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**Mr David Jones
General Manager
Adjudication
ACCC
PO Box 3131
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17 September 2019

Dear David,

**MFAA APPLICATION FOR REVOCATION AND SUBSTITUTION RE MFAA
DISCIPLINARY RULES -AA1000432-1**

I refer to our discussions of Thursday 12 September 2019 in relation to the above.

Late last year my client advised you that within a six-month period it was likely to update its Code of Practice and perhaps the Disciplinary Rules in response to the Hayne Report. As a result, the Commission granted my client an interim authorisation of its current Rules pending any changes.

As explained to you the other day it is now clear that the 6-month time frame was optimistic. There is much happening that is likely to impact on the MFAA Code of Practice and maybe the Disciplinary Rules namely, draft legislation on the best interest of consumers criteria, ASIC guidelines on responsible lending, the ASIC appeal in the Westpac litigation, the outcome of Combined Industry Forum (CIF) discussions with The Treasury on potential industry reforms and ASIC rules on enforcement processes and principles. There might be more.

It is the view of the MFAA that it is best to proceed to a final authorisation. There are too many unknowns. Ideally the ACCC could grant the MFAA, say, a two-year final. Should the various changes to law and guidelines be in effect before then the MFAA will approach the ACCC to encapsulate these into any authorisation.

As I indicated to you there have recently been some technical and fine-tuning changes to the MFAA Disciplinary Rules. I attach a final and a marked-up copy of the Rules. These changes do not change the overall framework of the MFAA Governance Regime.

I understand that this letter will be placed on the ACCC Public Register.

Yours truly,



Hank Spier



MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

ACN 006 085 552

DISCIPLINARY RULES

**Published 1 August 2019
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SECTION 1 - PREAMBLE

These are the Mortgage & Finance Association of Australia (MFAA) Disciplinary Rules (Rules) established under the terms of the MFAA Constitution.

These Rules, which are authorised by the Australian Competition and Consumer Commission (ACCC), act as an adjunct to statutory and regulatory requirements, including the *National Consumer Credit Protection Act 2009*, *National Consumer Credit Protection Regulations 2010*, the *ASIC Act 2001*, the *Privacy Act 1988*, the *Competition and Consumer Act 2010* and the Australian Consumer Law.

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

It is also to be noted that MFAA membership holds important commercial value, hence the obtaining and cessation of such membership is appropriately managed according to the principles of fairness and natural justice.

These Rules describe the process that the MFAA takes with respect to, but not limited to:

- Complaints about the conduct of Members of the MFAA;
- allegations of breaches by Members of the MFAA Constitution, Code of Practice, Disciplinary Rules or other published requirements of the Board;
- investigation of such Complaints, allegations and other matters by the Investigation Officer;
- the establishment of, and action taken by, the MFAA Tribunal; and
- appeals against cancellation of membership or refused applications for membership or refused applications for renewal of membership of the Association.

Capitalised words are defined in Section 5.1 of this document.

SECTION 2 - COMPLAINT AND ALLEGATION INVESTIGATION PROCESS

2.1. Investigation of Complaints including allegations of Misconduct

2.1.1. Appointment of Investigation Officers

The Board will appoint one or more persons to the position of Investigation Officer as it sees fit. Any entity so appointed will be, to the satisfaction of the Board, an appropriately qualified and experienced person or persons associated with that entity, who shall not be a Member of the Association. The powers of an Investigation Officer may be exercised by each entity or associated person so appointed.

2.1.2

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

2.1.3

A Complaint received by the Association from any source may be referred to the Investigation Officer for assessment and action deemed appropriate by the Investigation Officer.

2.1.4

Upon receipt of a Complaint, the Investigation Officer will determine whether an investigation of the matter is warranted. Subject to Rule 2.1.5, an investigation of the matter is warranted if it is the view of the Investigation Officer that the terms of the Complaint amount to a potential breach of the Constitution, the Code of Practice or Disciplinary Rules.

2.1.5

Despite Rule 2.1.4, the Investigation Officer must not carry out an investigation:

- a. where the Investigation Officer is of the view that the Constitution, the Code of Practice or Disciplinary Rules have not been breached;
- b. if the Investigation Officer is of the view, following consultation with the Chairman of the Tribunal, that the matter is more appropriately dealt with by a Court or other independent complaints, disciplinary, conciliation or arbitration body or procedure;
- c. if the subject matter of a Complaint comprises the subject of a Complaint previously lodged by the same Complainant, that has been previously considered by the Investigation Officer or the Tribunal, unless the Investigation Officer is of the view that relevant new evidence, not considered previously, is now available for assessment;
- d. if the Investigation Officer is of the view, following consultation with the Chairman of the Tribunal, that the matter is frivolous, or vexatious, or is being pursued by the Complainant in a frivolous or vexatious manner or for an improper purpose;
- e. if the substance of the Complaint:
 - i. is substantially a Contractual Dispute; or
 - ii. does not relate to the provision of Services to customers of Members.

2.1.6.

Where a Complainant refuses to consent in writing to the disclosure of their identity to the Member who is the subject of a Complaint, the Investigation Officer must not take any further action in relation to the Complaint if the disclosure of the Complainant's identity is necessary for the investigation to be adequately carried out. If the Investigation Officer will not take any further action in relation to the Complaint, he or she will advise the Complainant that no further action will be taken in relation to the matter and provide a statement of the reason/s for that decision.

2.1.7

The MFAA may elect, at its discretion, to refer the investigation process to an investigations service provider, approved by the Board, external to the Association. In such circumstances, the external investigator will assume the role of Investigation Officer under the Disciplinary Rules and be subject to all relevant provisions of the Disciplinary Rules.

2.1.8

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 use all lawful means to conduct an investigation of a Complaint in any manner the Investigation Officer considers appropriate, using commonly accepted investigative techniques and practices.

2.2.2

The Investigation Officer may inspect the Association's membership and other records for the purpose of undertaking the duties of 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. 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.
- b. In exceptional circumstances, the time period specified in Rule 2.2.4a may be reduced, providing the relevant time period is advised to the Member in writing in the notice issued under Rule 2.2.3.

2.2.5

Where a Member fails to satisfy requirements under Rule 2.2.4, 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 at their sole discretion.

2.3. Conclusion of Investigation

2.3.1

At the conclusion of an investigation, the Investigation Officer may:

- a. determine that any allegation/s made in the Complaint have not been supported by the available evidence, in which case the Investigation Officer will provide written responses to the Complainant and Member confirming this finding;
- b. determine that a Member may have engaged in Misconduct.

2.3.2

Where the Investigation Officer determines that a Member may have engaged in Misconduct, the Investigation Officer must prepare a Report of Alleged Misconduct. Such Report must include details of the allegations of any breach of the Constitution, the Code of Practice and/or these Rules.

2.3.3

The Investigation Officer must include, as part of the Report of Alleged 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 Alleged Misconduct to:

- a. the Member who is the subject of the Report of Alleged Misconduct; and
- b. the Chairman of the Tribunal

within five Business Days of the finalisation of the Report of Alleged Misconduct.

2.3.5

Where the Investigation Officer issues a Report of Alleged Misconduct, the Investigation Officer may:

- a. prepare and provide an amended Report of Alleged Misconduct; or
- b. prepare and provide a further Report of Alleged Misconduct; or
- c. withdraw a Report of Alleged Misconduct, with the leave of the Tribunal

as may be warranted in any matter, at any time.

2.3.6

Where the Tribunal is considering an allegation of Misconduct against a Member and it appears to the Tribunal, on the basis of the material before it, that the Member may have engaged in a

form of Misconduct that is not alleged, or that may be alleged in a different and more appropriate manner in order to reflect the nature of the conduct, the Tribunal may direct the Investigation Officer to prepare an additional or amended Report of Alleged Misconduct and serve it on the Member. The Tribunal may then proceed to deal with the matter in accordance with these Rules.

2.3.7

Where the complained of Member is a representative of an Australian Credit Licence holder that is not a credit provider, the Tribunal may inform the licence holder of any matter before the Tribunal involving that licensee. Where such notice is given, the licence holder has automatic standing to make submissions to the Tribunal on the matter. If the licence holder takes action against the representative before the Tribunal makes any determination, the Tribunal shall take such action into account in its decision.

2.3.8

Where the Investigation Officer is of the view that a matter it has investigated may not sufficiently support an allegation of misconduct but there are compliance issues that might properly be considered by the Tribunal for relevant orders, the Investigation Officer may refer such a 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 serious Misconduct, the Investigation Officer may, by notice in writing setting out the reasons, refer the matter to the Chairman or Deputy Chairman of the Tribunal with a copy of such notice in turn to be forwarded to the Member concerned by the Tribunal. The Investigation Officer may recommend that the Tribunal issue an Interim Suspension Order against the Member.

2.4.2

Notwithstanding any other provision of these Rules, no order for interim suspension of a Member shall take effect unless and until:

- a. the Member concerned has been given an opportunity, within the period of four Business Days prior to the date upon which a proposed Interim Suspension Order is to take effect, 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 fully considered all representations made and information provided by the Member; and
- c. a member of the Tribunal that reviews the matter, other than the Chairman (or Deputy Chairman) that makes the Interim Suspension Order, endorses the Order in writing.

2.4.3

Following consideration of representations and information submitted under Rule 2.4.2 and any other information or document provided by the Investigation Officer, the Chairman or Deputy Chairman of the Tribunal may make an Interim Suspension Order suspending the Member from membership of the Association.

2.4.4

Such Interim Suspension Order takes effect after the expiration of three Business Days from the making of such Order.

2.4.5

An Interim Suspension Order made by the Chairman or Deputy Chairman pursuant to Rule 2.4.3 will remain in effect until revoked by the Tribunal.

2.4.6

Where 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 Secretary to the Tribunal, require that the subject matter of the order be referred to a Tribunal for consideration. Such notice must be received by the Secretary to the Tribunal within ten (10) Business Days from the date of the Interim Suspension Order.

2.4.8

Further investigations may be conducted by the Investigation Officer where a Member has made a request under Rule 2.4.7.

2.4.9

Where the Secretary to the Tribunal has received a request from a Member pursuant to Rule 2.4.7, the Secretary must within five (5) Business Days, notify the Chairman or the Deputy Chairman who 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 of or lifting of the Interim Suspension Order.

2.4.10

Where the Chairman or Deputy Chairman has made an order for The interim suspension of a Member under Rule 2.4.3 and the person who made that order subsequently forms the opinion that he or she no longer has reasonable grounds to suspect that the Member has engaged in the Misconduct the subject of the notice, and it has not been referred to the Tribunal, that person may by notice in writing to the Member revoke the order for interim suspension and that revocation will have immediate effect.

2.4.11

Where the Chairman or Deputy Chairman has made an order for the interim suspension of a Member and the person who made that order forms the opinion that he or she continues to have reasonable grounds to suspect that the Member has engaged in the Misconduct the subject of the notice, and it has not been referred to the Tribunal, that person may by notice in writing to the Member make further orders to finalise the matter. Any further orders must be endorsed by the member of the Tribunal who endorsed the Interim Suspension Order or, if that person is unavailable, another member of the relevant Tribunal panel. Such further orders cannot be made within a period of 1 month from the date of the order for interim suspension

SECTION 3 - MFAA TRIBUNAL

3.1 Composition of the Tribunal

3.1.1

A Tribunal will be established for the purposes of:

- a. carrying out the functions of the Tribunal pursuant to these Rules;
- b. considering and determining any matters or allegations of Misconduct against any Member relating to any breach of the Constitution, the Code of Practice or the Disciplinary Rules by the Member;
- c. considering appeals in relation to cancelled membership or refused applications for membership or refused applications for renewal of membership of the Association;
- d. considering and determining matters referred to it under clause 2.3.7 and 2.3.8; and
- e. carrying out such other functions as are delegated to it by the Board.

3.1.2

The Tribunal cannot make a determination if the matter:

- a. is substantially a Contractual Dispute; or
- b. does not relate to the provision of Services to customers of Members.

3.1.3

The Tribunal will be referred to as the MFAA Tribunal.

3.1.4

The Board will appoint a Chairman, 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 Chairman will be appointed on such terms and conditions as are determined by the Board. The Chairman may not be a current Member or employee of the Association nor an employee of a current Member of the Association.

3.1.5

The Board may appoint a Deputy Chairman in accordance with the criteria expressed in Rule 3.1.4. The Board may appoint more than one Deputy Chairman at its discretion.

3.1.6

The Tribunal Secretary will maintain a list of members of the 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.

3.1.7

For the purposes of a matter referred to the Tribunal under Rule 3.1.1, a Tribunal will comprise:

- a. the Chairman or Deputy Chairman; and
- b. two persons selected by the presiding Chairman from the Tribunal Panel; or
- c. where the Chairman of the Tribunal determines, a Tribunal Panel consisting of both Chairman and Deputy Chairman and three Tribunal Panel members can be convened to consider a matter of importance; or
- d. where both the Chairman and Deputy Chairman are unable or unwilling to sit on a particular matter, three persons from the Tribunal Panel, selected by the Board, one of whom will be designated by the Board as Chairman for the purposes of that particular matter.

3.1.8

For the purposes of a particular matter, a Tribunal Panel member will be precluded from being a member of a Tribunal where the Tribunal Panel member has a conflict or possible conflict, as determined by the Chairman or Deputy Chairman of the Tribunal.

3.1.9

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 Alleged Misconduct

3.2.1

The Tribunal Secretary may assist the presiding Chairman to appoint the Tribunal to deal with a particular proceeding.

3.2.2

The Chairman must convene the Tribunal as quickly as is practicable, which may be effected in person, by telephone, email or audiovisual link as the Chairman 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 and provide written notice of these to any Member involved in a Tribunal matter upon request.

3.2.5

Where the Tribunal has determined pursuant to Rule 3.2.3 that a hearing will be convened in respect of a proceeding, the Chairman must appoint a date, time and place for the hearing. Notice of these particulars must be provided to the Investigation Officer and the Member who is the subject of the Report of Alleged 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 parties involved in the hearing.

3.3. Conduct of Tribunal Hearings

3.3.1

If the Tribunal decides to conduct a hearing in a particular 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 of up to two representatives to attend; and
- c. the Tribunal, at its sole discretion, may allow other representatives of the Association 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 Chairman 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. The Member may be represented with the leave of the Tribunal. Any party may provide written submissions and evidence to the Chairman 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.

3.3.5

The Tribunal may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it.

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, subject to reasonable delays caused by the member complained of or by the complainant.

3.4.3

The Tribunal must act without bias and treat all parties with fairness and in accordance with the principles of natural justice.

3.4.4

The Tribunal may conduct proceedings or meetings of the Tribunal in person or by other means to engage in conference and make decisions by email or by other electronic means. A hearing established by the Tribunal does not require Tribunal members to hear and speak with each other contemporaneously.

3.4.5

The Tribunal may, as it sees fit, hold informal meetings relevant to a matter before it 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.

3.4.6

All determinations and decisions of the Tribunal must be made by simple majority vote of the members of the Tribunal.

3.4.7

All correspondence between a party and the Tribunal may be dealt with on behalf of the Tribunal by the Chairman or Deputy Chairman.

3.4.8

Any document or correspondence with a Member, including without limitation a Report of Alleged Misconduct, may be served on the Member by personal service, by post or by email as contemplated by Rule 5.2e.

3.4.9

Where the Tribunal has made a determination pursuant to Rule 3.5.1 or Rule 3.5.2, the Chairman must notify the Member that is the subject of the matter of the determination, including any finding of Misconduct and any sanction as soon as this is practicable.

3.4.10

Where the Tribunal has made a determination pursuant to Rule 3.5.1 or Rule 3.5.2, the Chairman must notify of the determination and any sanction in writing to the Membership Secretary, as soon as this is practicable.

3.4.11

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 the Member who is the subject of the proceeding and to the Tribunal Secretary within 15 Business Days of the date on which the determination is made.

3.4.12

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 appear at a hearing within the period specified for the purpose by the Tribunal.

3.4.13

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.

3.5. Powers of the Tribunal - Sanctions

3.5.1

In relation to an investigation of alleged Misconduct, the Tribunal may:

- a. find the allegations not substantiated and dismiss the matter absolutely;
- b. dismiss the allegation/s subject to conditions;
- c. find that the Member engaged in conduct amounting to Misconduct but, due to exceptional circumstances, determine to not impose a sanction, to adjourn the matter on sanction to a future date to be fixed, or impose a sanction that is suspended

for any period of time that is determined at the discretion of the Tribunal;

- d. find that the Member has engaged in Misconduct, including acts of Misconduct not set out in the Report of Alleged Misconduct, and impose a sanction or sanctions;
- e. find that the Member would benefit from being ordered to undertake compliance and/or remediation processes including monitoring and training.

3.5.2

Subject to Rule 3.5.1 and Rule 3.5.3, if the Tribunal determines that a Member has engaged in Misconduct, the Tribunal may make a determination of Misconduct and may:

- a. dismiss the matter, subject to any conditions that the Tribunal may impose;
- b. counsel the Member;
- c. censure the Member;
- d. suspend the Member from membership of the Association, for such period and on such terms and conditions as the Tribunal considers appropriate;
- e. require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct found;
- f. require the Member to pay a financial contribution to the Association to be used as the Tribunal recommends or, in the absence of a recommendation, as the Association determines;
- g. require the Member to undertake such education or compliance program as the Tribunal considers appropriate, provided that the objective of such training is the reduction of likelihood of future acts of Misconduct by the Member;
- h. expel the Member from membership of the Association;
- i. cancel the Member's membership of the Association;
- j. make any other order that the Tribunal considers appropriate;
- k. adjourn the proceeding, subject to compliance with such conditions as to sanctions as the Tribunal may otherwise impose in accordance with this Rule.

3.5.3

Where the Tribunal has determined that a Member has engaged in Misconduct but, in the view of the Tribunal, there exists factors amounting to special circumstances, the Tribunal may decide to not make any determination of Misconduct against the Member and impose any one or more of the following penalties upon the Member:

- a. 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 up to two years as the Tribunal considers fit, 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.
- b. an admonishment of the Member without any finding of Misconduct by the Tribunal

against the Member;

- c. an order to require the Member to take such steps as the Tribunal may determine to correct the effect of any relevant conduct;
- d. an order to pay a financial contribution to the Association, to be used as the Tribunal recommends or, in the absence of a recommendation, as the Association determines;
- e. an order to require the Member to undertake such education or compliance program as the Tribunal considers appropriate, provided that the objective of such training is the reduction of likelihood of future acts of Misconduct by the Member.

3.5.4

The Tribunal may determine that a Member has not acted within the spirit of the Tribunal process and may determine to issue an appropriate sanction or sanctions and to seek to recover the costs incurred by the Association in respect of the matter from the Member as it sees fit, after taking into account whether the Member:

- a. has unreasonably failed to co-operate with the Tribunal and/or the Investigation Officer or has caused the Association to incur additional or avoidable costs by their behaviour; or
- b. has obstructed the progression of the matter; or
- c. has unreasonably failed to comply with requests for information in a timely manner, without reasonable excuse.

3.5.5

Prior to taking any action under Rule 3.5.2 or Rule 3.5.3 or Rule 3.5.4, 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

A determination, decision or order made by the Tribunal pursuant to the 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 Association, nor any constituent body of the Association other than the Tribunal, has power to vary or overrule a determination, decision or order made by the Tribunal.

3.6.3

Where the Tribunal is of the view that an error has occurred or that the Tribunal acted upon incorrect information that resulted in a sanction or sanctions, the Tribunal may, of its own motion, within three calendar months of a determination, decision or order, review its determination, decision or order and vary or overrule any decision relating to that sanction or sanctions made by the Tribunal.

3.6.4

A Member subject to action under Rule 3.6.3 must be advised of the intention to review a determination, decision or order and must be given reasonable opportunity to prepare and lodge a submission. A Member may request that the review be carried out by a Tribunal comprising individuals who did not initially consider the matter.

3.7. Notification to Persons Affected by a Determination

3.7.1

Where the Tribunal makes a determination, decision or order pursuant to these Rules and the effect of that determination, decision or order is to cause a Member to be suspended or expelled from membership of the Association or have their membership cancelled, the Tribunal:

- a. may make such ancillary orders 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, as soon as practicable, in such form and manner that the Tribunal deems appropriate, notify each such Member of the effect of the determination, decision or order and the terms of any ancillary order/s.

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 and make the register available for inspection by Members upon request. The register must, with respect to each determination, include:

- a. the name of the Member to whom the determination relates, and
- b. details of any findings of Misconduct by the Tribunal; and
- c. details of any orders made by the Tribunal, including any sanction/s; and
- d. a copy of the determination issued by the Tribunal.

3.8.2

The Association shall, as it deems appropriate, publish or otherwise make available to Members, any other persons or the general public, the content of, or an extract from, or précis of, any determinations by the Tribunal, other than determinations relating to refused applications for membership or refused applications for renewal of membership under Rule 4.5.4.

All Members, and their appointed Nominated Representatives from time to time, by this Rule, provide their express consent to the publication of material encompassed within this Rule 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.

3.8.3

For the purposes of clause 3.8.2, 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 is appointed as a director, secretary or Officer of that Member, to the same effect as clause 3.8.2. The failure of a Member to obtain a written waiver will not prejudice or otherwise affect any provision of the Disciplinary Rules so far as they apply to a Member that is a corporation.

3.8.4

Prior to the Association reporting any matter relating to proceedings under the Disciplinary Rules in relation to a Member, the Association must provide to the Member five business days' notice, or such shorter notice as the Board considers still affords procedural fairness to the Member, of the intention to publish material. Such notice must include an opportunity for the Member to, within the notice period, make representations as to why the material should not be published in the form and manner proposed. The Association is not bound by any representations made by the Member and the Association may proceed to report, notwithstanding any representations made or the making of them. This clause does not apply to reports made to ASIC in accordance with the Constitution.

3.8.5

The Association shall, as it considers appropriate, publish or otherwise make available to Members, or other persons or 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

Where the Board has determined that a Member, who is the subject of an order of the Tribunal, has failed to comply with the terms of the order within the time specified by the Tribunal or otherwise within a reasonable time in the view of the Board, such failure will be deemed to be in contempt of the Tribunal. In such cases, the matter will be referred to the Tribunal for further orders.

3.9.2

In such cases, the Tribunal may:

- a. expel the Member from membership of the Association;
- b. suspend the Member from membership of the Association, for such period and on such terms and conditions as the Tribunal considers appropriate;
- c. cancel the membership of the Association of the Member;
- d. order the Member to make a financial contribution to the Association of an amount determined by the Tribunal;

- e. order the Member to prepare and submit to the Tribunal a formal written apology; or
- f. a combination of any of the actions listed in Rule 3.9.2 a. to e.

3.9.3

Any order 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 Chairman or Deputy Chairman as appropriate, no later than five Business Days from the date of the order.

3.10. Keeping Complainants Informed

3.10.1

The Investigation Officer must keep a Complainant informed of the outcome of the matter relating to a Complaint lodged, provided always that the Investigation Officer must not provide to a Complainant any information in relation to the outcome of a Complaint where it is the view of the Investigation Officer that:

- a. to do so would expose the Investigation Officer, the Tribunal Secretary, the Association or any Officer of the Association or members of the Tribunal to potential liability for civil damages; or
- b. to do so could prejudice, impede or in any other manner adversely affect the proceedings of the Tribunal; or
- c. to do so could deny procedural fairness to the Member who is the subject of the Complaint.

3.11. Legal Proceedings and Indemnities

3.11.1

A Member, including a Member whose membership has been suspended or cancelled, may not bring any legal action or proceeding against the Association, any member of the Tribunal or any employee or agent of the Association (including, without limitation members of the Board or an Investigation Officer) with respect to the publication or provision of access to any person of material pursuant to Rule 3.8.1, Rule 3.8.2 or any other Rule in this document. This Rule may be pleaded as a complete bar to the commencement or continuation of any such proceedings in any jurisdiction.

3.11.2

The Association will indemnify each member of the Tribunal and each employee, contractor and agent of the Association 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, decision or order 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 ASSOCIATION 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 the Association of any Member who, in the Membership Secretary's view:

- a. does not meet or no longer meets the requirements of membership of the Association as set out in the 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 Association;
- c. does not have a relevant licence, authority, appointment or qualification as required by relevant legislation; or
- d. is not a Fit and Proper person, as set out in the Code of Practice.

4.1.2

A notice of the decision of the Membership Secretary to cancel membership of the Association of a Member must be sent to the Member by mail or email within five Business Days of the decision being made. The notice must include statements:

- a. setting out the reason/s for the decision and include copies of all relevant documentation and other material relied upon by the Membership Secretary in the making of 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 apply to the Association to lodge an appeal against the decision of the Membership Secretary. Such application must be in writing and be received by the Association 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 Chairman of the Tribunal within five 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 the Association of any Applicant who, in the Membership Secretary's view:

- a. does not meet the requirements of membership of the Association; 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 Association; or
- c. does not have a relevant licence, authority, appointment or qualification as required by the relevant legislation; or
- d. is not a Fit and Proper person, as set out in the Code of Practice.

4.3.2

A notice of the decision of the Membership Secretary to refuse membership of the Association of an Applicant must be sent to the Applicant by mail or email within five Business Days of the decision being made. The notice must include a statement setting out the reason/s for the decision and include copies of all relevant documentation and other material relied upon by the Membership Secretary in the making of 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 apply to the Association to lodge an appeal against the decision of the Membership Secretary. Such application must be in writing and be received by the Association 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 Chairman of the Tribunal within five 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 Chairman, appoint a Tribunal to deal with that particular proceeding.

4.5.2

The Tribunal must provide to 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 as to the reason/s why the membership should not be cancelled or should be accepted, as the case may be.

4.5.3

The Member or Applicant is not entitled to require that a hearing be held unless the Chairman or Deputy Chairman of that Tribunal is satisfied that special circumstances exist that justify the holding of a hearing.

4.5.4

If, having considered all submissions received by it, the Tribunal is of the view that the Member or Applicant:

- a. does not meet the requirements of membership of the Association; or
- b. has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided by the Association; or
- c. does not have a relevant licence, authority, appointment or qualification as required by the relevant legislation; or
- d. is not a Fit and Proper person, as set out in the Code of Practice;

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:

- a. does meet the requirements of membership of the Association; or
- b. has not made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided by the Association; or
- c. does have a relevant licence, authority, appointment or qualification as required by any legislation; or
- d. is a Fit and Proper person, as set out in the Code of Practice;

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

4.5.6

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

4.5.7

Where 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 five Business Days of the date of the Tribunal's determination.

4.5.8

Where a former Member of the Association applies to join the Association, such membership application will not be considered until proceedings in respect of any past Misconduct matters have been finalised.

4.5.9

Where an applicant who has been previously refused membership of the Association lodges a new application for membership, that Applicant must satisfy the Tribunal that the matter/s 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 Association to be accepted as a Member of the Association or have membership renewed;
Association	the Mortgage & Finance Association of Australia ACN 006 085 552;
Board	the Board of the Association as defined in the Constitution;
Business Day	any day not being a Saturday, Sunday or a day which is a public holiday or a Bank Holiday in the place in which the thing is to be or may be done under these Rules;
Chairman	the Chairman appointed under Rule 3.1.4 of the Tribunal as constituted in respect of a particular matter;
Complaint	a written expression of dissatisfaction with the words or actions of a Member, as submitted by a Complainant, or a written statement by any person that a Member may have engaged in Misconduct, or a written admission by a Member of their own Misconduct;
Complainant	a person or organisation lodging a Complaint against a Member;
Constitution	the Constitution of the Association, as amended from time to time;
Contractual Dispute	a dispute relating to business relationships including without limitation: <ul style="list-style-type: none"> i. monetary claims (such as entitlement to remuneration or the sharing of commissions); and ii. employment and contracts for service matters;
Corporation	as defined in the <i>Corporations Act 2001</i> (Cth);

Deputy Chairman	the Deputy Chairman appointed under Rule 3.1.5 of the Tribunal as constituted in respect of a particular matter;
Fit and Proper	as defined in the MFAA <i>Code of Practice</i> ;
Interim Suspension Order	a Tribunal order issued in accordance with Rule 2.4;-
Investigation Officer	a person appointed pursuant to Rule 2.1.1;
Member	a member of the Association as defined in the Constitution from time to time;
Membership Secretary	the person appointed to that position by the Association from time to time;
Misconduct	conduct as defined in the MFAA <i>Code of Practice</i> from time to time;
Officer	as defined in the <i>Corporations Act 2001</i> (Cth);
Report of Alleged of Misconduct:	a written report provided by the Investigation Officer to the Tribunal and the Member concerned under which an Allegation of Misconduct is made;
Rules	these Disciplinary Rules as amended from time to time;
Services	means the provision of credit services as defined in the <i>National Consumer Credit Protection Act 2009</i> (Cth) irrespective of whether the credit or proposed credit is regulated by that Act;
Suspension Order	an order of the Tribunal to suspend a Member from active membership of the Association;
Tribunal	the MFAA Tribunal established pursuant to the MFAA Constitution and Rule 3.1.1;
Tribunal Panel	as defined in Rule 3.1.6;
Tribunal Secretary	the person appointed to that position from time to time by the Association.

5.2. Interpretations

In the interpretation of the Rules:

- a. headings are disregarded;
- b. words importing persons include 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. all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force;
- e. where the Rules require a notice to be served on a Member, the notice is to be regarded as having been given by the Association and received by the Member:
 - i. if by delivery in person, when delivered to the Member;
 - ii. if by post, three Business Days from and including the date of postage to the Member's address entered in the Membership Register; or
 - iii. if by facsimile transmission, whether or not legibly received, when transmitted to the Member's fax number entered in the Membership Register and the Association's facsimile machine confirms receipt;
 - iv. if by electronic mail, when transmitted to the Member's email address entered in the Membership Register and the Member confirms receipt or receipt is deemed by virtue of legislation;

but if the delivery or receipt is on a day which is not a Business Day or is after 4:00pm (Member's time), it is regarded as having been received at 9:00am on the following Business Day;
- f. if there is an inconsistency between the provisions of these Rules, the MFAA *Code of Practice* and the MFAA Constitution, the provisions of the MFAA Constitution are to prevail.