

Form FC

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorization and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

**MORTGAGE AND FINANCE ASSOCIATION OF
AUSTRALIA....(MFAA).....**
.....
.....

- (b) Description of business carried on by applicant:
(Refer to direction 3)

**Peak national industry association for the mortgage and finance
industry,.....**
.....
.....

- (c) Address in Australia for service of documents on the applicant:

4 Waller Crescent, Campbell ACT 2612

.....
.....

2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

Authorisation A91396 in relation to the MFAA Disciplinary rules.

MFAA wishes to continue the authorisation, currently expires on 12 June 2019.

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.....
.....

(b) Provide details of the basis upon which revocation is sought:

(c) **See attached**

submission.....

.....

.....

3. **Substitution of authorisation**

(a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:
(Refer to direction 4)

.....

See attached

submission.....

.....

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.....

(b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

Delivery of credit services and credit brokerage

services.....

.....

.....

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.....

(c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

Ten years.....

.....

.....

.....

4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

See attached

submission.....

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- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

.....

See attached

submission.....

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- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

NA.....

.....

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...

5. Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:

See attached

submission.....

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(See Direction 6 of this Form)

- (b) Facts and evidence relied upon in support of these claims:

.....

.....

6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

Provision of credit services - See attached

submission.....

.....

.....

(See Direction 7 of this Form)

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

See attached

submission.....

.....

.....

(See Direction 8 of this Form)

- (b) Facts and evidence relevant to these detriments:

.....

.....

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

NA.....

.....

.....

(b) If so, the following information is to be furnished:

1. description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

.....

(See Direction 9 of this Form)

2. Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

.....

(See Direction 5 of this Form)

3. Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

.....

.....

9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

NA.....

.....

.....

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....

.....

- (c) If so, by whom or on whose behalf are those other applications being made?

.....

.....

10. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Spier Consulting - Legal

Hank Spier

4 Waller Crescent, Campbell ACT 2612

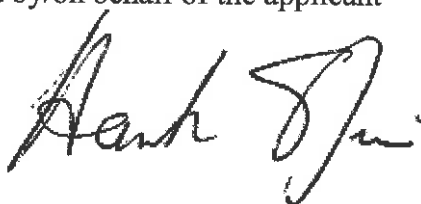
02 62812030, 0419239755

spierconsulting@netspeed.com.au

.....
.....

Dated.....?? December 2018.....

Signed by/on behalf of the applicant



.....

.....

(Signature)

Hank Spier.....
(Full Name)

Spier Consulting- Legal.....
(Organisation)

Principal.....
(Position in Organisation)

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

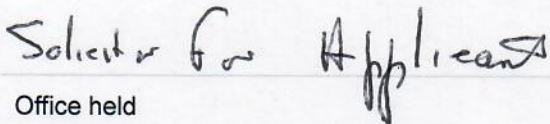
The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

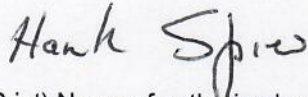
The undersigned are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



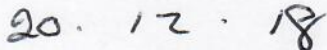
Signature of authorised person



Office held



(Print) Name of authorised person



This [insert day] day of [insert month] [insert year]

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.



SUBMISSION TO ACCC –

REVOCATION AND SUBSTITUTION FOR AUTHORISATION OF MFAA DISCIPLINARY RULES (A 91396)

In 2004 and 2009 and 2014 the ACCC granted authorisation for the MFAA Disciplinary Rules (the Rules).

The MFAA is seeking further authorisation for its Disciplinary Rules which are an essential part of the governance regime providing a framework for the conduct of MFAA members.

The MFAA is not seeking authorisation of the other parts of the governance regime.

However, some of the other MFAA governance documents have direct relevance ,as breaches of these are acted upon under the Rules, as are appeals following a refusal to admit an applicant to MFAA membership.

Consequently, the other parts of the regime are submitted to the ACCC as background to this application.

The further authorisation sought is essentially what is currently authorised. Since the ACCC authorisation in 2014 there have been some changes to the Rules. However, the basic framework remains.

Basically, the changes were of a housekeeping nature, the changes since 2014 in relation to the Disciplinary Rules are at **Attachment A**.

The Rules are regularly reviewed to keep them up to date and effective.

It is expected that issues arising out of the Banking Royal Commission are likely to result in further changes to the Rules and other parts of the MFAA Governance regime. It may be that that will result in an Application to the ACCC for a variation to the Rules.

The Applicant.

The MFAA is the peak organisation for the mortgage and finance industry in Australia. Its membership is broad and comprises lenders, aggregators, brokers and associated professions such as accountants, lawyers, sector support services and educators.

The Mortgage and Finance Association of Australia (MFAA) was established in 1980. It is a leading provider of service and advocacy for mortgage brokers, finance brokers, mortgage managers, lenders (bank and non-bank), and originators to assist them to develop, foster, and promote the mortgage and finance industry.

Today, the MFAA's governance framework compliments the ASIC national credit licensing regime. The goal of the two regimes is to create a seamless framework for professional conduct.

MFAA Purpose

MFAA Strategic Pillars and Objectives

Advocacy, promotion and member engagement: Shaping and influencing

Objectives

1. Enhance, build and maintain effective relationships with government, regulators, media and other key stakeholders;
2. Vigorously advocate on behalf of the mortgage broking industry and educate stakeholders about the broker value proposition;
3. Inform consumers and other stakeholders about the stringent professional standards set by the MFAA and the mortgage broking industry;
4. Consult and engage with members via Regulatory Roundtables, Member Forums, National Forums, MFAA communications and other means; and
5. Provide government and regulators with credible and persuasive submissions that are in the best interests of our members and the industry.

Education, training and events: Enabling and informing

Objectives

1. Set industry benchmarks in education, professional standards and professional development programs;
2. Deliver a National Roadshow and other events that provide relevant education to enhance the success of our members and underpin the professional recognition of our industry; and
3. Acknowledge and celebrate the professional achievements of our members at State and National Excellence Awards.

Professionalism and sustainability: Building confidence and trust

Objectives

1. Maintain and improve the MFAA Code of Practice and professional standards of our industry;

2. Continue to implement corporate governance improvements that best serve the interests of MFAA members;
3. Attract new members to join the industry's premier industry body; and
4. Provide frameworks that support our corporate social responsibility objectives and the delivery of industry-wide community engagement.

**Membership services and support:
Developing and strengthening**

Objectives

1. Deliver business building skills, tools and support services to enhance the success of our members;
2. Provide industry benchmarking data, information and reporting to our members; and
3. Be a hub of valued information for finance brokers.

**Monitor and evaluate emerging opportunities and threats:
Protecting and nurturing**

Objectives

1. Identify, monitor, evaluate and effectively respond to emerging opportunities and threats;
2. Collaborate with other industry associations where appropriate; and
3. Stay at the forefront of industry developments.

The Association has been known as the Mortgage & Finance Association of Australia since February 2006. It has previously been known as the Mortgage Industry Association of Australia (MIAA), the Mortgage Industry Association of Australasia and the Mortgage Bankers Association.

The MFAA has approximately 13,700 Members consisting of brokers, loan writers, lenders (bank and non-bank), aggregators and those associated with the industry such as lawyers, accountants, sector support services and educational institutions. The vast majority of the members are loan writers.

Membership has continued to grow after an initial dip following the introduction of the national credit legislation administered by ASIC.

Membership of the MFAA is voluntary, however some lenders value MFAA membership for their intermediaries.

The ACCC has in recent times let stand some third line forcing Notifications that insist on MFAA membership for brokers and loan writers.

This Application

The MFAA's Governance Regime

The governance regime consists of:

- the MFAA Constitution, which sets the governance framework for the Association;
- the MFAA Code of Practice, which outlines the standards that members have to adhere to; and
- the MFAA Disciplinary Rules, which are the regime to enforce the standards.

One of the conditions of membership for brokers is agreeing to be bound by the MFAA Code, the Disciplinary Rules, which essentially enforce the Code of Practice, and membership of an Ombudsman scheme (previously the Credit & Investments Ombudsman [CIO] or the Financial Ombudsman Scheme [FOS]), which handle consumer complaints. This has now been superseded by the Australian Financial Complaints Authority [AFCA].

The Disciplinary Rules

The Rules outline the processes for investigation of complaints, expulsion of members and appeals against refused applications for membership or accreditation. In addition, they include the rules for the MFAA Tribunal (the Tribunal). A copy of the current Rules is at [Attachment B](#)

The handling of complaints/matters

Complaints are referred to an external Investigating Officer (IO) appointed by the MFAA.

An IO may only investigate in certain circumstances including when the IO forms a view that a Member has engaged in misconduct as defined in the MFAA Code of Practice, and that the complaint is not frivolous or vexatious.

The IO may require Members to provide any relevant documents and/or attend an interview.

If, after investigating a complaint, the IO considers that a Member may have engaged in misconduct, then the Member must be informed of the allegations in writing and be given a copy of the Investigation Report which is referred to the Tribunal.

The Tribunal's role

Disciplinary allegations and membership refusals are considered by the Tribunal.

The Tribunal may hold a hearing on disciplinary allegations.

Hearings are private. Attendees may include the IO. The Member is expected to attend or may choose to rely on written submissions. Legal representation is permitted. The Tribunal must conduct hearings with as little formality and technicality as possible.

Under the Rules, if the Tribunal finds a Member has engaged in Misconduct, the Member may be censured, suspended, required to undertake education or compliance programs, or may be expelled. Membership can also be cancelled

in certain circumstances. Financial contributions and costs can also be awarded by the Tribunal but not compensation for complainants.

Membership Appeals processes

If an applicant for membership of the MFAA has their membership application declined by the Association, the applicant can appeal to the Tribunal.

The applicant in question must be given the opportunity to provide submissions to the Tribunal as to why the application for membership should be allowed. The Tribunal will then consider all the submissions. It cannot hold a hearing on the issue.

There is a similar process if the MFAA decides that a Member no longer meets the requirements of membership of the MFAA or has made a misrepresentation on an application form or other document, such as an annual member declaration, provided to the MFAA. In such circumstances, the matter may be referred to the Tribunal to determine whether, or not, a breach of the governance rules has occurred. This issue must be confirmed by decision of the Tribunal.

The Tribunal

The Tribunal consists of a Chair and an alternate Deputy Chair. There is also a Tribunal Panel of at least 20 persons drawn from all States and Territories who are long-standing members of considerable experience and who have been endorsed by the MFAA Board as a person that has demonstrated integrity and continuing high standards in their industry dealings.

The Panel Members are all MFAA Members, the Chair and Deputy Chair are not. Tribunal panel members must declare any conflict of interest and they may not participate in a matter if this is the case. Both the current Chair and Deputy Chair are ex ACCC staff.

There are a number of general rules that apply to the Tribunal including that it must act expeditiously in hearing a matter, it must act without bias and that it makes decisions by a simple majority vote. Virtually all decisions are by consensus.

The Tribunal must also follow the principles of natural justice.

The Tribunal is not required to issue written reasons for any determination, but it does so as a matter of policy. However, if it does, a copy must be provided to the Member or applicant.

Tribunal decisions are final and binding on all parties to the proceeding. They are also recorded on a register available to MFAA members for inspection.

The Code of Practice

The Disciplinary Rules essentially enforce the MFAA Code of Practice (the

Code brings into place all relevant laws such as the ASIC Act, Privacy Act, the National Consumer Credit Protection Act and the CCA.) Note that although the Code itself is not part of this application for authorisation, it is intrinsically related to the Rules. A copy of the Code is at **Attachment C**

Key initiatives of the Code are that Members involved in credit activities must:

- comply with all applicable laws;
- maintain appropriate and relevant training standards;
- hold adequate professional indemnity insurance;
- arrange appropriate finance for customers;
- act promptly and properly in relation to the management of finance applications;
- disclose commissions and other benefits received (brokers only);
- maintain IDR and membership of EDR schemes; and
- consider hardship applications submitted by customers in a timely and appropriately detailed manner.

The objectives of the Code are to:

- promote and establish professional standards between Customers and Members and between Members in the mortgage and finance industry;
- promote commitment by Members to compliance with laws and regulations and the spirit of those laws and regulations;
- promote the maintenance of the high public standing of MFAA membership; and
- promote ethical and fair business practices.

Requirements to become and remain a member

Qualification and experience: a member must have qualifications or experience relevant to the functions to be performed.

They must be a fit and proper person

They must also undertake continuing professional development (CPD) programs recognised by the MFAA in order to maintain membership. While the licensing provisions of the NCCP Act require licensees and their representatives who deal in regulated credit to complete 20 hours of CPD annually, the MFAA requires its members to complete 30 hours of CPD.

Professional indemnity insurance: members must maintain professional indemnity insurance of not less than \$2 million in any one claim and \$2 million in the aggregate.

Practice standards for MFAA Members

- **Compliance with laws:** a Member must always comply with the Code, and relevant legislation throughout the time a Member is dealing with a loan.
- **Appropriate finance:** a Member arranging mortgages on residential real estate must only suggest or recommend mortgage finance options that the Member reasonably believes are appropriate to the needs of that applicant. If a member is acting as a representative for a credit provider, the Member must recommend that the applicant make their own enquiries about the competitiveness and suitability of the loan before signing a letter of engagement.
- **Loan applications:** a Member must always disclose all relevant details about a proposed loan over residential real estate to an applicant; a Member must always make necessary enquiries to determine an applicant's capacity to repay the proposed loan, where the loan is for residential real estate; and a Member must submit a loan application to the credit provider promptly (within 5 working days if possible for residential real estate) after receipt of a correctly completed application form.
- **Outcome of a loan application:** a Member dealing with a mortgage over residential real estate must advise an applicant of any loan decision made by a credit provider within 5 working days of being notified. If a loan is declined, the Member must refund any amounts due to the applicant within 2 business days.
- **Confidentiality:** a Member must keep information provided by an applicant confidential.
- **Fees and commissions:** a Member must always disclose if they will be paid a fee or commission in connection with a loan, including the amount of the fee or the formula by which it is calculated. A Member must never charge an applicant a non-refundable application fee for a loan where the member suspects there is little chance of the loan being approved.
- **Skill, care and due diligence:** a Member must act with due skill, care and diligence in their dealings, including ensuring that their staff and associates are knowledgeable in the aspects of the industry in which they work. They must also ensure that all matters are completed in a timely fashion.
- **Honest and honourable dealings:** a Member must establish and maintain honest and honourable relationships with all persons they deal with, must use plain language in written terms and conditions, and must not engage in any acts or omissions that are misleading, dishonest or fraudulent, including in advertising.
- **Conflict of interest:** a Member must fully disclose any conflict of interest if it concerns a consumer and not engage in any relevant

activity if that activity presents a conflict of interest that will disadvantage the consumer.

Monies held on trust: there are various procedures for how Members should deal with any money received from a consumer and held in trust. Any money received from a client must be deposited with the third party on the next business day. They must also keep a record of all transactions on trust and ensure that these records are audited regularly. Note that finance brokers rarely handle client funds.

The MFAA Constitution

A copy of the Constitution will be emailed to the Commission, it is **Attachment D**. Its provisions are not sought to be authorised.

Evaluation of the conduct sought to be authorised

Market definition

In its 2004 consideration of the MFAA Rules' authorisation, the Commission considered that it was not necessary to fully define the scope of the relevant markets.

The proposed arrangements would apply whatever market definition is adopted.

In respect of the product market, the Commission at the time noted that it could be defined to include all mortgage retail services, that is, including mortgage retailing by banks, building societies and credit unions directly to consumers, as well as through mortgage brokers.

Alternatively, the product market may be defined more narrowly as only those mortgages arranged by brokers. In its determination, the Commission had, for convenience, considered a narrow view of the product market. However, the Commission considered that even if it were to adopt a broader view, its conclusions would be the same.

In respect of the geographic market, the Commission did not consider it necessary to determine whether it is national or regionally based. In either case, the MFAA governance regime applies to all its members throughout Australia.

The Commission in the past noted the following features of the market:

- ***services are offered throughout Australia*** - mortgage broking services are offered throughout Australia, in both capital cities and in rural and regional areas although with minor differences in the products they offer depending on location;
- ***consumer preferences*** - while mortgage broking services are offered throughout Australia, consumers are likely to prefer using a locally based broker rather than one located some distance away, due to

considerations of convenience and time.

- ***businesses operating in the industry*** - there are many small locally-based mortgage broking businesses, and also several large national businesses such as 'Mortgage Choice', 'Aussie' and the like offering similar products and services; and
- ***low barriers to entry*** - The barriers to entry were low in the past, although there were some State licensing regimes. (Such barriers are now determined by the ASIC licensing regime which is complemented by the MFAA Governance regime).

Future with-and-without test (the counter- factual)

In order to identify and measure the public benefit and public detriment generated by the conduct for which authorisation is sought, the Commission applies the 'future with-and-without test'. This involves identifying a counterfactual that is, making a prediction as to what will happen if authorisation is denied.

The Commission compares the public benefits and public detriment that will result in the future if authorisation is granted with the counterfactual.

It is suggested that the likely counterfactual is a situation where the MFAA will not sanction or expel members who are found to have engaged in misconduct (as defined in the MFAA's Constitution) under its Rules.

It is also submitted that if the authorisation is not granted and the MFAA cannot legally enforce its governance regime, ethical standards in the industry are likely to suffer and members who are known to, or thought likely to, have engaged in misconduct may continue to do so at a potentially significant loss to consumers who are unaware until the regulator (ASIC) and the industry itself is able to recognise the member's failure and is able to effect action to stop them.

Effect on Competition

Public detriment arising from a lessening of competition could flow from disciplinary processes for enforcing a code of conduct of an industry association where membership of the association is necessary to compete or significantly assists a business to compete, and either:

Where a code of conduct contains broadly-expressed provisions it might be open to subjective interpretation by disciplinary tribunals, and the disciplinary processes do not provide association members with sufficient procedural fairness. A risk might then arise that members could be expelled for anti-competitive purposes (in particular, so as to exclude them from the market) and that this would happen enough times to reduce the intensity of competition in the market.

There is evidence that where the number of members likely to be expelled for acting unethically is likely to constitute such a proportion of the market that the expulsion of these businesses from the association (while likely to generate offsetting public benefits) that would reduce the level of competition in the market.

The effect of membership on a business' ability to compete

MFAA membership is not mandatory for mortgage brokers. ASIC licensing is. The MFAA is the peak body for the mortgage industry in Australia, and its membership consists of about 94 per cent of mortgage brokers, lenders and managers, and about 40-50 per cent of the potential membership of loan writers, that is, individual brokers who deal face to face with consumers.

There is a competing professional association, the Finance Brokers' Association of Australia (FBAA), which includes mortgage brokers among its membership. It seems likely that the FBAA would offer similar benefits to its members to those offered by the MFAA. The FBAA Governance regime's Disciplinary Rules have in recent times been authorised by the ACCC.

Mortgage brokers can and do move between Associations or are members of both.

The MFAA considers it unlikely that loss of MFAA membership would significantly impede mortgage brokers' ability to compete.

In any case the MFAA's governance regime is unlikely be used for anti-competitive purposes. If it were used for such purposes brokers would move to another association or not be a member of any association.

The number of Members that are likely to be the subject of disciplinary rulings, such as suspensions or expulsions, whilst significant, is not sufficient to impact on the competitive dynamics of the industry.

It is the Applicant's contention that the Disciplinary Rules are likely to generate minimal public detriment constituted by any lessening of competition.

Public Benefit

The Applicant considers that there is potential for a significant public benefit to arising from the MFAA's governance regime, including the Disciplinary Rules, through encouraging compliance with a high standard of conduct.

Whether this is effective, or not, depends on the regime containing appropriate ethical rules and whether these can be effectively enforced.

For a governance regime to be effectively enforced, the Commission has indicated in the past that this would involve effective progressing of complaints and the imposition of appropriate sanctions on those found to have breached the Code and subsequently disciplined under the Rules.

The Regime has now been operating for some 15 years. The Tribunal has considered 500 matters since its inception and the IO around double that number. After a reduction in matters going to the Tribunal and IO in 2016 /2017 the numbers are increasing and that is expected to continue.

A review of the MFAA website (www.mfaa.com.au) will show a listing of those MFAA Members who have been either expelled or suspended. That list is growing.

Applicant contends that the Rules generate a public benefit by assisting MFAA Members to act ethically and professionally within the mortgage broking industry. It is further contended that the MFAA Tribunal's 15-year history is overwhelmingly positive and supports the 2004 ACCC decision that the regime was likely to result in a public benefit.

Balance of public benefit and detriment

It is submitted that minimal public detriment is likely to flow as a result of the MFAA arrangements. Yet there is substantial public benefit.

In that regard the Applicant refers to what ASIC stated in its submission in relation to the review of some third line forcing notifications in 2011. ASIC stated,

- **the MFAA imposes a higher lending obligation on its member brokers to ensure that a credit contract is 'appropriate' for the consumer, rather than the legislative requirement that a credit contract is 'not unsuitable' for the consumer and**
- **the MFAA sets higher educational standards - for instance, MFAA members are now required to complete a diploma level qualification, while the legislation requires mortgage brokers to hold, at a minimum, a Certificate IV in Finance and Mortgage Broking.**

What does the MFAA Regime add to the ASIC regulatory regime?

The MFAA disciplinary regime adds elements of ethics and professional standards to the statutory obligations of Australian credit licensees and their representatives under ASIC's regulatory regime established by the *National Consumer Credit Protection Act 2009* (Cth).

The MFAA's Code of Practice arguably sets some higher standards. For example, the Code requires a loan writer (broker) to only recommend loan products that are appropriate for a consumer whereas the statutory obligation is to not provide a loan product that is 'unsuitable'.

In addition, the MFAA's disciplinary regime requires the Association to act on any complaint (other than a contractual dispute) where the complainant provides evidence of misconduct (as defined by the Code of Practice) to support an allegation. ASIC's enforcement process is on occasion hampered by a lack of resources to deal with some matters that are brought to its attention.

Interface with ASIC

The MFAA has long had a sound interface with ASIC. Matters are referred to ASIC where the MFAA Tribunal expels or suspends a member and ASIC will often then take action under its legislation.

To the extent that it legally can, ASIC will refer matters to the MFAA.

Time period of authorization

The ACCC has authorized the MFAA Regime for some 15 years. The Applicant requests that any new authorization be for a period of 10 years. It is the clear view of the Applicant that the public benefit balance will not change in the foreseeable future. If it does, the Applicant will file a new Application or a variation.

Attachments.

- **A The changes since 2014 to the MFAA Disciplinary Rules.**
- **B: The MFAA Disciplinary rules – to be emailed**
- **C The MFAA Code of Practice- to be emailed**
- **D the MFAA Constitution – to be emailed.**

- **E- Recent Tribunal Report to MFAA Board.** 



MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

ACN 006 085 552

DISCIPLINARY RULES

Published ~~13-August-~~
~~2016~~TBA
Effective ~~14-September-~~
~~2016~~TBA

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. Each individual so appointed will be, to the satisfaction of the Board, an appropriately qualified and experienced person or persons, who shall not be a Member of the Association. 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 Complaints and to provide assistance to the MFAA Tribunal on request.

2.1.3

A Complaint received by the Association from any source ~~shall~~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 2.1.45, 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 is solely a Contractual Dispute between Members and no allegation of Misconduct is made against a Member.

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 Investigation Officer may elect, at their 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
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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. ~~The Investigation Officer must also concurrently prepare a written Investigation Report in support of the Report of Alleged Misconduct.~~

2.3.3

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

- a. all relevant correspondence and evidence ~~received from the Complainant~~ 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 ~~and the Investigation Report~~ 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 ~~Investigation~~ 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.

2.4. 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 a Suspension Order against the Member.

2.4.2

Notwithstanding any other provision of these Rules, no order for 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 Suspension Order is to take effect, to make representations and to provide information to the Tribunal in relation to the 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 other than the Chairman or Deputy Chairman approves and endorses the Suspension 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 order suspending the Member from membership of the Association.

2.4.4

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

2.4.5

A 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 2.4.1., the Tribunal may, by notice in writing to the Member, revoke the Suspension Order and that revocation will have immediate effect.

2.4.7

A Member who is the subject of a 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. Such notice must be received by the Secretary to the Tribunal within ten (10) Business Days from the order for suspension.

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 suspension.

2.4.10

Where the Chairman or Deputy Chairman has made an order for 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 suspension and that revocation will have immediate effect.

2.4.11

Where the Chairman or Deputy Chairman has made an order for 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 order for suspension. Such further Orders cannot be made under a period of 1 month from the order for 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; and
- d. carrying out such other functions as are delegated to it by the Board.

3.1.2

The Tribunal does not have jurisdiction in relation to any Contractual Dispute between Members, but the Tribunal may determine any matter or allegation of Misconduct, notwithstanding that there may be a separate Contractual Dispute between 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 terms criteria expressed in-of Rule 3.1.4.

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-cred#credit 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 ~~the proceeding will take place and be determined in the absence of the parties, or determine whether a hearing will be convened. The determination of whether~~ or not a hearing is convened is 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-served~~ or may continue to ~~actserve~~ 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 ~~other than the Member or, with the leave of the Tribunal, the Member's representative with the leave of the Tribunal~~ but 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.

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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-penalty, in writing to the Member who is the subject of the matter, 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-penalty 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 2015 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.

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;
- ii. 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, 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, 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 Tribunal must not hold a hearing in respect of the matter and~~ 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 Complaint](#) 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:

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Applicant	a person or business that has lodged an application with the Association to be accepted as a Member of the Association;
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 <u>appointed under Rule 3.1.4</u> 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 between Members where the substantial basis of the dispute relates to their respective business interests and may include monetary claims such as entitlement to remuneration or the sharing of commissions;
Corporation	as defined in the <i>Corporations Act 2001</i> (Cth)
Deputy Chairman	an alternate Chairman <u>appointed under Rule 3.1.5</u> of the Tribunal as constituted in respect of a particular matter;
Fit and Proper	as defined in the <i>MFAA Code of Practice</i> ;
Investigation Officer	a person appointed pursuant to Rule 2.1.1;
Investigation Report	a report on an investigation made by the Investigation Officer pursuant to Rule 2.3.2;
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 <i>MFAA Code of Practice</i> from time to time;
Officer	as defined in the <i>Corporations Act 2001</i> (Cth);
Report of Alleged of Misconduct:	<ul style="list-style-type: none"> 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;
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 <u>MFAA</u> 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.



MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

ACN 006 085 552

DISCIPLINARY RULES

**Published 13 August 2016
Effective 14 September 2016**

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 *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 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. Each individual so appointed will be, to the satisfaction of the Board, an appropriately qualified and experienced person or persons, who shall not be a Member of the Association. 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 Complaints and to provide assistance to the MFAA Tribunal on request.

2.1.3

A Complaint received by the Association from any source shall 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 2.1.4, 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 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 is solely a Contractual Dispute between Members and no allegation of Misconduct is made against a Member.

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 Investigation Officer may elect, at their 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.

2.2. 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) within the possession, custody or control of the Member, by way of notice in writing to the Member specifying particular documents or categories of documents, provided that the 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 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 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. The Investigation Officer must also concurrently prepare a written Investigation Report in support of the Report of Alleged Misconduct.

2.3.3

The Investigation Officer must include, as part of the Investigation Report, copies of:

- a. all relevant correspondence and evidence received from the Complainant; 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 and the Investigation Report 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 Investigation Report.

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.

2.4. 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 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 a Suspension Order against the Member.

2.4.2

Notwithstanding any other provision of these Rules, no order for 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 Suspension Order is to take effect, to make representations and to provide information to the Tribunal in relation to the 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.

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 order suspending the Member from membership of the Association.

2.4.4

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

2.4.5

A 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 2.4.1., the Tribunal may, by notice in writing to the Member, revoke the Suspension Order and that revocation will have immediate effect.

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 of the Association; and
- d. carrying out such other functions as are delegated to it by the Board.

3.1.2

The Tribunal does not have jurisdiction in relation to any Contractual Dispute between Members, but the Tribunal may determine any matter or allegation of Misconduct, notwithstanding that there may be a separate Contractual Dispute between 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 of the Association or an employee of a current Member of the Association.

3.1.5

The Board may appoint a Deputy Chairman in accordance with the terms of Rule 3.1.4.

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 credit 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 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 the proceeding will take place and be determined in the absence of the parties, or determine whether a hearing will be convened. The determination of whether or not a hearing is convened is solely the decision of the Tribunal.

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 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 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 served or may continue to serve 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 but 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.

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 of the determination, including any finding of Misconduct and any penalty, in writing to the Member who is the subject of the matter, 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 penalty 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 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.

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. 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 seek to recover the costs incurred by the Association in respect of the matter from the Member, 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;
- 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, 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 under Rule 4.5.4.

All Members, 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, 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.

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 Tribunal must not hold a hearing in respect of the matter and 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 Complaint 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;
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 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 between Members where the substantial basis of the dispute relates to their respective business interests and may include monetary claims such as entitlement to remuneration or the sharing of commissions;
Corporation	as defined in the <i>Corporations Act 2001</i> (Cth)
Deputy Chairman	an alternate Chairman of the Tribunal as constituted in respect of a particular matter;
Fit and Proper	as defined in the <i>MFAA Code of Practice</i> ;
Investigation Officer	a person appointed pursuant to Rule 2.1.1;
Investigation Report	a report on an investigation made by the Investigation Officer pursuant to Rule 2.3.2;
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;
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 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.



MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA
ACN 006 085 552

CODE OF PRACTICE

Published 3 August 2016
Effective 4 September 2016

Key initiatives of this Code:

Members involved in credit activities must:

- comply with all applicable laws;
- maintain appropriate and relevant training standards;
- hold adequate professional indemnity insurance;
- arrange appropriate finance for customers;
- act promptly and properly in relation to the management of finance applications;
- disclose commissions and other benefits received (brokers only);
- maintain IDR and membership of EDR schemes; and
- consider hardship applications submitted by customers in a timely and appropriately detailed manner.

1. Name of the Code

- 1.1. This Code is the MFAA Code of Practice. Capitalised words are defined at the end of this document.

2. Objectives of the Code

- 2.1. The objectives of the Code are to:
 - a. promote and establish professional standards between Customers and Members and between Members in the mortgage and finance industry;
 - b. promote commitment by Members to compliance with laws and regulations and the spirit of those laws and regulations;
 - c. promote the maintenance of the high public standing of MFAA membership; and
 - d. promote ethical and fair business practices.

3. Application of the Code

- 3.1. This Code of Practice applies to and is binding on Members who are Brokers, Managers, Servicers, or Credit Providers (unless otherwise specified in this Code). Clause 4 of this Code (General Standards) applies to all Members.
- 3.2. The Board may from time to time:
 - a. amend this Code;
 - b. prescribe that parts or all of this Code applies to one or more classes of Member.

4. General Standards

- 4.1. Members must not engage in Misconduct and must be, and continue to be, of good character and repute and a Fit and Proper person.
- 4.2. Members must always comply with this Code.
- 4.3. Members must keep up to date with and comply with all applicable laws, regulations and practices relevant to the conduct of their business. If the requirements of any law or regulation impose a higher standard than specified in this Code, then such higher standard will apply. If any provision of this Code conflicts with any law or regulation, that provision will not operate, however the balance of the Code will apply.
- 4.4. Members must undertake continuing education programs recognised by the Board and complete sufficient number of hours of Continuing Professional Development (CPD) to maintain membership as determined by the Board from time to time.
- 4.5. Members must ensure that at all times they employ or otherwise engage only with operatives who have any relevant licence or authorisation, and who have the

qualifications and experience necessary to deal competently and professionally with Customers.

- 4.6. Members must always conduct that Member's business in accordance with the Constitution of the MFAA and this Code of Practice.
- 4.7. Members are liable for any acts or omissions of any employee or representative that are within the scope of the employees' or representatives' duties or ostensible duties.
- 4.8. Members must:
 - a. act with appropriate skill, care and diligence;
 - b. deal with all persons with whom they may come into contact in the course of their professional and commercial activities in good faith;
 - c. not engage in any acts or omissions of a misleading or deceptive nature;
 - d. not engage in any acts or omissions of a dishonest or fraudulent nature;
 - e. ensure that their advertising is not false, misleading, deceptive, dishonest or likely to mislead or deceive;
 - f. not engage in unconscionable conduct;
 - g. fully disclose to any Customer or potential Customer any actual, apparent or potential conflict of interest of which a Member is or ought to be, aware, to the extent that such a conflict of interest may reasonably concern a Customer;
 - h. refrain from any conduct which may embarrass, impugn, or discredit the MFAA or bring the MFAA into disrepute; and
 - i. adhere to the reasonable instructions of Customers.

5. Professional Indemnity Insurance

- 5.1. Members who are Brokers, Mortgage Managers, or Servicers (unless, in the opinion of the Board, they have net tangible assets that are satisfactory to cover professional indemnity risk, in the opinion of the Board) must maintain professional indemnity insurance:
 - a. of not less than \$2 million for any one claim and \$2 million in the aggregate; and
 - b. endorsed to cover a determination made by an EDR scheme; and
 - c. which provides at least 12 months 'run-off' cover; and
 - d. if trust money is held, with an extension for fidelity cover of not less than \$100,000; and
 - e. underwritten by an insurer regulated by APRA or otherwise acceptable to the Board; and
 - f. in a form approved by the Board from time to time.

6. Contracts with Customers

- 6.1. Brokers are required to record the essential terms of an agreement to provide services to a Customer. This document can be combined with the prescribed disclosure documents under any relevant law. It is best practice to have the agreement signed by the Customer and the Member. If an agreement is entered into, the Member must retain a copy of the document for at least seven years after it is made. The Member must provide the Customer with a copy of the document upon request from the Customer.
- 6.2. Brokers who charge a fee for the provision of credit assistance to a Customer, must clearly:
 - a. describe the nature of credit assistance to be provided for which the fee will be charged, and
 - b. state the amount of the fee to be charged; and
 - c. specify when the fee is payablein writing.
- 6.3. Members must never charge a Customer a non-refundable fee for preparation and submission of a Credit application if the Member knows or suspects that there is little or no chance of the application being approved, unless the Member has completed a preliminary assessment of eligibility of the Customer and the Customer agrees to such a fee in writing before such a preliminary assessment is completed.
- 6.4. Members who represent one or a small number of Credit Providers must, before providing credit assistance to a Customer, inform the Customer that the Customer should rely upon the Customer's own enquiries about the competitiveness and appropriateness of the proposed Credit.
- 6.5. Members must express written terms and conditions of their services in plain language in English. This provision does not preclude a Member from also providing such written terms and conditions in a language/s other than English.

7. Arranging Credit

- 7.1. Members must suggest or recommend to Customers only Credit that Members reasonably believe is appropriate to the needs of that Customer, after undertaking an appropriate assessment of the Customer's capacity to service the proposed Credit.
- 7.2. Members must not receive a commission, payment or other incentive for negotiating the refinancing of Credit for a Customer in circumstances where the Customer does not receive a beneficial result from the refinance, except where the Member has acted under the specific instructions of the Customer, after appropriate advice has been given to the Customer by the Member.
 - 7.2.1. A Customer will ordinarily not receive a beneficial result from a refinance where:

- a. the Customer can make offset and extra payment savings under their existing loan; or
 - b. the Customer cannot make offset savings under their existing loan, but the amount of those potential savings is less than the transaction costs that will be incurred as a result of refinancing.
- 7.3. Members must always disclose to Customers all relevant details known to the Member about a proposed Credit application as and when appropriate.
- 7.4. Members must always make such enquiries as are reasonable in all the circumstances to determine a Customer's capacity to service any proposed Credit.
- 7.5. Members must submit a Credit application to a Credit Provider or the Credit Provider's representative, when practicable, within five business days (but in any case promptly) after completion of a duly completed application, containing all information required by the Credit Provider to assess the application.
- 7.6. Members dealing with Customers must always keep Customers informed, where appropriate, of all relevant information known to Members relating to a proposed or current Credit application.

8. Outcome of Application for Credit

- 8.1. Members must advise Customers of the outcome of a submitted Credit application, whenever practicable, within two business days (but in any case promptly), of the decision being notified in writing to the Member by the Credit Provider to which the application was submitted.
- 8.2. Members must refund any amounts due to Customers, whenever practicable, within five business days (but in any case promptly).

9. Confidentiality

- 9.1. Members must at all times keep information, that has been provided by a Customer, confidential and secure and only disclose information as required by law, the MFAA Disciplinary Rules or as authorised by the Customer.

10. Fees and Commissions Disclosure

- 10.1. If a commission or other benefit will or may be paid by or to a Member for, or in connection with, provision of Credit to a customer, the Member must always disclose to the Customer that fact and:
 - a. the name of the person by whom the commission or other benefit is payable; and
 - b. the name of the person to whom the commission or other benefit is payable; and
 - c. the amount of the commission or other benefit, if ascertainable; and

- d. if the amount of the commission or other benefit is not ascertainable, the basis of or formula for such commission or other benefit;

but this disclosure requirement does not apply to:

- e. the amount payable in connection with a credit related insurance contract; or
- f. the commission or other benefits paid to employees of the Member.

Commissions and other benefits need not be disclosed by Managers or Servicers where the Customer is provided with the Manager's or Servicer's own Credit product.

11. Dispute Resolution – IDR, EDR, and the MFAA Tribunal

- 11.1. Members must establish IDR procedures in accordance with guidelines issued from time to time by the MFAA. Members must make information about their IDR scheme available to all Customers and prospective Customers.
- 11.2. Members must ensure that their complaints contact person has the authority to determine and respond to any complaint made by a Customer.
- 11.3. Members must maintain a written IDR policy which is made available to any person on request and posted on the Member's website, if any.
- 11.4. Members must ensure that a complainant is treated courteously when making a complaint.
- 11.5. Members must not impose any fee in relation to a complaint on a Customer who makes a complaint.
- 11.6. Members must be a member of an EDR scheme. Members must make information about their EDR scheme available to all Customers and prospective Customers, and that information must be posted on the Member's web site, if any.
- 11.7. Members must respond in writing to written requests from their EDR scheme concerning a complaint promptly and in any event within 10 business days.
- 11.8. Members must respond in writing to written requests from the MFAA Investigation Officer promptly and in any event within 10 business days.
- 11.9. Members must respond in writing to written requests from the MFAA Tribunal promptly and in any event within ten 10 business days.
- 11.10. Members must respond in writing to written requests from the MFAA Membership Secretary promptly and in any event within 10 business days.
- 11.11. Members must maintain a written record of written complaints made against them and supply a copy to the Investigation Officer or MFAA Tribunal on request.

12. Money Held on Trust

- 12.1. Members who receive trust money must promptly, and in any event within two business days, deposit that money into a trust account maintained by the Member with an authorised deposit-taking institution.
- 12.2. Members must promptly, and in any event within five business days, account for any money held in trust which has become payable to third parties.
- 12.3. Members who hold trust money must keep such books and records that correctly record and explain the transactions in the trust account and have the account audited by an independent external auditor at least annually.

13. Hardship Applications

- 13.1. If a Member becomes aware, or is advised by a Customer, that the Customer is or may be in financial difficulties, the Member will consider in good faith whether it is reasonably appropriate to vary the payment terms of the credit facility, or if it is appropriate, suggest that the Customer contact the Credit Provider and request the Credit Provider to vary the Customer's repayment terms.

- 13.2. Where appropriate, the Member must:

- a. have regard to the Customer's financial circumstances and consider in good faith and within a reasonable time the Customer's request to vary the payment terms; and
- b. suspend any action to recover any payments due under a Credit contract and, if it has not listed a default already, not list a credit default in respect of the Credit facility against the Customer until:
 - i. the Member informs the Customer in writing whether or not it will vary the payment terms; and
 - ii. if the Member and the Customer agree to vary the payment terms, the Customer fails to meet the varied payment terms; and
- c. encourage the Customer to make payments the Customer can afford, pending the Member informing the Customer of its decision; and
- d. have a documented policy and procedure in place for receiving and assessing requests to vary credit contracts upon hardship grounds and must provide information about that hardship policy to a Customer on request.

- 13.3. Members must act reasonably in assessing a Customer's request to vary payment terms. Amongst other things, Members must not require:

- a. the Customer to apply for the early release of any part of the Customer's superannuation entitlements; or
- b. the Customer to obtain funds from family members, friends or other third parties;

prior to the Member considering whether to, or agreeing to, vary the payment terms.

- 13.4. Members who decide to vary the payment terms must promptly and in any case within 21 calendar days give the Customer written notice setting out particulars of the varied payment terms.
- 13.5. Members who decide not to vary the payment terms must promptly and in any case within 21 calendar days give the Customer written notice of:
- a. its decision and the reasons for its decision; and
 - b. the Customer's right to make a complaint to the Member's IDR and EDR schemes (providing contact details for those schemes) if the Credit falls within the jurisdiction of those schemes.

14. Interpretation and Definitions

14.1. Interpretation

In this document, unless the context requires otherwise:

- clause and sub-clause headings are for reference purposes only;
- the singular includes the plural and vice versa;
- words denoting any gender include all genders;
- a reference to a person includes any other entity recognised by law and vice versa;
- where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- any reference to any agreement or document includes that agreement or document as amended at any time;
- the use of the word *includes* or *including* is not to be taken as limiting the meaning of the words preceding it;
- the expression *at any time* includes reference to past, present and future time and performing any action from time to time.

14.2. Definitions

In this Code of Practice, the following words and phrases have the meanings and references set out below:

ASIC:	the Australian Securities and Investments Commission
Board:	the board of directors of the MFAA from time to time
Broker:	a Member when conducting the business of finance broking or mortgage broking, but excludes Members when acting as Mortgage Managers, Credit Providers, or Servicers

Customer:	a natural person (i.e. an individual) or a small business, that is, a business that employs fewer than 20 people, who engages a Member to provide services relating to the provision of Credit
Credit:	financial accommodation provided to Customers, including lease finance, hire purchase, mortgage loans, personal loans
Credit Provider:	a person that provides Credit to Customers, and where the context admits, includes Servicers and Mortgage Managers acting for Credit Providers.
EDR:	means an external dispute resolution scheme approved by ASIC for the purposes of the <i>National Consumer Credit Protection Act 2009</i> (Cth)
EDR Rules:	the rules of an EDR as defined above
Fit and Proper:	individuals having the necessary competence for the role/s that they purport to or seek to perform, taking into account such attributes as knowledge, skills, and experience and whether or not an individual is of good fame and character, as well as attributes such as diligence, honesty, integrity and judgement.

The criteria for determining whether a person is a Fit and Proper person includes, but is not limited to, an assessment of whether the person has:

- appropriate knowledge, skills, experience, competence, judgment, character, honesty and integrity;
- been subject to criticism, discipline, disqualification or removal by a professional or regulatory body, court or relevant tribunal where such outcome is relevant to the activities the person seeks to carry out as a Member of the MFAA;
- been subject to adverse findings in relevant criminal or civil proceedings;
- been refused a licence or registration for a commercial or professional activity;
- failed to manage personal debts satisfactorily;
- been a responsible officer in an entity at a time the entity failed;
- been obstructive, misleading or untruthful in dealing with a regulatory body, or a court;
- been inappropriately critical of a relevant self-regulatory body, or tribunal;
- demonstrated a lack of willingness to comply with regulatory or professional requirements;
- been involved in business activities that appear negligent, deceitful or otherwise improper;
- been, or is, considered of bad repute, or
- has surrendered, lost or failed to maintain an essential qualification, licence or requirement to be admitted to membership or to remain a Member of the MFAA, or such qualification has been terminated, suspended or cancelled, whether this qualification or requirement arises under the Constitution, the Disciplinary Rules or another requirement of the MFAA, or under law.

IDR: Internal Dispute Resolution

Manager: a Member who manages mortgages on behalf of a Credit Provider, including:

- a. management of the relationship with the Customer throughout the term of the Credit; and
- b. undertaking some or all of the work associated with Credit assessment; and
- c. whose commission or remuneration is calculated by reference to:
 - i. a pool of contracts for Credit in respect of which the commission is determined by reference to the net profit of operating the pool; or
 - ii. the difference between:
 - A. the delivery rate (being the cost of funds for the pool of contracts made available to the licensee or the credit representative); and
 - B. the interest rate and other income derived from the pool of contracts; and
- d. ASIC or the MFAA has not declared the Member not a Manager or not a Manager in respect of certain transactions.

Member: a person that is a Member of the MFAA as defined in the Constitution of the MFAA.

Membership Secretary: the Membership Secretary as defined in the Constitution of the MFAA

MFAA: Mortgage & Finance Association of Australia ACN 006 085 552

MFAA Tribunal: the Tribunal as defined in the Constitution of the MFAA

Misconduct: a breach of this Code of Practice or conduct involving:

- fraud or dishonesty; or
- misleading or deceptive representation/s or activities; or
- knowingly making a false statement; or
- gross negligence; or
- a refusal to, or neglecting, or failure to, comply with a provision of the Constitution, the MFAA Code of Practice, EDR Rules, the MFAA Disciplinary Rules; or
- unreasonably failing or refusing to provide information to the Investigation Officer; or
- misrepresentation of material facts in relation to an application for Membership of the MFAA; or
- misrepresentation of material facts in relation to mentoring of a Member; or
- misrepresentation of material facts, making a false statement or being grossly negligent concerning continuing professional development hours earned or to be earned as a Member; or
- misrepresentation of material facts, making a false statement or gross negligence in relation to any borrower, guarantor, proposed borrower or proposed guarantor, Credit application or Credit variation application; or
- a breach of any legislation relating to the Member's business activities; and:

- which indicates a failure to understand or practice the principles of honesty and fair dealing in relation to other participants in the mortgage and finance industry; or
- which indicates a substantial or consistent failure to reach reasonable standards of efficiency and competence in the conduct of business in the mortgage and finance industry; or
- which is prejudicial to the reputation or interests of the MFAA; or
- which is described by the Board as being a failure, without reasonable excuse, proof of which will lie on the Member, to comply with a determination, decision or any sanction or order of the Tribunal imposed on the Member; or
- which is unethical conduct or conduct unbecoming of a Member; or
- which the Board may in addition from time to time prescribe as Misconduct and has been made generally known for at least one calendar month, including publication on the MFAA website.

Servicer: a Member who is the principal servicer of Credit for a Credit Provider, and who exercises the majority of the credit and other decisions relating to the Credit Provider's Credit portfolio and who ASIC or the MFAA has not declared the Member to not be a servicer or to not be a servicer in respect of certain transactions.



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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MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

~~(STRICTLY CONFIDENTIAL FOR MFAA BOARD ONLY)~~

15 th ANNUAL REPORT BY MFAA TRIBUNAL

OVERVIEW

- Report covers the period - *October 2016- October 2017*
- Tribunal had 25 formal matters referred to it during the reporting period. A material increase from recent years, this increase appears to be accelerating.
- The Tribunal disposed of 20 matters during the period. It currently has ??matters yet to be finalised. There are two others where the outcome of ASIC /AAT action is awaited,
- 4 Members were expelled or suspended for misconduct or memberships were cancelled as they no longer met MFAA membership requirements.
- In the reporting period, there were 2 appeals against the refusal by the MFAA to admit an applicant to membership; one was successful, the other unsuccessful.
- There have been 83 expulsions, suspensions or cancellations since the Tribunal was established in 2003.
- The Tribunal has had 460 formal matters referred to it since its inception.

THE TRIBUNAL DURING THE PERIOD

The number of new formal matters was once again dramatically lower than the previous year.

The advent of the ASIC legislative regime and the impact of the MFAA Governance regime should have the effect of fewer matters being referred to the Tribunal over the years. This is from a peak of 60 matters in the early years.

I expect that the numbers might stabilise to around 10-20 in coming years

Matters that now get to the Tribunal are generally of a complex or difficult nature or blatant.

Simple matters are disposed of informally and past Tribunal decisions have largely eliminated certain areas past areas of concern, such as comparison rates.

Many matters involve now extensive contact with the complained of and the complainant. To some degree the Tribunal is sometimes duplicating the work of the IO and that is not what was intended. However, with the lower matter number and the experience of Tribunal members it may be appropriate for more matters to come direct to the Tribunal, the downside of that is that there may be calls for an appeal mechanism as one of the checks and balances in the process is removed.

Most of the new formal matters were from NSW and Victoria.

In addition to formal matters, the IO, often in conjunction with the Tribunal Chair, handles a substantial amount of other matters that do not warrant formal referral to the Tribunal and are resolved informally or do not disclose a breach of the Rules.

There is also on going work in chasing up follow up issues from previous years matters, ensuring that undertakings are complied with.

The MFAA Secretariat handles the detail of expulsions, suspensions and cancellations and chases up the payment of any financial contributions to the MFAA ordered by the Tribunal,

TRIBUNAL OBSERVATIONS.

The following observations are offered to assist the Board in its consideration of the Governance regime and member reaction or usage of the regime.

“Fit and Proper” and ASIC bans

The Tribunal has long adopted the position that it will follow ASIC bans of MFAA members. Someone who is subject to an ASIC ban, for whatever reasons, is not a fit and proper person to be an MFAA member.

This position applied whether the ASIC “ban” related to any ASIC licence and not only a credit licence.

It is odd that ASIC says that someone is not fit to hold one licence but ok for another when the conduct is misleading and deceptive conduct.

ASIC liaison.

A close relationship has been continued with ASIC. ASIC has regularly followed up Tribunal decisions and the Tribunal follows up on relevant ASIC matters.

ASIC has in fact cancelled credit licences where the Tribunal has expelled or suspended a member. In almost every case where the Tribunal either expels or suspends ASIC issues a Section 267 notice on the MFAA seeking formal information.

We co operate to the extent appropriate but will protect member's and MFAA information.

There is however frustration on the MFAA side. The information flow is largely one way. We flow and they absorb. In my view ASIC, can be more co-operative.

Members subject to Regulatory action.

The MFAA has been referring to the Tribunal, for possible expulsion or suspension or cancellation of membership, those Members who have been found guilty or pleaded guilty in court or regulatory proceedings.

The Tribunal welcomes that approach and takes such references very seriously.

We hope that the MFAA continues to do that as that we substantially enhance public and regulatory acceptance of the seriousness of the MFAA in maintaining proper standards.

Some may say that this is double jeopardy. But can the MFAA keep as a member someone who has been found guilty of serious offences, especially those involving honesty issues. Even for less serious offences MFAA compliance action may be warranted.

However, the Tribunal will not act simply where a member has been charged with an offence, it usually waits until the outcome of any court or regulatory proceedings unless the Tribunal has independent information upon which it can act, such as the member admitting the conduct.

History has shown us that allegations or charges may either not be proven or withdrawn.

Member obligations.

As part of its toughening attitude to ethical issues the Tribunal has taken a firm attitude on failure by members to scrutinize critical information coming from borrowers as part of applications. Issues such as passports, Medicare cards, pay records are important and should be verified.

The Tribunal has had many instances where members have clearly turned a blind eye to false or suspect information provided and may have even encouraged such conduct. The explanation often given by members is that is what the borrower gave us. In many cases that is not good enough.

Member education.

As in past years the Tribunal continues to be struck by the lack of knowledge shown by some MFAA members of their obligations under the MFAA Governance regime.

The position has improved but there is still an issue.

The Tribunal presiding members/Chairs are of the view that the educational requirements that should rightly be expected of members should include knowledge of the MFAA Governance regime and the law.

One point of concern is that there appears to be a view by many members that all that they have to comply with are the MFAA code and guidelines **BUT** the definition of "misconduct" covers all relevant legislation and compliance with that is part of the member's compliance obligations.

There seems to be a bit of push back on the MFAA Governance regime. Some members see the ASIC regime as being enough. That is misconceived.

Obtaining Information

The Tribunal and the IO have for a long time been frustrated by the time some members take to provide information or a flat refusal by others.

We are now setting time limits but must still be fair. Also, increasingly lawyers are getting involved and this invariably delays matters and often leads to game playing.

The Tribunal has to chart a course to be fair to all but like all Tribunals finds this to be a task which requires constant vigilance.

After all these years, there are still issues with getting information from lenders. that is unacceptable and needs to be addressed, hiding behind lawyers is not an answer. Lawyers are supposed to be facilitators not gatekeepers.

I also recall that years ago lenders agreed to add the IO and Tribunal in the privacy waivers that borrowers sign.

The MFAA Disciplinary Rules.

The Rules have to be dynamic and the Tribunal will continue to suggest improvements to the Board where appropriate.

B2B unfair contract terms

The Government has introduced B2B unfair contract terms legislation. This will impact on sector practices. It is not yet clear when it will become law.

It also raises the issue whether the Tribunal should get involved in contract matters where they are standard form contracts by say, aggregators.

FBAF

It is to be noted that the FBAA has developed a Governance regime very similar to the MFAA. The FBAA has applied to the ACCC for authorisation, as did the MFAA some years ago. The MFAA authorisation has been renewed by the ACCC on two occasions.

Tribunal thanks and appreciation

The Tribunal would like to thank the MFAA Board for its support during the past year.

The Tribunal MFAA staff, Peter Kennedy and Scott Raymond.

The Tribunal also thanks the IO. The working relationship between the Tribunal and the IO is very good.

Panel members

The Tribunal would not have been able to function without the many MFAA Tribunal panel members who have willingly given of their time to be on Tribunals, many on a number of occasions. Panel members give their time voluntarily and this is very much appreciated by the Tribunal.

The Tribunal enjoys working with Panel members. They bring an air of reality and industry knowledge.



HANK SPIER
Chair

