full Member in such meetings and proceedings of the Association and for the election of Directors and may, by like notice, from time to time, remove any such representative and appoint another person in their place. Subject to the Act, if a Nominated Representative is appointed, the Nominated Representative, while appointed, acts to the exclusion of the Full Member.

11.2 Privileges of Nominated Representative

The Nominated Representative will have all of the rights of the Full Member appointing them (except the ability to appoint a representative) and, subject to this Constitution, will be eligible to hold office as, and to nominate, a Director and vote at general meetings and for the election of Directors in the same way as an individual Full Member.

11.3 Termination of appointment

The appointment of a Nominated Representative automatically terminates if the Nominated Representative:

- (a) was nominated by a person who ceases to be a Full Member;

- (b) dies, becomes bankrupt or is found to have committed an offence that is punishable on conviction by imprisonment or which the Board, acting reasonably, considers warrants termination of their appointment;
- (c) held a licence or authority issued by a government authority relating to the Nominated Representative's activities in the credit, finance or financial services industries and the licence or authority is suspended or cancelled; or
- (d) engages in conduct which the Board, acting reasonably, considers might bring the Association into disrepute.

12. Cancellation of Membership

12.1 Cancellation

- (a) A person is no longer eligible to be a Member and the Association may cancel that person's Membership if the person:
 - (i) dies;
 - (ii) resigns that Membership;
 - (iii) fails to pay that person's Annual Subscription within three months from the date nominated by the Board for payment and after having received at least 21 calendar days' written notice from the Association of their failure to pay the Annual Subscription;
 - (iv) if after 30 calendar days' written notice by the Association of the basis upon which it is said the person has breached or failed to meet the relevant criteria for that person's class of Membership, the person fails to remedy any such breach to the satisfaction of the Board within the 30 calendar day notice period;
 - (v) is expelled from the Association under this Constitution or under the Disciplinary Rules;
 - (vi) if the person was a licensee or credit representative under the *National Consumer Credit Protection Act 2009* (Cth), the person is subject to a suspension, banning, or disqualification order by ASIC; or
 - (vii) if a Full Member, ceases to satisfy the requirements of clause 6.3.1(a) and clause 6.3.1 (d) to (j) inclusive.
- (b) The Disciplinary Rules may specify other circumstances in which a person is no longer eligible to be a Member. This clause operates independently of any provision of the Disciplinary Rules.
- (c) If an event referred to in this clause occurs, the Membership Secretary, the Board or the Tribunal may issue a notice to the person notifying the person that the person's Membership is to be cancelled.
- (d) To avoid doubt, nothing in this clause prevents the Association or the Tribunal from expelling a person from the Association without first cancelling the person's Membership.

12.2 Membership not transferable

A right, privilege or obligation which a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon cessation of the person's Membership.

12.3 Resignation

- (a) A Member may not resign Membership except in accordance with the following:
 - (i) a Member must notify the Association of their intention to resign by notice in writing and the resignation takes effect three months from the date the Association receives any such notice of resignation from that Member; and
 - (ii) the Member must pay all amounts payable by the Member to the Association in respect of the Member's Membership upon resignation, including any outstanding subscription, other monies and interest due. The Member agrees that any amounts payable to the Association upon resignation, remain due as a debt to the Association.
- (b) A Member whose conduct is under investigation pursuant to the Disciplinary Rules, or a Qualifying EDR Scheme Rules, may not resign until the proceedings have been completed and any penalty is satisfied.
- (c) Despite anything in this clause, a Member may also resign as a Member at any time with the consent of the Board on the terms and conditions determined by the Board.

12.4 Membership deemed to continue

While a Member is under investigation by the Association under the Disciplinary Rules, the Member's Membership is deemed to continue until the matter is finalised and all outstanding debts, fees, subscriptions, levies and monetary penalties which were due from the Member to the Association will remain a contractual obligation of the Member until settled to the satisfaction of the Board. The Association may enter into an arrangement with a third party to collect any debts, fees, subscriptions, levies and monetary penalties. Despite this clause, the Board, Tribunal or Membership Secretary may in its absolute discretion determine that a Membership has terminated.

13. Promulgation of rules and codes of practice

13.1 Disciplinary Rules

- (a) The Board may from time to time promulgate rules to establish a procedure and a Tribunal to deal with matters referred to the Tribunal in accordance with the rules or this Constitution, including complaints made to the Association by any person, including any Member, in relation to the conduct of any Member, the refusal to grant or renew Membership, and concerns about the conduct of a Member.
- (b) The rules so promulgated will be called the Disciplinary Rules.
- (c) The Disciplinary Rules may be amended only by a resolution of the Board.

- (d) Changes to the Disciplinary Rules will come into effect one month after publication of the revised Disciplinary Rules on the MFAA website and by publication elsewhere if the Board sees fit.
- (e) Each Member is bound by the Disciplinary Rules.
- (f) The Board may, of its own volition, refer the conduct of a Member to the Tribunal as a complaint (as defined in the Disciplinary Rules) under the Disciplinary Rules.

13.2 MFAA Code of Practice

- (a) The Board may, from time to time, promulgate a code of practice in relation to the conduct of participants in the mortgage and finance industry and mortgage market towards other participants in the industry or towards consumers in the industry.
- (b) The code so promulgated will be called the MFAA Code of Practice.
- (c) Changes to the MFAA Code of Practice will come into effect one month after publication of the revised MFAA Code of Practice on the MFAA website or by publication elsewhere if the Board sees fit.
- (d) Each Member is bound by the MFAA Code of Practice.

14. Meetings of Members

14.1 Calling of meetings

The Board may call a general meeting of the Members.

14.2 Requisition of meetings

The Board must call and arrange to hold a general meeting on the request of at least 1% of the total number of Voting Members worked out as at the midnight before the request is given to the Association. A request made under this clause must comply with section 249D of the Act and shall be taken to be a request made under that section.

14.3 Notice of meeting

Every notice of a general meeting must:

- (a) set out the place, date and time of meeting;
- (b) in the case of special business, state the general nature of the business;
- (c) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the resolution;
- (d) contain a statement that a Voting Member has a right to appoint a proxy and that the proxy need not be a Member; and
- (e) set out any other matters required under the Act.

14.4 Entitlement to notice

Notice of a general meeting must be given to:

- (a) each Member except any Member who under this Constitution or the conditions imposed on their Membership is not entitled to the notice;
- (b) each Director; and
- (c) the auditor of the Association.

14.5 Notice period

Notice of a general meeting must be given in accordance with the Act.

14.6 Proxy Voting by Members

If a Voting Member is a firm or corporation, the Voting Member is considered to be present at a general meeting if it is represented by its Nominated Representative. A Voting Member may appoint a person as its proxy to attend and vote on its behalf at any meeting at which the Voting Member is entitled to attend and vote. The proxy may, but need not, be a Member. The instrument appointing a proxy must be signed by the Voting Member or by its Nominated Representative or in such other manner as the Board approves from time to time. To be effective, a proxy appointment (and the original or a certified copy of the power of attorney or other authority (if any) under which it is signed) must be received by the Association at the Registered Office, a fax number at the Registered Office or at such other place, fax number or electronic address specified for that purpose in the notice of the meeting at least 48 hours before the scheduled commencement of the meeting or adjourned or postponed meeting (as the case may be). A proxy appointment must be in the form specified in the notice of meeting or in such other form as is valid under the Act.

14.7 Omission to give notice

The accidental omission to give notice of a general meeting to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

14.8 Cancellation or postponement of meeting

The Board may cancel or postpone the holding of any general meeting. However, if the meeting was called in response to a requisition by Voting Members, the Board must not cancel the meeting and may postpone the holding of it only with the consent of a majority of the requisitioning Voting Members who requisitioned the meeting.

14.9 Notice of cancellation or postponement

The Board may notify the Members of a cancellation or postponement of a meeting by such means as it sees fit. If any meeting is postponed for 28 calendar days or more, then no less than five business days' notice must be sent to the Members of the postponed meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

14.10 **Venue**

Despite any other clause, the Association may hold a general meeting of Members at two or more venues using technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.

14.11 **Annual General Meeting**

The business of an annual general meeting of the Association is to:

- (a) receive and consider the accounts and reports required by the Act to be laid before each annual general meeting; and
- (b) transact any other business required by this Constitution to be transacted at an annual general meeting of the Association.

14.12 **Report on Association's activities**

The Board must, at each annual general meeting, in addition to the matters in clause 14.11, submit to the Members a report on the activities of the Association during the last completed Financial Year.

15. Proceedings at meetings of Members

15.1 **Quorum**

No business may be transacted at any general meeting unless a quorum of Voting Members is present at the time when the meeting proceeds to business. Except as provided in clause 15.2, 10 Voting Members present in person, by duly appointed proxy, attorney or Nominated Representative, are a quorum for a general meeting of the Association. A person who is attending both as a Voting Member and as a proxy, attorney or Nominated Representative for another Voting Member is counted only once for determining whether a quorum is present.

15.2 **Failure of quorum**

If a quorum is not present within 30 minutes from the time appointed for a general meeting:

- (a) if the meeting was called by, or in response to, the requisition of Voting Members made under clause 14.2 or the Act, the meeting is dissolved; or
- (b) in any other case, the meeting stands adjourned to such day, and at such time and place, as the Board determines.

If no determination of an adjourned meeting is made by the Board, the meeting stands adjourned to the same day in the second week following, at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, 3 Voting Members present in person or by duly appointed proxy, attorney or Nominated Representative constitute a quorum, or where 3 Voting Members are not present in person or by duly appointed proxy, attorney or Nominated Representative, the meeting is dissolved.

15.3 **Frequency of Annual General Meeting**

The Association must hold an annual general meeting at least once every calendar year and within five months after the end of its Financial Year.

15.4 Special business

No special business may be transacted at any general meeting other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution or the Act to be transacted at the meeting.

15.5 Chair of meeting

The Chair, or in the Chair's absence the Deputy Chair of the Association, is entitled to take the chair at each general meeting. If neither of those persons is present at any general meeting within 30 minutes after the time appointed for holding the meeting, or neither of them is willing to take the chair, the Voting Members present in person or by duly appointed proxy, attorney or Nominated Representative must elect a Voting Member present in person to be chair of the meeting.

15.6 Passing the chair

If the chair of a general meeting is unwilling or unable to be the chair for any part of the business of the meeting:

- (a) that chair may withdraw as chair for that part of the business and may nominate any person who would be entitled under the preceding clause to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chair. The prior chair is then entitled to resume as the chair of the meeting.

15.7 Responsibilities of chair

The chair of a general meeting is responsible for the general conduct of the meeting. For these purposes, the chair of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) prescribe, vary or revoke procedures;
- (c) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the consent of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (d) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

15.8 Adjournment of meeting

The chair of a general meeting at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the chair determines.

15.9 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting. However if any

meeting is adjourned for 10 business days or more, notice of the adjourned meeting must be given in the same manner as for the original meeting.

16. Voting at meetings of Members

16.1 Entitlement to vote

Subject to this Constitution and the conditions imposed on any Membership, each Voting Member present in person or by proxy, attorney or Nominated Representative at a general meeting of the Association has one vote.

16.2 Number of votes

If a person present at a general meeting represents (as proxy, attorney or Nominated Representative) more than one Voting Member then the person has:

- (a) on a show of hands (or on the voices) only one vote (unless, in the case of a person who is present as a proxy or attorney, the person is prohibited from voting under the Act); and
- (b) on a poll, one vote for each Voting Member which the person represents (in addition to any vote which the person may have as a Voting Member in their own right).

16.3 Voting restrictions

If permitted or contemplated by the Act or this Constitution, any Director may direct that particular persons (whether specified by name or description) do not cast a vote on particular business of a general meeting. In relation to that business, votes cast by the prohibited persons are to be disregarded.

16.4 Method of voting

Every resolution put to a vote at a general meeting must be determined by the voices or a show of hands (as determined by the chair of the meeting) unless a poll is properly demanded before a vote is taken or before or immediately after the declaration of the result of the voices or the show of hands and the demand is not withdrawn.

16.5 Demand for poll

A demand for a poll under the preceding clause may be made by:

- (a) the chair of the meeting; or
- (b) at least 3 Voting Members present in person or by proxy, attorney or Nominated Representative entitled to vote on the resolution.

16.6 Declaring result of vote on show of hands

In respect of any general meeting of the Association (unless a poll is so demanded):

- (a) a declaration by the chair of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority; and
- (b) an entry made in the book containing the minutes of proceedings of the Association,

is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

16.7 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chair of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a chair or on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

16.8 Casting vote of chair

If, on a show of hands or on a poll, the votes are equal, the chair of the meeting will not be entitled to a casting vote in addition to the deliberative vote (that is, the entitlement to vote as a Voting Member), if any, of the chair.

16.9 Equal votes

If on a show of hands or on a poll, the votes are equal the resolution will lapse.

16.10 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered. Every vote allowed at any such meeting or poll is treated as valid. In recording votes, the latest copy of the Register held in the Registered Office must be adopted and acted on as the voting roll.

16.11 Ruling on votes

The chair of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chair is final and conclusive.

17. Appointment and removal of Directors

17.1 The Board

The Board comprises:

- (a) five Directors elected by the Voting Members, provided that at least four of those Directors are Eligible Brokers; and
- (b) one or more Additional Directors appointed at the Board's discretion,

provided that:

- (c) the minimum number of Directors is six and the maximum number of Directors is ten; and
- (d) Directors who are Eligible Brokers must always constitute the majority on the Board; and

- (e) if there are insufficient nominations to satisfy the requirement that at least four of the Directors elected by the Voting Members be Eligible Brokers, then, subject to paragraphs (d), (f) and (g) of this clause, the remaining vacancies on the Board for Directors elected by the Voting Members may be filled by the candidate or candidates with the next highest number of votes cast at the relevant election; and
- (f) no more than two of the five Directors elected by the Voting Members may have their principal place of residence in the same state or territory of Australia at any one time; and
- (g) no more than one Director, whether a Director elected by the Voting Members or an Additional Director, can be associated with or represent the interests of any one organisation or organisational group.

17.2 Additional Directors

- (a) An Additional Director appointed by the Board under this Constitution must be a natural person who is at least 18 years of age.
- (b) An Additional Director holds office for the period determined by the Board and on any other terms determined by the Board.
- (c) An Additional Director may be a Member but does not have to be a Member.
- (d) An Additional Director may not be a member of any Advisory Forum.
- (e) The Board may from time to time specify any other criteria that must be met by a person to be eligible to be appointed as an Additional Director.

17.3 Directors elected by Voting Members

- (a) To be eligible for election as a Director elected by the Voting Members, a person must be a Full Member or Life Member in good standing for at least five consecutive years up to the closing date for nominations under clause 17.5(c).
- (b) The Board may from time to time specify any other criteria that must be met by a person to be eligible for election as a Director elected by the Voting Members.
- (c) A Director elected by the Voting Members may not be a member of any Advisory Forum.
- (d) A Director elected by the Voting Members who has held that office for 2 consecutive Terms (or, in the case of the Transitional Chair, for longer than 2 consecutive Terms) is not eligible to be a Director elected by the Voting Members until after the close of the second annual general meeting following the date on which they ceased to hold that office. In this clause 17.3(d), "Term" means:
 - (i) in the case of a Director who was elected (or re-elected) by the Voting Members before 26 July 2018, the period of approximately 2 years commencing on the date on which their election took effect and expiring on the date on which their retirement takes effect; and
 - (ii) in the case of a Director who is elected (or re-elected) or taken to be elected (or re-elected) under clause 17.6(d) by the Voting Members after 26 July 2018, the period of approximately 3 years commencing on the date on which their

election takes effect and expiring on the date on which their retirement takes effect.

- (e) An employee of the Association or a person who provides services to the Association as an independent contractor, either directly or through an interposed entity, (other than as a Director) is not eligible for election as a Director elected by the Voting Members.
- (f) A person who was employed by the Association or who provided services to the Association as an independent contractor, either directly or through an interposed entity, (other than as a Director) is not eligible for election as a Director elected by the Voting Members until the expiry of three months following the cessation of their employment by the Association or the provision of such services to the Association (as the case may be).

17.4 Retirement of elected Directors by rotation

- (a) Subject to clause 17.4(g), at the annual general meeting held in 2018 and 2019, the following Directors elected by the Voting Members must retire:
 - (i) one third (or if that is not a whole number, the next lowest whole number nearest to one third) of the Directors elected by the Voting Members who are not required to retire under clause 17.4(a)(ii);
 - (ii) any Director appointed to fill a casual vacancy in the office of a Director elected by the Voting Members or as an addition to the number of Directors elected by the Voting Members under clause 17.7 since the previous annual general meeting; and
 - (iii) any Director elected by the Voting Members who, if that Director did not retire at that annual general meeting, would hold office past the second annual general meeting following that Director's last election or 2 years, whichever is longer.
- (b) At each annual general meeting held after 2019, the following Directors elected by the Voting Members must retire:
 - (i) one third (or if that is not a whole number, the next lowest whole number nearest to one third) of the Directors elected by the Voting Members who are not required to retire under clause 17.4(b)(ii);
 - (ii) any Director appointed to fill a casual vacancy in the office of a Director elected by the Voting Members or as an addition to the number of Directors elected by the Voting Members under clause 17.7 since the previous annual general meeting; and
 - (iii) any Director elected by the Voting Members who, if that Director did not retire at that annual general meeting, would hold office past the third annual general meeting following that Director's last election.
- (c) The Directors who must retire by rotation under clauses 17.4(a)(i) and 17.4(b)(i) are those who have served longest in office since they were last elected or re-elected. If there are equally serving Directors, those equally serving Directors may, among

themselves, agree who is to retire by rotation. If those Directors are unable to decide, the Directors to retire by rotation will be chosen by drawing lots.

- (d) An office vacated by a Director under clauses 17.4(a), 17.4(b) or 17.10 must be filled by an election to be held in accordance with this Constitution in or about October or November each year and, in any event, before the next annual general meeting.
- (e) Subject to clauses 17.3 and 17.5, a Director who retires under this clause is eligible for re-election.
- (f) The retirement of a Director under this clause takes effect at the close of the annual general meeting at which the results of the election are declared.
- (g) If the Transitional Chair remains in office as Chair at the annual general meeting held in 2018, the Transitional Chair is exempt from retirement by rotation under clause 17.4(a) at that annual general meeting and shall not be taken into account in determining the number of Directors to retire by rotation under clause 17.4(a)(i) at that annual general meeting.

17.5 Nominations for Directors to be elected by Voting Members

- (a) A person is not eligible for election to the office of Director unless the person is nominated according to the process specified in this Constitution.
- (b) The Association must call for nominations for Directors to be elected by the Voting Members no later than 45 calendar days before the scheduled date of each annual general meeting of the Association.
- (c) Nominations must be made to the Secretary at the Registered Office. Nominations close at 5:00pm Sydney time on the day which is 30 calendar days before the scheduled date of the annual general meeting. For a nomination to be valid:
 - (i) the nomination must name the candidate and be signed by not less than 3 Voting Members who have been in good standing for at least five consecutive years up to the date of the nomination or, in the case of such a Voting Member who is a Full Member, by their Nominated Representative;
 - (ii) the person nominated must consent to act if elected; and
 - (iii) the nomination and consent must be received by the Secretary at the Registered Office before the close of nominations.
- (d) A consent is sufficient if the person signs a form of consent on the nomination paper. The Secretary may accept any other form of consent, whether or not accompanied by the nomination paper, that the Secretary deems satisfactory, and such acceptance is final.

17.6 Conduct of elections of Directors elected by Voting Members

- (a) All Voting Members may vote to elect Directors. Each Voting Member has one vote.
- (b) The method of conducting the election of Directors by the Voting Members is to be the proportional representation electoral system known as the Hare-Clark system.

The Hare-Clark is a type of proportional representation system known as the single transferable vote method. Voting Members vote by showing preferences for individual candidates. To be elected, a candidate needs to receive a quota of votes. Each Voting Member has a single vote, which can be transferred from candidate to candidate according to the preferences shown until all the vacancies are filled.

- (c) The Board may make rules or decisions that are not inconsistent with this Constitution about any matter relating to the conduct of the election of Directors.
- (d) If at the close of nominations the number of eligible candidates is equal to or less than the number of vacancies to be filled and those candidates would if elected satisfy the requirements for the composition of the Board set out in clause 17.1, then all such candidates shall be taken to be elected without the need for an actual election.
- (e) The Secretary must declare in writing the results of the election at the next annual general meeting.
- (f) The election of a Director who is elected or taken to be elected by the Voting Members takes effect at the close of the annual general meeting at which the results of the election are declared.

17.7 Casual vacancies and additional elected Directors

The Board may, at any time, appoint any person who is eligible to be a Director elected by the Voting Members under clause 17.3 as a Director to fill a casual vacancy in the office of a Director who was elected by the Voting Members or as an addition to the number of Directors elected by the Voting Members but so that the number of Directors elected by the Voting Members does not at any time exceed five. The appointment must not be made if it would result in the number of Directors who are Eligible Brokers being less than a majority on the Board or a breach of clauses 17.1(f) or (g). A person appointed under this clause is taken to be a Director elected by the Voting Members for the purposes of clauses 17.1(f) and (g).

17.8 Retirement of casual appointee and additional elected Director

A Director appointed to fill a casual vacancy or as an additional Director under clause 17.7 holds office only until the conclusion of the annual general meeting following their appointment and, subject to this Constitution, is then eligible for election.

17.9 Resignation of Director

Any Director may retire from office by giving notice in writing to the Association of the Director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time. However the resignation must take effect within three months from the date of the giving of the notice.

17.10 Vacation of office

In addition to the circumstances in which the office of Director becomes vacant by virtue of the Act or other provisions of this Constitution, the office of Director is vacated automatically if the Director:

- (a) was a Full Member or Life Member and ceases to be a Full Member or Life Member (as the case may be) for any reason;

- (b) dies, becomes bankrupt or is found to have committed an offence that is punishable on conviction by imprisonment or which the Board, acting reasonably, considers warrants expulsion from the office of a Director;
- (c) held a licence or authority issued by a government authority relating to the Director's activities in the credit, finance or financial services industries and the licence or authority is suspended or cancelled; or
- (d) did not disclose before being elected or appointed, the events in paragraphs (b) or (c) which occurred before the election or appointment.

Despite this clause, the Board may decide that the person may continue to be a Director or be reinstated as a Director, even though one or more of the above events has occurred.

17.11 Less than minimum number of Directors

The Board may act despite any vacancy in its body. If the number of Directors falls below the minimum number fixed in accordance with this Constitution, the Board may act only:

- (a) to appoint Directors up to that minimum number; or
- (b) to call a general meeting.

18. Chair and Deputy Chair

18.1 Election of Chair and Deputy Chair

- (a) The Directors must elect a Director to the offices of Chair and Deputy Chair of the Board at a Board meeting as soon as practicable after the office of Chair or Deputy Chair becomes vacant. Where an election of both the Chair and Deputy Chair is to be held at the same Board meeting, then the election of the Chair must be completed before the election of the Deputy Chair.
- (b) The election of the Chair and Deputy Chair must be conducted in accordance with clause 18.3.

18.2 Term of office of Chair and Deputy Chair

- (a) Subject to clause 18.2(b), the Director who holds the office of Chair or Deputy Chair holds that office until:
 - (i) the end of the first Board meeting held after the end of the annual general meeting next following their election to that office;
 - (ii) the end of their term of appointment to that office (if any);
 - (iii) the Directors resolve to remove that Director from that office;
 - (iv) that Director retires from that office by notice in writing to the Board; or
 - (v) that Director ceases to be a Director for any reason,whichever first occurs.

- (b) The Transitional Chair holds office as Chair until:
 - (i) the end of the first Board meeting held after the annual general meeting in 2019;
 - (ii) the Transitional Chair retires from the office of Chair by notice in writing to the Board; or
 - (iii) the Transitional Chair ceases to be a Director for any reason,whichever first occurs.

18.3 Conduct of the election of Chair and Deputy Chair

- (a) Nominations for the office of Chair and Deputy Chair must be called for and received by the Secretary.
- (b) If more than one candidate is nominated for the office of Chair or Deputy Chair, then a ballot must be held to elect a Director to hold the relevant office as follows:
 - (i) if only two candidates are nominated for the relevant office, then a Director may vote for their preferred candidate by writing that candidate's name on a ballot paper; or
 - (ii) if more than two candidates are nominated for the relevant office, then the ballot papers must contain the names of the candidates in alphabetical order determined by their surnames and a Director may vote by marking a mark on the ballot paper next to the name of their preferred candidate.
- (c) Once a Director had indicated on the ballot paper their preferred candidate in accordance with clause 18.3(b), they must fold the ballot paper and hand it to the Secretary without disclosing the name of their preferred candidate to any other Directors.
- (d) The person chairing the meeting of the Directors at which the Chair or Deputy Chair is to be elected must:
 - (i) if only one candidate is nominated for that office, declare that candidate as taken to be elected to the relevant office;
 - (ii) declare as elected to the relevant office the candidate who received the highest number of votes, according to the Secretary's report; or
 - (iii) declare that the winning candidate is to be determined by lot under clause 18.3(e) if there is an equal number of highest votes for two or more candidates according to the Secretary's report.
- (e) If according to the Secretary's report, two or more candidates received an equal highest number of votes for an office, then the Secretary must write the name of each of those candidates on similar slips of paper and draw one of those slips of paper at random. The person chairing the meeting must declare elected to the relevant office the candidate whose name is on the slip of paper drawn by the Secretary.

18.4 Absence of Chair and Deputy Chair

The Chair is entitled (if present within 10 minutes after the time appointed for holding a Board meeting) to preside as chairperson of each Board meeting. If at a Board meeting a Chair has not been elected, or the Chair is not present within 10 minutes after the time appointed for holding of the Board meeting or is unwilling to act as chairperson of the meeting, the Deputy Chair (if any), if then present and willing to act, is entitled to be chairperson of the meeting or if the Deputy Chair is not present or is unwilling to act as chairperson of the meeting, the Directors present must elect one of their number to be the chairperson of the meeting.

19. Chief Executive Officer and Association Secretary

19.1 Appointment of Chief Executive Officer

The Board may at any time:

- (a) appoint a Chief Executive Officer, who may or may not be a Member, but must not be a Director;
- (b) define, limit and restrict that person's powers;
- (c) fix that person's remuneration and duties;
- (d) subject to the provisions of any contract between that person and the Association, vary any of the powers so conferred; and
- (e) remove that person from that office and appoint another in that person's place.

19.2 Chief Executive Officer's Voting Rights

Despite anything in this Constitution, if the Chief Executive Officer is a Voting Member, his or her voting and other rights as a Voting Member shall be suspended whilst he or she holds office as Chief Executive Officer.

19.3 Appointment of Secretary

The Board must appoint a person to act as the Secretary of the Association for such term and on such conditions as the Board thinks fit. The Secretary may be removed by the Board at any time.

20. Proceedings of the Board

20.1 Number of Board meetings

Board meetings must be held at least four times in each Financial Year.

20.2 Mode of meeting

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it sees fit. The Board may conduct its meetings in person, by telephone, audio visual link or by using any other technology consented to by all Directors. A consent may be a standing one. A meeting conducted by telephone or other means of communications is

considered to be held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

20.3 Quorum

A quorum for a meeting of the Board comprises not less than half of the Directors, provided this includes at least three Directors elected by Voting Members.

20.4 Chair calling a meeting

The Chair may at any time call a meeting of the Board to be held at such time and place as the Chair chooses.

20.5 Secretary calling a meeting

The Secretary, upon the written request of any Director other than the Chair, must call a meeting of the Board to be held at such time and place as is convenient to the Board.

20.6 Notice of meeting

Notice of each meeting of the Board:

- (a) may be given by such means as is convenient, including by telephone or electronic transmission; and
- (b) must be given to all Directors.

20.7 Recipients of notice

For the purposes of clause 20.6 the accidental omission to give notice of any meeting of the Board to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

20.8 Votes of Directors

Matters arising at any meeting of the Board must be decided by a majority of votes cast. Each Director has one vote. If there is an equality of votes, provided more than three Directors present are competent to vote on the question at issue but not otherwise, the Chair has a second or casting vote.

20.9 Circular resolution of Directors

If a majority of Directors entitled to vote (being at least a quorum) have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the Board held on the day on which the document was signed. If the Directors sign the documents on different days, then a resolution is treated as having been passed on the day on which the document was last signed by a Director. A resolution is not treated as passed on that day if the document, by its terms, is said to take effect from an earlier date.

20.10 Signing of circular resolution

For the purposes of clause 20.9:

- (a) each Director, other than a Director not entitled to vote on the resolution, may sign the document;
- (b) if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;
- (c) an electronic transmission purporting to be signed by a Director is treated as being in writing signed by such person; and
- (d) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together treated as constituting one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

20.11 Deemed minute

The document or documents referred to in the two preceding clauses are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

20.12 Validity of acts of Directors

All acts done in respect of any meeting of:

- (a) the Board; or
- (b) a Committee; or
- (c) other persons or by any person acting as a Director; or
- (d) any person purporting to act as an attorney under power of the Association,

are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such Director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director or attorney and was entitled to vote.

21. Director's contracts with the Association

21.1 Director's contracts and conflicts of interest

In relation to Director's contracts and conflicts of interest, but subject at all times to clause 4:

- (a) despite any rule of law or equity to the contrary, no Director is disqualified by that office from contracting with the Association;
- (b) no Director may be an employee of the Association;
- (c) any such contract, or any contract entered into by or on behalf of the Association in which any Director is in any way interested, is not avoided;

- (d) any Director so contracting or being so interested is not liable to account to the Association for any profit realised by any such contract by reason only of such Director holding that office or of the fiduciary relationship thereby established;
- (e) the nature of the Director's interests must be disclosed by that Director at the meeting of the Board at which the contract is decided on if that interest then exists and has not previously been disclosed. In any other case, the nature of the interests must be disclosed at the first meeting of the Board after the interests arise; and
- (f) a Director may not vote in that capacity in respect of any contract or arrangements in which the Director is interested if prohibited by the Act from doing so. However, such Director may, despite that interest, participate in the execution of any instrument by or on behalf of the Association, whether through signing it or otherwise.

21.2 Requirement to leave the meeting

Despite anything in clause 21.1, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting or vote on the matter unless permitted to do so under section 195 of the Act.

21.3 Notice of interest

A Director who has a material personal interest in a matter relating to the affairs of the Association must give the other Directors notice of that interest as the Act requires.

21.4 Office in another corporation

- (a) A Director may be, or become, a director or other officer of, or otherwise interested in, any corporation promoted by the Association or in which the Association may be interested, or which holds any Membership in the Association.
- (b) No such Director is accountable to the Association for any remuneration or other benefits received by him or her as a director or officer of, or from his or her interest in, such corporation.
- (c) The Board may exercise the voting power conferred by the shares in a corporation owned by the Association, or exercisable by the Board as a director of such corporation in such manner in all respects as it thinks fit. This includes the exercise of that voting power in favour of any resolution appointing any Director as a director or other officers of such corporation. Any Director may vote in favour of the exercise of such voting power in that manner despite the fact that he or she may be, or be about to be, appointed a director or other officer of such corporation and as such is, or may become, interested in the exercise of such voting power in that manner.

21.5 Director of wholly owned subsidiary

If a Director is or becomes a director of a wholly owned subsidiary of the Association, and the constitution of that subsidiary expressly authorises the Director to act in the best interests of the Association, that Director is taken to be acting in the best interests of the wholly owned subsidiary when he or she acts in good faith in the best interests of the Association and that subsidiary is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

22. Powers and duties of the Board

22.1 Powers generally

Subject to the Act and to any other provisions of this Constitution, the management and control of the Association and of the business and affairs of the Association is vested in the Board, which may exercise all such powers of the Association and do all such acts or things not expressly required by this Constitution or by the Act to be exercised or done by a general meeting. No rule made or resolution passed by a general meeting invalidates any prior act of the Board which would have been valid if that rule or resolution had not been made or passed.

22.2 Borrowing

The Board has the power to raise or borrow any sum of money and to secure the payment or repayment of such money and any other obligation or liability of the Association in such manner and on such terms as it thinks fit. This includes:

- (a) upon the security of any mortgage; or
- (b) by the issue of debentures or debenture stock of the Association charged upon all or any of the property of the Association (both present and future) including its goodwill and undertaking for the time being; or
- (c) upon bills of exchange, promissory notes or other obligations or otherwise.

22.3 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Association may be signed, drawn, accepted, endorsed or otherwise executed as the case may be, in such manner as the Directors at any time determine.

22.4 Appointment of attorney

The Board may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Association for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution) and for such period and subject to such conditions as it may think fit. Any such powers of attorney may:

- (a) contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit; and
- (b) authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

22.5 Delegation

The Board may at any time confer upon any Director, or such other person as it may select, such of the powers exercisable under the Constitution by the Board for such time as it may think fit and to be exercised for such objects and purposes and upon such terms and with such restrictions as it thinks expedient. It confers such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Board in that respect. The Board may at any time revoke, withdraw, alter or vary all or any of such powers.

22.6 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which, but for such omission, would have been valid.

23. Committees and Advisory Forums

23.1 Committees and Advisory Forums

The Board may:

- (a) delegate any of its powers to committees which may consist of one or more persons who may be any Director but need not be any Director, as it thinks fit; and
- (b) establish advisory forums or other bodies not having any delegated powers of the Directors consisting of such person or persons as it thinks fit.

23.2 Committee and Advisory Forum powers

Any Committee or Advisory Forum so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any directions or regulations that may at any time be imposed by the Board.

23.3 Committee meetings

The meetings and proceedings of any Committee, consisting of two or more persons, are governed by the provisions in this Constitution for regulating the meetings and proceedings of the Board so far as those provisions are applicable and not affected by any resolution or regulation made by the Board under clause 23.2.

23.4 Committee Members as officers

Each person appointed to a Committee, if not otherwise an officer of the Association, is, when exercising the powers so delegated or functions entrusted, an officer of the Association.

24. Minutes

If any minutes of a general meeting or of a Board meeting are signed by any person purporting to be either the chair of such meeting, or the chair of the next succeeding meeting, those minutes must be received in evidence without any further proof that the matters and things recorded by or appearing in such minutes actually took place or happened at a meeting duly called and held.

25. Seal

25.1 Manner of execution

Without limiting the ways in which the Association can execute documents under the Act, the Association may execute a document if the document is signed by:

- (a) two Directors,

- (b) a Director and the Secretary, or
- (c) any other person or persons authorised by the Board for that purpose.

25.2 Use of common seal

The Seal must not be affixed to any document unless it is done by the authority of the Board or of a Committee .

25.3 Mode of execution by common seal

Every document to which the Seal is affixed must be signed, to attest the affixing of the Seal, by two persons. One must be a Director. The other must be another Director or the Secretary of the Association. No person may sign in more than one capacity.

26. Budget

26.1 Budget

- (a) The Board must review and adopt a Budget for each Financial Year under this clause.
- (b) The Chief Executive Officer must submit to the Board a draft Budget at least one month before the commencement of each Financial Year.
- (c) The Board must review and seek to approve the Budget, with or without amendment, by majority consent before the commencement of the Financial Year.
- (d) The Budget from the previous Financial Year continues to apply until the Board adopts a new Budget, in the event that the Board fails to adopt a Budget before the commencement of any Financial Year.

26.2 Distribution of funds

The Board will be responsible for the allocation and distribution of the funds of the Association as provided in the Budget.

27. Accounts

27.1 Accounts to be kept

The Association must keep proper books of account (which may include computer records) of the Association at its principal office and entries made of all such matters, transactions and things which are usually entered in books of accounts kept by entities engaged in concerns of a similar nature.

27.2 Audit

The Association must arrange for the accounts to be audited in accordance with the Act.

28. Notices

28.1 Service of notices

Where this Constitution, the Act or other legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this clause referred to as “**served**”), the document may be served on the person:

- (a) by delivering it to the person personally;
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to:
 - (i) the address of the place of residence; or
 - (ii) the business of the person last known to the person serving the document; or
 - (iii) in the case of a Member, to the address of the Member entered in the Register, or
- (c) subject to the Act, by publication in a newspaper circulating generally throughout Australia.

28.2 Date of deemed service

A document served under clause 28.1 is treated as having been duly served, regardless of whether it is actually received:

- (a) where clause 28.1(b) applies - on the business day following the day when dispatch occurred; and
- (b) where clause 28.1(c) applies - on the day the newspaper is first published.

28.3 Counting of days

Subject to the Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

28.4 Service on Association or its officers

Every document required to be served upon the Association or upon any officer of the Association may be served by leaving it at the Registered Office.

28.5 Signature

The signature to any document to be given by the Association may be written, printed or stamped.

29. Indemnity

29.1 Indemnity for Officers and Other Persons

Except to the extent that the Act precludes it, each officer of the Association, each officer of a related body corporate of the Association, and each member of any Tribunal established by the Board from time to time must be indemnified by the Association against all liabilities, losses, costs, charges, and expenses (including without limitation, legal costs and expenses incurred in defending any proceedings (whether criminal, civil, administrative, or judicial)) incurred by that person in that capacity.

29.2 Insurance premiums

The Association may, at any time, pay premiums in respect of a contract insuring a person (whether with others or not) who is an officer of the Association, and each member of any Tribunal established by the Board from time to time against a liability incurred by that person in that capacity. The liability insured against may not include that which the Act prohibits.

30. Members to comply with the Act

30.1 Compliance with the Act

The Board may at any time resolve to adopt policies or promulgate policies, codes, or rules relating to:

- (a) training and supervision of Members in relation to provision of financial product advice;
- (b) the conduct of Members;
- (c) dealing with customers;
- (d) the disclosure obligations of individual Members to the Association and ASIC;
- (e) information the Association will disclose to ASIC;
- (f) ethics;
- (g) standards; and
- (h) regulatory codes,

as the Board thinks fit.

30.2 Each Member is bound to comply with such policies, codes or rules as the Board may have adopted, promulgated or made as the case may be as referred to in clause 30.1.

31. Assistance with inquiries

31.1 Every member who is the subject of any notice to attend a hearing or respond to questions issued by a Qualifying EDR Scheme or pursuant to the Disciplinary Rules, must respond or attend (as the case may be) unless there is a reasonable excuse for failing so to do.

- 31.2 Every Member that is a corporation that has received a notice referred to in clause 31.1, must nominate a director, secretary or other officer of that Member to attend in accordance with such notice where issued to that corporate Member.
- 31.3 Any Member who fails to attend a hearing without reasonable excuse may be required to pay the reasonable costs incurred by the Association of convening that hearing and may also be required to appear before the Tribunal in relation thereto.

32. Constitution and Replaceable Rules

32.1 Effect of Constitution

This Constitution and any policy, code or rule promulgated by the Board have effect as a contract between:

- (a) the Association and each Member; and
- (b) between the Association and each Director and officer; and
- (c) a Member and each other Member;

under which each such person agrees to observe and perform the obligations so imposed.

32.2 Replaceable rules

The operation of each of the sub-sections of the Act which are defined as 'replaceable rules' apply to the Association and form part of its Constitution except to the extent that they are displaced, inconsistent with or modified by this Constitution.

32.3 Alterations to Constitution

- (a) The Association may modify or repeal this Constitution, or a provision of this Constitution, by Special Resolution.
- (b) The Association must lodge with ASIC a copy of a Special Resolution adopting, modifying or repealing its constitution within 14 calendar days after it is passed. The Association must also lodge with ASIC within that period a copy of any modification to the Constitution or a copy of a Constitution that is adopted.
- (c) The alteration takes effect in accordance with section 137 of the Act.

33. Publication and reporting

- 33.1 If a Member has been suspended or expelled by the Tribunal under the Disciplinary Rules, the Association must give written notice to ASIC advising ASIC of the suspension or expulsion within three business days after such suspension or expulsion.
- 33.2 The Association may as it sees fit publish or make available to any one or more Member, or any other person, or the public generally, the content of, or an extract from or précis of any determination by the Tribunal and the register maintained for the purposes of the Disciplinary Rules (including details of any expulsion, cancellation or suspension of Membership) as permitted by the Disciplinary Rules.

- 33.3 Each Member hereby consents to the publication of information, documents and other material by the Association as contemplated by this Constitution and expressly waives and forever releases any rights such Member may otherwise have to bring action with respect to such publication whether by suit in defamation or other cause of action whatsoever.
- 33.4 Before the Association reports any matter relating to proceedings under the Disciplinary Rules in relation to a Member the Association must give five days notice, or such shorter notice as the Board regards as still affording procedural fairness to the Member concerned of the intention to publish material and provide to the Member within that period an opportunity to make representations as to why the material should not be published in the form and manner proposed, but the Association is not bound by any representations made by the Member and the Association may proceed to report notwithstanding the representations or the making of them. This clause does not apply to reports to ASIC under clause 33.1.
- 33.5 For the purposes of clause 33.3, every Member that is a corporation must at the time of applying for Membership and at all times thereafter, obtain a written waiver of each person who is or becomes a director, secretary or officer of that Member to the same effect as clause 33.3. The failure of a Member to obtain a written waiver will not prejudice or otherwise affect any provision of this Constitution or any action taken under this, or with the authority of, this Constitution so far as it applies to the Member that is a corporation.

34. Definitions and interpretation

34.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

Act means the *Corporations Act* 2001 (Cth) as it applies to the Association.

Additional Director means a person appointed as a Director by the Board in accordance with clause 17;

Advisory Forum means an advisory forum or other body not having any delegated powers of the Directors formed under clause 23.1(b).

Affiliated Association has the meaning given in clause 6.6;

Annual Subscription means the amount determined by the Board from time to time;

Application Fee means the amount (if any) determined by the Board from time to time which is payable by a Member upon admission to Membership;

ASIC means the Australian Securities and Investments Commission;

Association means the Mortgage & Finance Association of Australia ACN 006 085 552;

Board means the Board of Directors of the Association from time to time;

Budget means the budget adopted by the Board in accordance with clause 26;

Broking Business means a business that employs individuals who write loans or obtains the services of individuals who write loans as contractors (either directly or through an interposed

entity), but does not manage loans or provide aggregation services for loan writers (either as part of, or incidentally to, that business);

Chair means the person elected from time to time to the office of Chair (or who becomes the Chair) in accordance with this Constitution;

Chief Executive Officer means the person appointed as Chief Executive Officer pursuant to clause 19;

Committee means a committee of the Board formed under clause 23.1(a).

Constitution means this Constitution;

Deputy Chair means the person elected from time to time to the office of Deputy Chair in accordance with this Constitution;

Director means a person appointed or elected from time to time to the office of Director of the Association in accordance with this Constitution;

Disciplinary Rules means the rules relating to complaints against Members promulgated by the Board from time to time in accordance with clause 13;

Eligible Broker means:

- (a) a Full Member who is an individual operating as a loan writer; or
- (b) the Nominated Representative of a Full Member which carries on a Broking Business;

Financial Year means the year beginning on 1 July and ending on 30 June of the subsequent year;

Full Member means a person whose name is entered in the Register as a Full Member;

Honorary Member means a person entered in the Register as an Honorary Member;

Joint Membership means two or more separate legal entities applying to hold the same Membership;

Life Member means a person whose name is entered in the Register as a Life Member;

Member means a person whose name is entered in the Register as a Life Member, Honorary Member, Full Member or Student Member or such other category of Member established under this Constitution;

Membership means membership of the Association;

Membership Secretary means any person appointed to perform the duties of Membership Secretary of the Association;

MFAA Code of Practice means any code of practice promulgated by the Board from time to time in accordance with clause 13;

Misconduct means misconduct as defined from time to time in the MFAA Code of Practice;

Nominated Representative means a natural person appointed by a Full Member which is a firm or corporation, to be that Member's representative at general meetings and proceedings of the Association (including for the election of Directors) in accordance with clause 11 and whose name is entered in the Register;

Qualifying EDR Scheme means an external dispute resolution scheme approved as such by ASIC for the purposes of the *National Consumer Credit Protection Act 2009* (Cth);

Qualifying EDR Scheme Rules means the rules of a Qualifying EDR Scheme in force from time to time;

Register means the register of Members;

Registered Office means the registered office for the time being of the Association;

Seal means the common seal of the Association and includes any official seal of the Association;

Secretary means any person appointed to perform the duties of secretary of the Association and includes an assistant secretary or any person appointed to act as the secretary or assistant secretary temporarily;

Special Resolution has the same meaning as in section 9 of the Act;

Student Member means a person whose name is entered in the Register as a Student Member;

Transitional Chair means the Director holding office as Chair on 26 July 2018;

Tribunal means the MFAA Tribunal established in accordance with clause 13; and

Voting Member means a Full Member, a Nominated Representative of a Full Member or a Life Member for the time being and:

- (a) who has not ceased to be a Member under this Constitution; or
- (b) who is not the subject of a suspension of Membership under this Constitution or pursuant to the Disciplinary Rules.

34.2 Interpretation

In the construction of this Constitution:

- (a) headings are disregarded;
- (b) a reference to 'person' includes partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (c) singular includes plural and vice versa and words importing any gender include all other genders;
- (d) except for the definitions in the preceding clause, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act; and

- (e) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

Constitution

Mortgage & Finance Association of Australia
ACN 006 085 552

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