

Disciplinary Rules

16 November 2023



SECTION 1. PREAMBLE

These are the Mortgage & Finance Association of Australia (**MFAA**) Disciplinary Rules (**Rules**) established in accordance with clause 13.1 of the MFAA Constitution.

These Rules are an industry-based initiative which demonstrate and support the high standards, including ethical standards, under which MFAA Members agree to operate. By joining the MFAA, Members agree to be bound by these Rules.

These Rules describe the process that the MFAA takes with respect to:

- matters concerning the conduct of Members; and
- appeals against cancellation of Membership or refused applications for Membership or refused applications for renewal of Membership.

Capitalised words are defined in Section 5.1 of this document.

SECTION 2. MATTER INVESTIGATION PROCESS

2.1 Investigation of Matters

2.1.1 Appointment of Investigation Officer

The Board may from time to time appoint one or more persons to the position of Investigation Officer as it sees fit and may from time to time suspend or terminate any such appointment. Any person so appointed will be, to the satisfaction of the Board, appropriately qualified and experienced and must not be a current Member. The powers of an Investigation Officer may be exercised by each person so appointed.

2.1.2 The role of the Investigation Officer is to investigate Matters and to provide assistance to the Tribunal on request.

2.1.3 A Matter received or identified by the MFAA may be referred to the Investigation Officer for assessment and action deemed appropriate by the Investigation Officer.

2.1.4 Upon receipt of a Matter, the Investigation Officer will determine whether an investigation of the Matter is warranted.

2.1.5 Despite rule 2.1.4, the Investigation Officer may elect to terminate any further action in relation to a Matter:

- (a) if the Investigation Officer is of the view, following consultation with the Chair of the Tribunal, that the Matter is more appropriately dealt with by a court or other person or procedure;
- (b) if the substance of a Matter has been previously considered by the Investigation Officer or the Tribunal, unless the Investigation Officer is of the view that relevant new factors exist;

- (c) if the Investigation Officer is of the view following consultation with the Chair of the Tribunal, that the Matter is frivolous, vexatious, or has been raised for an improper purpose;
- (d) if the substance of the Matter is substantially or wholly a Contractual Dispute.

2.1.6 If a Matter relates to the conduct of a Member, there is no obligation on anybody to give the Member to which the Matter relates or anybody else information about the Matter or the name of any person that provided information regarding the Matter. However, if the Investigation Officer decides that the Matter involves action that may affect a Member, that Member must be provided with sufficient information about the Matter to enable the Member to address the Matter. The Member may be informed of the name of a person who provided information about a Matter but only with the consent of that person.

2.1.7 The MFAA, the Investigation Officer, or the Tribunal may initiate a Matter for investigation by the Investigation Officer under these Rules.

2.2 Powers of the Investigation Officer

2.2.1 The Investigation Officer may conduct an investigation of a Matter in any manner the Investigation Officer considers appropriate.

2.2.2 The Investigation Officer may inspect the MFAA's Membership and other records for the purpose of undertaking the duties of the Investigation Officer.

2.2.3 The Investigation Officer may require a Member to produce to the Investigation Officer documents (including records kept in electronic form) and/or information within the possession, custody or control of the Member, by way of notice in writing to the Member specifying particular information or documents or categories of documents, provided that the information or documents or categories so required to be produced must, in the Investigation Officer's reasonable opinion, be potentially relevant to the subject matter of a current investigation being conducted by the Investigation Officer.

2.2.4 A Member who receives a notice issued under rule 2.2.3 must produce the requested documents and/or information to the Investigation Officer within 15 Business Days of the date of the notice, or such other time as is agreed in writing with the Investigation Officer.

2.2.5 In exceptional circumstances, the time period specified in rule 2.2.4 may be reduced, providing the relevant time period is advised to the Member in writing in the notice issued under rule 2.2.3.

2.2.6 If a Member fails to satisfy requirements under rules 2.2.4 or 2.2.5, without reasonable excuse, the Investigation Officer may finalise an investigation based on the evidence available to the Investigation Officer. An extension of time may be granted by the Investigation Officer.

2.3 Conclusion of Investigation

- 2.3.1 At the conclusion of an investigation, the Investigation Officer must decide whether the Matter should be the subject of any further action.
- 2.3.2 If the Investigation Officer determines that a Member may have engaged in Misconduct, the Investigation Officer must prepare a Report of Possible Misconduct setting out information about any potential breach of the MFAA Constitution, the MFAA Code of Practice and/or these Rules.
- 2.3.3 The Investigation Officer must include, as part of the Report of Possible Misconduct, copies of:
- (a) all relevant correspondence and evidence that supports the allegation; and
 - (b) all correspondence and evidence received from the Member and/or any legal or other representative of the Member.
- 2.3.4 The Investigation Officer must provide a copy of the Report of Possible Misconduct to:
- (a) the Member who is the subject of the Report of Possible Misconduct; and
 - (b) the Chair of the Tribunal
- within six Business Days of the finalisation of the Report of Possible Misconduct.
- 2.3.5 If the Investigation Officer issues a Report of Possible Misconduct, the Investigation Officer may at any time:
- (a) prepare and provide an amended Report of Possible Misconduct; or
 - (b) prepare and provide a further Report of Possible Misconduct; or
 - (c) withdraw a Report of Possible Misconduct, with approval of the Chair of the Tribunal.
- 2.3.6 In considering a Matter, the Tribunal may have regard not only to any information contained in a Report of Possible Misconduct, but also to any other information that it receives concerning the Matter.
- 2.3.7 If the Member involved in a Matter is a representative (as defined in the *National Consumer Credit Protection Act 2009* (Cth) of an Australian Credit Licence holder, the Tribunal may inform the licence holder about the conduct and the content of the Matter including the name of the Member. A Member's licensee has automatic standing to make submissions to the Tribunal on any Matter concerning its representatives.
- 2.3.8 If the Investigation Officer considers that a Matter may not comprise Misconduct, but the Investigation Officer considers that there are compliance issues that might properly be considered by the Tribunal for relevant orders, the Investigation Officer may refer the Matter to the Tribunal.

2.4 Interim Action to Suspend

- 2.4.1 If, at any time, the Investigation Officer suspects on reasonable grounds that a Member has committed, or has been directly or indirectly involved in the commission of, any Misconduct, the Investigation Officer may, by notice in writing setting out the reasons, refer the Matter to the Chair or Deputy Chair of the Tribunal. The Investigation Officer may recommend that the Tribunal issue an Interim Suspension Order in respect of the Member.
- 2.4.2 Notwithstanding any other provision of these Rules, no Interim Suspension Order of a Member shall take effect unless and until:
- (a) the Member concerned has been given not less than four Business Days to make representations and to provide information to the Tribunal in relation to the Interim Suspension Order. The Tribunal must consider, but is not bound by, any representations made by the Member; and
 - (b) the Tribunal has considered the representations made and information provided by the Member; and
 - (c) a member of the Tribunal that reviews the Matter, other than the Chair (or Deputy Chair) that made the Interim Suspension Order, confirms the Interim Suspension Order in writing.
- 2.4.3 Following consideration of representations and information submitted, the Chair or Deputy Chair of the Tribunal may make an Interim Suspension Order suspending the Member from Membership.
- 2.4.4 Such an Interim Suspension Order takes effect upon being made. The MFAA must ensure that the affected Member is promptly informed of the Interim Suspension Order.
- 2.4.5 An Interim Suspension Order made by the Chair or Deputy Chair pursuant to Rule 2.4.3 will remain in effect until revoked by the Tribunal.
- 2.4.6 If a Tribunal subsequently forms the view that there are no reasonable grounds to suspect that the Member has engaged in the Misconduct the subject of the notice issued under Rule 2.4.3, the Tribunal may, by notice in writing to the Member, revoke the Interim Suspension Order and that revocation will have immediate effect.
- 2.4.7 A Member who is the subject of an Interim Suspension Order made pursuant to Rule 2.4.3 may, in writing to the Tribunal Secretary, request that the subject matter of the order be referred to a Tribunal for consideration.
- 2.4.8 If the Tribunal Secretary has received a request from a Member pursuant to Rule 2.4.7, the Secretary must within six Business Days, notify the Chair or the Deputy Chair (whichever person did not make the order under Rule 2.4.3), and the Tribunal Secretary must convene a Tribunal as soon as practicable to consider the continuation or lifting of the Interim Suspension Order.

- 2.4.9 If the Matter has not been referred to the Tribunal under clause 2.4.8, the person who made the Interim Suspension Order may by notice in writing to the Member revoke the Interim Suspension Order and that revocation will have immediate effect.
- 2.4.10 If the Matter has not been referred to the Tribunal under clause 2.4.8 within one month from the date on which the Interim Suspension Order was made, the person who made the Interim Suspension Order may by notice in writing to the Member make further orders in relation to the Matter, including extending or varying the Interim Suspension Order.

SECTION 3. MFAA TRIBUNAL

3.1 Composition of the Tribunal

- 3.1.1 A Tribunal will be established for the purposes of carrying out the functions of the Tribunal pursuant to these Rules.

3.1.2 The Board will appoint a Chair, who is a legal practitioner of at least five years' standing who holds the right to operate as a legal practitioner within a State or Territory of Australia. The Chair will be appointed on such terms and conditions as are determined by the Board. The Chair may not be a current Member or employee of the MFAA nor an employee of a current Member of the MFAA.

- 3.1.3 The Board may appoint a Deputy Chair in accordance with the criteria set out in rule 3.1.2. The Board may appoint more than one Deputy Chair at its discretion.

- 3.1.4 One or more Tribunal Panels may be established. The Tribunal Secretary will maintain a list of members of each Tribunal Panel. The Tribunal Panel will consist of members approved by the Board, each of whom, in the view of the Board, is a person of good character, good standing and of significant experience in the financial services industry.

- 3.1.5 A Tribunal will comprise either:

- (a) the Chair or Deputy Chair (as decided by the Chair or Deputy Chair); and
- (b) two persons selected by the presiding Chair from the Tribunal Panel,

or

- (c) at the option of the Chair, both the Chair and the Deputy Chair and three Tribunal Panel members; or
- (d) if both the Chair and Deputy Chair are unable or unwilling to sit on a particular Tribunal, three persons from the Tribunal Panel, selected by the Board, one of whom will be designated by the Board as Chair for the purposes of that particular Tribunal.

- 3.1.6 A Tribunal Panel member will be precluded from being a member of a Tribunal if that Tribunal Panel member has a conflict or possible conflict, as determined by the Chair or Deputy Chair of the Tribunal.
- 3.1.7 A Tribunal Panel member who has a material personal interest in a matter that relates to the functions and powers of the Tribunal Panel must give notice of such interest to each other Tribunal Panel member.

3.2 Proceedings of the Tribunal - Reports of Possible Misconduct

- 3.2.1 The Tribunal Secretary may assist the presiding Chair to appoint the Tribunal to deal with a particular proceeding.
- 3.2.2 The Chair must convene the Tribunal as quickly as is practicable, which may be effected in person, by telephone, or electronically as the Chair considers appropriate.
- 3.2.3 In any Matter, the Tribunal will determine whether or not a hearing is convened at its sole discretion.
- 3.2.4 The Tribunal will determine the processes that will apply to Matters before it.
- 3.2.5 If the Tribunal has determined pursuant to rule 3.2.3 that a hearing will be convened in respect of a Matter, the Chair must appoint a date, time, and method of meeting (e.g., face-to-face, or electronically). Notice of these particulars must be provided to the Investigation Officer and the Member who is the subject of the Report of Possible Misconduct. The period of notice must not be less than 10 Business Days prior to the scheduled date of the hearing.
- 3.2.6 The Tribunal may adjourn, postpone, or reconvene a hearing at its sole discretion, provided that reasonable notice is given to the persons involved in the hearing.

3.3 Conduct of Tribunal Hearings

- 3.3.1 If the Tribunal decides to conduct a hearing in a Matter, the hearing must be held in private, except that:
- (a) the Member, if a natural person, has the right to attend; or
 - (b) the Member, if a corporate entity, has the right to designate up to two representatives to attend; and
 - (c) the Tribunal, at its sole discretion, may allow other representatives of the MFAA and the Member to attend and make submissions; and
 - (d) the Investigation Officer may attend at the invitation of the Tribunal.

- 3.3.2 A Member may be legally represented before the Tribunal provided that:
- (a) the presiding Chair is advised not less than two Business Days prior to the scheduled hearing date of the intention of the Member to have legal representation and the name and contact details of each such legal representative; and
 - (b) the Tribunal may, if it is satisfied that legal representation has acted or may continue to act to delay the hearing of the Matter, terminate the right of the Member to have legal representation, in which event any legal representative must depart the hearing and take no further part in it. In such event, the hearing will continue in the absence of that legal representation.
- 3.3.3 No party may be compelled to appear at a hearing of the Tribunal. Any party may provide written submissions and evidence to the Chair no later than three Business Days prior to the scheduled hearing date or at the hearing with the leave of the Tribunal.
- 3.3.4 The Tribunal may make such procedural arrangements as it thinks fit, including directions for the provision of written submissions and evidence and the taking of a transcript of the hearing.

3.4 General Rules Governing the Tribunal

- 3.4.1 The laws and rules of evidence do not apply to Matters dealt with by the Tribunal.
- 3.4.2 The Tribunal must act expeditiously in considering, hearing (when deemed appropriate) and determining all Matters before it.
- 3.4.3 The Tribunal must treat all parties with fairness and in accordance with the principles of natural justice.
- 3.4.4 The Tribunal may, as it sees fit, hold informal meetings relevant to a Matter before it meets with any party, including the Member who is the subject of the Matter, to assist it in making its decision. Such informal meetings do not constitute a hearing under these Rules.
- 3.4.5 All determinations and decisions of the Tribunal must be made by simple majority vote of the members of the Tribunal.
- 3.4.6 All correspondence between a party and the Tribunal may be dealt with on behalf of the Tribunal by the Chair or Deputy Chair.
- 3.4.7 If the Tribunal has made a determination pursuant to rules 3.5.1 or 3.5.2, the Chair must notify any Member that is the subject of the Matter of the determination within six Business Days of the determination being made.

- 3.4.8 If the Tribunal has made a determination pursuant to rules 3.5.1 or 3.5.2, the Chair must notify the Tribunal Secretary and the Membership Secretary of the determination and any sanction as soon as practicable.
- 3.4.9 The Tribunal is required to issue written reasons for any determination made by it. Any such written reasons must be issued by the Tribunal to any Member who is the subject of the Matter and to the Tribunal Secretary within 28 Business Days of the date on which the determination is made.
- 3.4.10 The Tribunal may proceed to determine any Matter before it, notwithstanding the failure by the Member who is the subject of the Matter to make submissions or to provide documents or information or to attend at any hearing.
- 3.4.11 Any act or omission by an Officer, employee, contractor or representative of a Member is deemed, for the purposes of these Rules, to be an act or omission by the Member where the Member, in the view of the Tribunal, has failed to implement and maintain appropriate management controls, authorisations and protections within the Member's business.
- 3.4.12 The MFAA, the Investigation Officer and the Tribunal are not liable for any action or omission or any other conduct in connection with acting in those capacities. Any information released by any of them and any other conduct is covered by qualified privilege and creates no liability on their part or on any other person.
- 3.4.13 Neither the MFAA, the Investigation Officer nor the Tribunal is obliged to provide information about how a Matter came to the attention of the MFAA, the Investigation Officer or the Tribunal.

3.5 Powers of the Tribunal - Sanctions

- 3.5.1 In relation to a Matter involving possible Misconduct, the Tribunal may make such a determination as the Tribunal considers appropriate including that:
- (a) Misconduct did not occur, with or without imposing sanctions or conditions;
 - (b) Misconduct did occur, with or without imposing sanctions or conditions.
- 3.5.2 Without limiting rule 3.5.1, if the Tribunal determines that a Member has engaged in Misconduct, the Tribunal may do any one or more of the following:
- (a) counsel the Member;
 - (b) censure the Member;

- (c) suspend the Member from Membership, for such period and on such terms and conditions as the Tribunal considers appropriate;
 - (d) require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct found;
 - (e) require the Member to pay a financial contribution to the MFAA to be used as the Tribunal recommends;
 - (f) require the Member to undertake such education or compliance program as the Tribunal considers appropriate, provided that the objective of such training is reduction of the likelihood of future acts of Misconduct by the Member;
 - (g) expel the Member from Membership ;
 - (h) cancel the Member's Membership ;
 - (i) make any other order that the Tribunal considers appropriate;
 - (j) adjourn the proceeding, subject to compliance with such conditions and sanctions as the Tribunal determines;
 - (k) make a suspended determination of Misconduct, under which the determination of Misconduct by the Tribunal against the Member is to be suspended for any period of time of up to two years as the Tribunal considers fit, to take effect from the date of the imposition of the suspended determination of Misconduct. The suspended determination of Misconduct will be of no effect after the expiration of any such period of suspension;
 - (l) admonish the Member without any finding of Misconduct;
 - (m) make an order requiring the Member to take such steps as the Tribunal may determine are appropriate to correct the effect of any relevant conduct.
- 3.5.3 The Tribunal may determine that a Member has not co-operated with the Tribunal process and may order that the Member pay some or all of the costs incurred by the MFAA in respect of the Matter.
- 3.5.4 Prior to taking any action under rules 3.5.1, 3.5.2, or 3.5.3, the Tribunal must provide such reasonable period of time as the Tribunal determines for the Member to make such representations and to provide such information to the Tribunal as the Member considers appropriate, in relation to the action proposed to be taken by the Tribunal.

3.6 Effect of Tribunal Determinations

- 3.6.1 Subject to rule 3.5.2(k), a determination, decision or order made by the Tribunal pursuant to these Rules has effect from the date on which the Tribunal determines that it will have effect. If the Tribunal does not specify such a date, the determination, decision or order will have effect immediately from the date on which it is made.
- 3.6.2 A determination, decision or order made by the Tribunal is final and binding on all parties to the proceeding. Neither the MFAA, nor any constituent body of the MFAA other than the Tribunal, has power to vary or overrule a determination, decision or order made by the Tribunal.
- 3.6.3 If the Tribunal is of the view that an error has occurred or that the Tribunal acted upon incorrect information that resulted in a determination or sanction, the Tribunal may, of its own motion, review and change its determination and any sanctions imposed.

3.7 Notification to Persons Affected by a Determination

- 3.7.1 If the Tribunal makes a determination that a Member be suspended or expelled from Membership or have their Membership cancelled, the Tribunal:
- (a) may make such ancillary determinations concerning Members who are employed by or contracted to the Member concerned as the Tribunal considers appropriate and any such ancillary order shall bind every such Member; and
 - (b) must notify each such Member of the ancillary determination within a reasonable time.

3.8 Publication of Tribunal Determinations

- 3.8.1 The Tribunal Secretary must maintain a register of all determinations made by the Tribunal pursuant to these Rules.
- 3.8.2 The MFAA may, as it deems appropriate, publish, or otherwise make available to Members or any other persons, including the general public, information about determinations. Such information is covered by qualified privilege and creates no liability for the MFAA, the Tribunal, or anybody else.
- 3.8.3 All Members and their representatives provide their express consent to the publication of material contemplated by these Rules and waive and release forever any rights they may otherwise hold to bring action with respect to such publication, whether by suit in defamation or other cause of action.

3.8.4 Prior to the MFAA reporting any Matter relating to proceedings under these Rules in relation to a Member, the MFAA must provide to the Member six Business Days' notice, or such shorter notice as the Board considers still affords procedural fairness to the Member, of the intention to publish material.

3.8.5 The MFAA may, as it considers appropriate, publish, or otherwise make available to Members, or other persons including the general public, a statistical report of Tribunal hearings and determinations or other statistical data as it considers appropriate.

3.9 Enforcement of Tribunal Orders

3.9.1 If the Board determines that a Member has failed to comply with the terms of the determination, such failure may be deemed to be in contempt of the Tribunal and the failure may be referred to the Tribunal for further orders.

3.9.2 In such cases, the Tribunal may make such further determination as it considers fit.

3.9.3 Any determination made by the Tribunal under rule 3.9.2 must be communicated to the Member who is the subject of the order, in writing, by the Chair or Deputy Chair no later than six Business Days from the date of the determination.

3.10 Keeping Complainants Informed

3.10.1 The Investigation Officer may keep any person who brought conduct considered in a Matter to the attention of the MFAA informed about the conduct of an investigation and proceedings under these Rules.

3.11 Legal Proceedings and Indemnities

3.11.1 A Member, including a Member whose Membership has been suspended, expelled, or cancelled, may not bring any legal action or proceeding against the MFAA, any member of the Tribunal or any employee or agent of the MFAA (including without limitation members of the Board or an Investigation Officer) with respect to the publication or provision of access to any person of information or documents relating to the Member and the conduct of a Tribunal, the Chair, the Deputy Chair, the Membership Secretary, the Tribunal Secretary, the Investigation Officer, or anybody else. This rule 3.11.1 may be pleaded as a complete bar to the commencement or continuation of any such proceedings in any jurisdiction.

3.11.2 The MFAA must indemnify each member of the Tribunal and each employee, contractor and agent of the MFAA against any claim, action or proceeding brought against that person by any other person arising out of or in connection with the conduct of an investigation by an Investigation Officer, a proceeding before the Tribunal or any determination made by an Investigation Officer or the Tribunal. This indemnity will extend to the conduct of the defence to any proceedings and the payment of any costs thereof.

SECTION 4. CANCELLATION OR REFUSAL OF MFAA MEMBERSHIP

4.1 Proceedings for Cancellation of Membership

4.1.1 The Membership Secretary may, in his or her absolute discretion, cancel the Membership of any Member who, in the Membership Secretary's view:

- (a) does not meet or no longer meets the requirements of Membership as set out in the MFAA Constitution; or
- (b) has made a material misrepresentation (whether by way of statement or omission) on a Membership application form or other document provided by the MFAA; or
- (c) does not have a relevant licence, authority, appointment or qualification as required by relevant legislation.

4.1.2 A notice of the decision of the Membership Secretary to cancel a Member's Membership of the MFAA must be sent to the Member by mail or email within six Business Days of the decision being made. The notice must include statements:

- (a) setting out the reason/s for the decision; and
- (b) that the cancellation of Membership will be effective 21 calendar days from the date of the notice unless the Member lodges an appropriate appeal in accordance with rule 4.2.1.

4.2 Right of a Member to Appeal Cancellation of Membership

4.2.1 A Member who is the subject of action taken under rule 4.1.1 may lodge with the MFAA an appeal against the decision of the Membership Secretary. Such appeal must be in writing and be received by the MFAA no later than 21 calendar days from the date of the notice issued under rule 4.1.2.

4.2.2 On receipt of an application by a member under rule 4.2.1, the Membership Secretary must refer the Matter to the Chair of the Tribunal within six Business Days. Such referral must be in writing and include a copy of the notice issued under rule 4.1.2 and a copy of the Member's application under rule 4.2.1.

4.3 Refused Applications for Membership

4.3.1 The Membership Secretary may, in his or her absolute discretion, refuse to approve an application for Membership of any Applicant who, in the Membership Secretary's view:

- (a) does not meet the requirements of Membership as set out in the MFAA Constitution or as prescribed by the Board from time to time; or
- (b) has made a material misrepresentation (whether by way of statement or omission) on a Membership application form or other document provided by the MFAA; or
- (c) does not have a relevant licence, authority, appointment or qualification as required by the relevant legislation.

4.3.2 A notice of the decision of the Membership Secretary to refuse an Applicant's Membership must be sent to the Applicant within six Business Days of the decision being made. The notice must include a statement setting out the reason/s for the decision.

4.4 Right of an Applicant to Appeal Refusal of Membership

4.4.1 An Applicant who is the subject of action taken under rule 4.3.1 may lodge with the MFAA an appeal against the decision of the Membership Secretary. Such an application must be in writing and received by the MFAA no later than three calendar months from the date of the notice issued under rule 4.3.2.

4.4.2 On receipt of an application by an Applicant under rule 4.4.1, the Membership Secretary must refer the Matter to the Chair of the Tribunal within six Business Days. Such referral must be in writing and include a copy of the notice issued under rule 4.3.2 and a copy of the Applicant's application under rule 4.4.1.

4.5 Proceedings in Relation to Appeals against Cancelled or Refused Membership

4.5.1 Upon receiving a notice of referral under rule 4.2.2 or rule 4.4.2, the Tribunal Secretary must, in consultation with the Tribunal Chair, appoint a Tribunal to deal with that particular proceeding.

4.5.2 The Tribunal must provide the Member or Applicant who is the subject of the Membership cancellation or refusal decision a reasonable opportunity to make written submissions to the Tribunal.

4.5.3 The Member or Applicant the subject of the Membership cancellation or refusal decision is not entitled to require that a hearing be held.

4.5.4 If, having considered the submissions received by it, the Tribunal is of the view that the Member or Applicant the subject of the Membership cancellation or refusal decision:

- (a) does not meet the requirements of Membership as set out in the MFAA Constitution;
- (b) has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided to the MFAA; or
- (c) does not have a relevant licence, authority, appointment, or qualification as required by the relevant legislation.

the Tribunal may instruct the Membership Secretary to cancel the Membership or refuse the Membership application, as the case may be.

4.5.5 If, having considered all submissions received by it, the Tribunal is of the view that the Member or Applicant the subject of the Membership cancellation or refusal decision:

- (a) does meet the requirements of Membership as set out in the MFAA Constitution;
- (b) has not made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided by the MFAA; or
- (c) does have a relevant licence, authority, appointment, or qualification as required by any legislation.

the Tribunal may instruct the Membership Secretary to rescind the cancellation or refusal of Membership notice or grant the Membership application, as the case may be.

4.5.6 If the Tribunal directs that a Member's Membership be maintained or that an Applicant be admitted to Membership, the Tribunal may place such relevant conditions on that Membership, as it considers appropriate.

4.5.7 If the Tribunal has made a determination pursuant to rule 4.5.4 or rule 4.5.5 or rule 4.5.6, the Membership Secretary must advise the Member or Applicant of the Tribunal's determination in writing within six Business Days of the date of the Tribunal's determination.

4.5.8 If a former Member applies to join the MFAA, such a Membership application will not be considered until proceedings in respect of past Misconduct Matters, if any, have been finalised.

4.5.9 If an Applicant who has previously been refused Membership of the MFAA lodges a new application for Membership, that Applicant must satisfy the Membership Secretary or the Tribunal that the matters relating to the previous refusal have been resolved.

SECTION 5. DEFINITIONS AND INTERPRETATION

5.1 Definitions

In these Rules, the following words and phrases have the meanings and references set out below:

Applicant	a person or business that has lodged an application with the MFAA to be accepted as a Member of the MFAA or to have Membership renewed
Board	the Board of the MFAA as defined in the MFAA Constitution
Business Day	any day not being a Saturday, Sunday or a New South Wales or Commonwealth public holiday on which banks are generally not open to conduct business in New South Wales
Chair	the chair appointed under rule 3.1.2 of these Rules in respect of a particular Matter
Contractual Dispute	<p>a dispute between Members including those relating to contractual relationships including without limitation:</p> <ul style="list-style-type: none"> (a) monetary issues (such as entitlement to remuneration or the sharing of commissions); and (b) employment and contracts for service matters; (c) appointment as a credit representative; (d) Membership of an aggregator; (e) termination or variations of relationships; and (f) the provision of or content of a reference.
Deputy Chair	a deputy chair appointed under rule 3.1.3 of these Rules in respect of a particular Matter;

Interim Suspension Order	a Tribunal order issued in accordance with rule 2.4 of these Rules
Investigation Officer	a person appointed pursuant to rule 2.1.1 of these Rules
Matter	consideration of the conduct of a Member (including a Member’s representatives) or an Applicant
Member	a person that is a member of the MFAA as defined in the MFAA Constitution
Membership	membership of the MFAA
Membership Secretary	the person appointed to that position by the MFAA from time to time;
MFAA Code of Practice	The Code of Practice adopted by the MFAA from time to time
MFAA Constitution	the constitution of the MFAA, as amended from time to time
Misconduct	Misconduct as defined in the MFAA Code of Practice
Officer	as defined in the <i>Corporations Act 2001</i> (Cth)
Report of Possible Misconduct	a written report provided by the Investigation Officer concerning possible Misconduct
Rules	these MFAA Disciplinary Rules as in force from time to time
Tribunal	the MFAA Tribunal established pursuant to the MFAA Constitution and rule 3.1 of these Rules
Tribunal Panel	means a panel of the Tribunal established pursuant to rule 3.1.4 of these Rules
Tribunal Secretary	the person appointed to that position from time to time by the MFAA

5.2 Interpretation

In the interpretation of the Rules:

- (a) any action taken under previous versions of these Rules (including appointments of persons, suspensions, and cancellations) continues in full force and effect. Amendments to these Rules from previous versions apply from the dates each version of these Rules is adopted (usually shown on the front page of the Rules);
- (b) clause and sub-clause headings are for reference purposes only;
- (c) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (d) the singular includes the plural and vice versa;
- (e) words denoting any gender include all genders;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word *includes* or *including* is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression *at any time* includes reference to past, present and future time and performing any action from time to time;
- (j) each obligation is a separate obligation and does not act to qualify any other obligation;
- (k) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force;
- (l) if the law or regulations impose a higher standard of conduct than specified in these Rules, the higher standard of conduct applies; and

- (m) where the Rules require a notice to be given by the MFAA, the notice is to be regarded as having been given by the MFAA and received by the recipient:
 - (i) if by delivery in person, when delivered;
 - (ii) if by post, seven Business Days from the date of postage; or
 - (iii) if electronically, upon completion of transmission unless the MFAA receives an automated notification that the email has not been received by the intended recipient;

but if the delivery or receipt is on a day which is not a Business Day, it is regarded as having been received on the following Business Day.



**MORTGAGE AND
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