

Accc/miaa/variation

FILE No:
DOC:
MARS/PRISM:



National/NSW Secretariat
ABN 62 006 085 552

PO Box 604
Neutral Bay NSW 2089
Australia
Telephone 1300 554 817
Facsimile 02 9967 2896
www.miaa.com.au

**Mr S. Gregson
General Manager
Adjudication
ACCC
PO Box 1199**

2 March 2005

Dear Mr Gregson,

MORTGAGE INDUSTRY ASSOCIATION OF AUSTRALIA (A 90880)
VARIATION TO AUTHORISATION

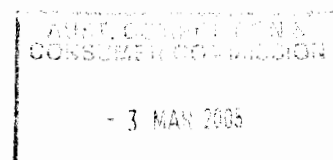
In February 2004 the ACCC granted authorization to the above application.

The authorization covers the MIAA governance regime. Any governance regime must be dynamic and will be regularly up dated to meet changing conditions and changes dictated by experience. That has been the case with the MIAA scheme.

In the last year the MIAA has made the changes to the Constitution, Code of Practice and Disciplinary Rules. The most extensive changes were those made to the Disciplinary Rules on 24 November 2004. Further there were substantial additions to the Code of Practice.

The changes to the Disciplinary Rules were made to make the rules more flexible, transparent and more responsive. Essentially the changes were those suggested by the Tribunal members themselves based on the first year's operation of the Tribunal. A marked up version of the Rules showing the changes is at **Attachment A**.

Attachments B and C are Advertising Guidelines and MIAA Code on Alternative Forms of Remuneration respectively. Both being part of the MIAA Code of Practice and added in the last year.



Attachment D is copies of the relevant MIAA Board resolutions including some changes to the MIAA Constitution.

Attachment E is a marked up Code of Practice.

I have also attached clean and up to date copies of both the Code of Practice and the Disciplinary Rules.

The material is submitted pursuant to section 91 (1B) of the Trade Practices ACT 1974 being "minor" variations to the authorization. As indicated the changes are very much by way of updating and in my view do not change the authorization test balance, if anything, the public benefit is strengthened.

The MIAA will continue to up date the governance regime and will lodge further variations, as appropriate.

Should you wish to discuss this matter please do not hesitate to contact me on 02 - 62812030 or 0419239755 or email spierconsulting@netspeed.com.au.

Yours truly,

A handwritten signature in black ink, appearing to be 'HANK SPIER', written over the printed name.

HANK SPIER

On behalf of the MIAA

Attachments.

MORTGAGE INDUSTRY ASSOCIATION OF AUSTRALIA

DISCIPLINARY RULES

Made by Decision of the Board

Deleted: National Council

27 May 2003

Showing amendments approved by the Board on the 26th of November 2004

Deleted: National Council

Formatted: Font: 12 pt

Deleted: xx

Formatted: Font: 12 pt

Inserted: /yy/2004

Formatted: Superscript

Deleted: /yy/

Formatted: Font: 12 pt

MORTGAGE INDUSTRY ASSOCIATION OF AUSTRALIA

DISCIPLINARY RULES

SECTION 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Rules, unless the contrary intention appears:

“AMC” means an Accredited Mortgage Consultant as defined in the Constitution;

Deleted: ¶

“Applicant” means a person who has lodged an application with the Association to be accepted as a Member;

“Association” means Mortgage Industry Association of Australia ABN 62 006 085 552;

“Board” means the Board of the Association as defined in the Constitution;

“Business Day” means 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;

Deleted: “Business Day” means a day not being a Saturday, Sunday or gazetted public holiday in the State of New South Wales; should this be wider than nsw

Inserted: should this be wider than nsw.

Formatted: Font: Times New Roman, 12 pt

“Chairperson” means the Chairperson of the Tribunal as constituted in respect of a particular proceeding;

Deleted: c

Deleted: c

“Constitution” means the Constitution of the Association as amended from time to time;

Deleted: COS

Deleted: Industry

“Complainant” means the person or organisation making a complaint against a Member.

Deleted: COS

Deleted: Industry

“Corporation” means corporation as defined in the Corporations Act 2001 of the Commonwealth;

Deleted: .

Inserted: .

“COS Limited” means Credit Ombudsman Service Limited or its successor in title;

Deleted: Industry

Deleted: Industry

“COSL Referral” means a complaint referred to the Association pursuant to the Credit Ombudsman Service Rules in connection with a complaint made by a consumer about the conduct of a Member and which complaint specifically calls for the suspension of a Member's membership or the expulsion from membership of a Member or other disciplinary action permitted under the Rules;

Deleted: COS Limited

Deleted: redit Industry Ombudsman Service

Deleted: Credit Industry Ombudsman

Deleted: Credit Industry Ombudsman

Deleted: Service

“COSL Rules” means the Credit Ombudsman Service Rules made by COS Limited;

Inserted: “Service” or “COS” means the service for complaint and dispute handling established by COS Limited

“Credit Ombudsman” means the Credit Ombudsman appointed pursuant to the Constitution of COS Limited and the COSL Rules;

Deleted: or “COS”

Formatted: Font: Bold

Formatted: Font: Bold

“COS” means the service for complaint and dispute handling established by COS Limited;

Deleted: COS Limited

“Deputy Chairperson” means the Deputy Chairperson of the Tribunal as constituted in respect of a particular proceeding;

Deleted: ¶

"Investigating Officer" means a person appointed pursuant to sub-rule 2.1.1;

"Member" means a Member of the Association as defined in the Constitution;

"Membership Secretary" means the person appointed to that position by the Association from time to time;

MIAA MIAA Code of Practice means any MIAA Code of Practice promulgated by the Board from time to time pursuant to the Constitution;

"Misconduct" means:

- (a) conduct involving fraud or dishonesty;
- (b) refusal or failure to comply with a provision of the Constitution, the MIAA Code of Practice, the COSL Rules, or the Disciplinary Rules;
- (c) misrepresentation of material facts in relation to an application for membership of the Association;
- (d) misrepresentation of material facts in relation to accreditation as an Accredited Mortgage Consultant;
- (e) misrepresentation of material facts concerning continuing professional development points earned or to be earned as a Member;
- (f) misrepresentation of material facts in relation to any borrower, guarantor, proposed borrower or proposed guarantor;
- (g) conduct involving a breach of any legislation or delegated legislation governing or relating to conduct by participants in the Mortgage Industry including but not limited to the Uniform Consumer Credit Code, Financial Transactions Reports Act 1988 of the Commonwealth, Corporations Act 2001 of the Commonwealth, (NSW) Consumer Credit Administration Act 1995 and corresponding legislation in other States and Territories, Trade Practices Act 1974 of the Commonwealth and corresponding fair trading legislation in the States and Territories, Australian Securities and Investments Commission Act 2001 of the Commonwealth, Privacy Act 1988 of the Commonwealth and the criminal Statutes of the Commonwealth and of the States and of the Territories;
- (h) whether or not any conduct referred to in paragraphs (a) to (g) is involved, conduct:
 - (i) which indicates a failure to understand or practice the principles of honesty and fair dealing in relation to other participants in the Mortgage Industry, to Regulatory Authorities, to the Association, to Customers, or to the public;
 - (ii) which indicates a substantial or consistent failure to reach reasonable standards of efficiency and competence in the conduct of business in the Mortgage Industry; or

Deleted: "Credit Industry ... [1]
Inserted: "Credit Industry ... [2]
Formatted ... [3]
Formatted ... [4]
Deleted: "MIOS Limited" m... [5]
Deleted: "
Deleted: MIOS Referral" m... [6]
Deleted: Misconduct
Deleted: Misconduct as defir... [7]
Deleted: ;
Inserted:
Inserted: or as prescribed fr... [8]
Deleted: Misconduct means: ¶
Formatted: Bullets and Num... [9]
Deleted: ortgage
Deleted: ndustry
Inserted: ndustry Code of Practice
Deleted: Code of Practice
Deleted: COSL
Deleted: [why should this b... [10]
Inserted: [why should this b... [11]
Formatted ... [12]
Deleted: ¶
Inserted: ¶ ... [13]
Formatted ... [14]
Deleted: .
Inserted: . Commonwealth,
Deleted: Credit (Finance Br... [15]
Inserted: Credit (Finance B... [16]
Deleted:
Deleted: -
Inserted: . legislation in oth... [17]
Deleted: -
Deleted: other
Deleted: -
Deleted: -
Deleted: Secret Commissio... [18]
Deleted:
Deleted: (ga) conduct presc... [19]
Inserted: (ga) conduct presc... [20]
Inserted:
Inserted: listed in paragrap... [21]
Deleted: [what about overse... [22]
Inserted: [what about overse... [23]
Deleted: ¶
Inserted: ¶ ... [24]
Formatted: Bullets and Num... [25]

- (iii) ~~conduct prejudicial to the reputation or interests of the Association being conduct prescribed by the Board which is substantially prejudicial to that reputation or those interests;~~

- ~~(i) such other conduct (whether by way of act or omission) as the Board may from time to time prescribe as Misconduct under the Constitution for the purposes of these Rules.~~

"Non-active AMC" means a person whose membership of the Association has been suspended pursuant to Rule 5.1.1 or 5.1.2;

"Officer" means officer as defined in the Corporations Act 2001 of the Commonwealth;

"Respondent" means the person or organisation against which an allegation of Misconduct has been made;

"Rules" means these Disciplinary Rules as amended from time to time;

"State Council" means a State Council of the Association as defined in the Constitution;

"Tribunal" means the MIAA Tribunal established pursuant to Rule 4.1.1;

"Tribunal Secretary" means the person appointed to that position from time to time by the Association.

1.2 Interpretation

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 or permit any document to be served on, given, sent or dispatched to any person, where any such expression or any other expression is used (in this Rule referred to as "served"), irrespective of whether any such document is actually received by the person the document is deemed as having been duly served by delivering such document to the person personally or 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.~~

Deleted: [substantially]

Inserted: [substantially]

Deleted: National Council

Deleted: ¶
or ¶

Deleted: (i) conduct prescribed by the National Council being a failure, without reasonable excuse, proof of which shall lie on the member, to comply with a decision or order of the Tribunal as to a penalty

Inserted: (i) conduct prescribed by the National Council being a failure, without reasonable excuse, proof of which shall lie on the member, to comply with a decision or order of the Tribunal as to a penalty

Deleted: [should it be wider than just penalty is any order by the Tribunal]

Inserted:

Inserted: [should it be wider than just penalty is any order by the Tribunal]

Deleted: imposed on the Member ¶

Deleted: j

Inserted: imposed on the Member ¶
(

Inserted: j) such other conduct (whether by way of act or omission) as

Deleted: National Council

Deleted: misconduct

Deleted: is Constitution

Deleted: ¶
¶

Deleted: "Mortgage Industry Ombudsman" means the Mortgage Industry Ombudsman appointed pursuant to the Constitution of MIO Limited and the Mortgage Industry Ombudsman Service Rules

Deleted:

Deleted: "Mortgage Industry Ombudsman Service Rules" means the Mortgage Industry Ombudsman Service Rules made by MIO [26]

Deleted: "National Council" means the National Council of the [27]

Deleted:

Deleted: Misconduct

Deleted: provide for the provision of

Deleted: notice in writing

Deleted: that notice may be delivered to the recipient by [28]

Formatted: Indent: Left: 0.98"

Formatted: Bullets and Numbering

- (f) ~~where in these Rules any period of time is designated in Business Days, dating from a given day, act, or event, the time shall, unless the contrary intention appears, be reckoned exclusive of such day or of the day of such act or event;~~
- (g) ~~where a time period is designated in Business Days, that period terminates at 12.00 pm on the last Business Day of the period;~~
- (h) ~~if there is an inconsistency between the provisions of the Rules and the Constitution then the provisions of the Constitution are to prevail.~~

SECTION 2 –

INVESTIGATIONS, INCLUDING OF COMPLAINTS

2.1 Receipt of complaints

- 2.1.1 ~~The Board must appoint one or more persons to the position of Investigating Officer, but the persons so appointed may be individuals or a company or partnership. Each individual person appointed to the position of Investigating Officer, or if the Investigation Officer is not a natural person, each individual appointed or engaged to assist the Investigation Officer must have legal, accounting or auditing qualifications or experience to the satisfaction of the Board and shall not be a Full Member of MIAA or an AMC. The powers of an Investigating Officer may be exercised by each person so appointed.~~

- 2.1.1A ~~The role of the Investigation Officer is to investigate complaints and suspected breaches of the Constitution, the MIAA Code of Practice, and to investigate referrals and applications concerning membership in accordance with these Rules, and where required, to assist the Tribunal, as an impartial friend of the Tribunal, in proceedings coming before or before the Tribunal.~~

- 2.1.2 ~~A complaint received by the Association from any person, including but not limited to any Member or COS Limited, or to a State Council or the Board, in relation to conduct of a Member, must be referred directly to an Investigating Officer. A complaint may be received and acted upon regardless of its origin or form, and regardless of whether the complainant is identified in the complaint.~~

- 2.1.3 ~~Subject to Rule 2.1.3A, the Investigating Officer must not decide to conduct an investigation, including an investigation in his or her own discretion, whether the investigation will arise from a complaint or at the motion of the Investigation Officer;~~

- (a) ~~unless he or she suspects on a bona fide basis that a Member may have committed Misconduct;~~
- (b) ~~if he or she is of the opinion that it is more appropriate that the complaint be dealt with by a Court or another independent complaints, disciplinary, conciliation, or arbitration body or procedure;~~
- (c) ~~if the complainant seeks any compensation or reimbursement whatsoever and the complainant is not alleging that a Member has committed Misconduct;~~
- (d) ~~if the act or omission giving rise to the complaint occurred before the date of commencement of the Rules~~

Deleted: ¶

Formatted: Indent: Left: 0", Hanging: 0.49"

Deleted: references to time are construed as references to Sydney local time; (should be the time that is relevant to the issue)

Inserted: [should be the time that is relevant to the issue]

Deleted: Business Day

Deleted: 5

Deleted: Business Day

Deleted: [should be midnight]

Inserted: [should be midnight]

Deleted:

Deleted: [or should it be the latest

Inserted: [or should it be the latest

Deleted: ¶

Deleted: }

Inserted: ¶

Formatted: Font: Not Bold

Formatted: ... [29]

Formatted: Font: Not Bold

Deleted: National Council

Deleted: and/

Deleted: National Council

Deleted: Code of Practice

Formatted: ... [30]

Deleted: MIOS

Deleted: COS Limited

Inserted: COS

Deleted: National Council

Deleted:

Deleted: .

Deleted:

Deleted: [any concerns tha ... [31]

Inserted: [any concerns tha ... [32]

Inserted: ¶ ... [33]

Deleted: The

Deleted: to whom a complai ... [34]

Formatted: ... [35]

Deleted: upon

Deleted: the

Deleted: , provided that he ... [36]

Deleted: Misconduct

Deleted: Misconduct

- (e) if the subject matter of the particular complaint was comprised in a complaint by the same person (or any one or more of them) previously considered by the Investigating Officer or the Disciplinary Tribunal unless the Investigating Officer is of the opinion that relevant new evidence is available;
- (f) if the Investigating Officer is of the opinion, following consultation with the Chair of the Disciplinary Tribunal, that the complaint is frivolous or vexatious or is being pursued by the complainant in a frivolous or vexatious manner or for an improper purpose,

2.1.3A If a complaint is referred to the Investigating Officer by COS, or by the MIAA through a State Council or the Board, ASIC or by another regulatory body, the Investigating Officer must conduct an investigation into the complaint.

2.1.4 Subject to Rule 2.1.4B, the Investigating Officer may, before deciding to conduct an investigation, require that the complainant provide a complaint in written form and particulars of the complainant's identity and where in the Investigating Officer's opinion it is necessary so to do to afford procedural fairness to the Member the subject of the complaint, the complainant's written consent to the disclosure of his, her or its identity.

2.1.4A In all cases, the Investigating Officer will keep the identity of the complainant confidential except where the complainant has consented in writing to the disclosure of his, her or its identity,

2.1.4B Rule 2.1.4 does not prevent the Investigation Officer from conducting an investigation or from referring a matter to the Tribunal on the initiative of the Investigation Officer where there has been no complaint, but the Investigation Officer suspects on a bona fide basis that a Member may have committed Misconduct.

2.1.5 Where the Investigating Officer is of the opinion that disclosure of the identity of the complainant is necessary to afford procedural fairness to the Member the subject of the complaint, but the complainant refuses to provide such written consent, and Investigating Officer is not able to substantiate the subject matter of the complaint by independent means, without reference to the identity of the complainant, the Investigating Officer must not take any further action in relation to the complaint other than to advise the complainant that no further action will be taken in relation to the complaint.

2.2 Powers of Investigating Officer

2.2.1 The Investigating Officer may use all lawful means to conduct the investigation of a complaint and may conduct the investigation in any manner, using commonly accepted investigative techniques that the Investigating Officer considers fit.

2.2.2 The Investigating Officer may inspect the Association's membership and other records.

2.2.3 The Investigating Officer may require a Member to produce to the Investigating 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

Deleted: ;{ what if it another example of the conduct

Inserted: [what if it another example of the conduct

Deleted:]

Inserted:]

Deleted: he or she

Deleted: [I have some concerns]

Inserted: [I have some concerns]

Deleted: ¶

Inserted: ¶

2.1.3A - If a complaint is referred to the Investigating Officer by COS

Formatted: Indent: Left: 0", Hanging: 0.49"

Deleted: COS

Deleted: National Council

Deleted: A

Deleted: The

Deleted: electing whether

Deleted: A

Inserted: A

Deleted: [should the last sentence be a new clause]

Inserted: [should the last sentence be a new clause]

Deleted: A

Inserted: A - Rule 2.1.4 does not prevent the Investigation Officer from conducting an investigation or from referring a matter to the Tribunal on the initiative of the Investigation Officer where there has been no complaint, but the Investigation Officer suspects on a bona fide basis that a m

Deleted: .

Deleted: m

Deleted: Misconduct

Deleted: legal

documents or categories so required to be produced must in the Investigating Officer's reasonable opinion be potentially relevant to the subject matter of a current investigation being conducted by the Investigating Officer. A Member who receives such a notice must produce the documents required to the Investigating Officer, within the shortest time that is practicable.

Deleted: immediately or, if that is not possible,

2.2.4 The Investigating Officer may require a Member who is a natural person to attend on him or her for the purpose of being interviewed, by way of written notice in writing to the Member specifying the date, time and place of the interview and notifying the Member that he or she may have a legal representative present at the interview. A Member who receives such a notice must attend the interview and must answer all questions asked of him or her in the interview.

2.2.5 The Investigating Officer may issue a notice in writing to a Member that is a Corporation requiring that the Member make available for interview any Officer of the Member, or requesting that the Member make available for interview any employee of the Member as specified in the notice. The Member must upon receiving such a notice cause the Officer specified to attend the interview, and must use its best efforts to ensure that each employee specified attends the interview. Any such notice issued by the Investigating Officer in relation to an employee must include a notification to the Member that:

Deleted:

Deleted:

- (a) the Investigating Officer does not have the power to compel the employee specified in the notice to be interviewed; and
- (b) any employee who agrees to be interviewed may have a legal representative present at the interview.

2.2.6 An interview conducted by the Investigating Officer must be recorded on tape or computer disc, and a copy made available to the Member and any other person interviewed upon request.

Deleted: Investigating Officer's p

2.3 Power to suspend

2.3.1 If at any time in the course of an investigation the Investigating Officer suspects on reasonable grounds that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, the Investigating Officer may, by notice in writing setting out the reasons, refer the matter to the Chairperson or Deputy Chairperson of the Tribunal with a copy to be forwarded to the Member.

Deleted: ,

Deleted: ¶

Formatted: Indent: Left: 0", First line: 0"

Deleted:

Deleted: on which the Investigating Officer

Deleted: s

Deleted: that it will have effect

Deleted: the Investigating Officer does

Deleted: specify

Deleted: such a date

Deleted: an Investigating Officer

Deleted: Investigating Officer

Deleted: by an Investigating Officer

2.3.1.1 The Chairperson or Deputy Chairperson may upon receipt of a notice pursuant to Rule 2.3.1 from the Investigation Officer make an order suspending the Member from membership of the Association, and subject to Rule 2.3.8 such notice has effect from the date determined or, if a date is not specified, immediately from the date on which the order is made.

2.3.2 An order for suspension made by the Chairperson or Deputy Chairperson pursuant to Rule 2.3.1.1 will remain in effect until revoked by that person or the Tribunal.

2.3.3 A Member who is the subject of an order for suspension made pursuant to Rule 2.3.1.1 may, by notice in writing to the Investigating Officer or to the Secretary to

the Tribunal, require that the subject matter of the order be referred to the Tribunal.

Deleted: the Investigating Officer refer

Deleted:

Deleted:

- 2.3.4 Where the Investigating Officer has received a notice in writing pursuant to Rule 2.3.3, the Investigating Officer must forward the notice together with the notice containing the order for suspension and such supporting information as the Investigating Officer thinks fit, to the Tribunal Secretary within two Business Days.

Deleted: Business Day... [37]

Inserted: ¶
¶
2.3.4.1

Deleted: Business Day

- 2.3.4.1 Where the Secretary to the Tribunal has received a notice from a Member pursuant to Rule 4.3.3, the Secretary must within two Business Days notify the Chairperson or the Deputy Chairperson, as the case may be, being the person who did not make the Order under Rule 2.3.1.1 to suspend the Member and the person receiving the notice must arrange for the Secretary to convene the Tribunal as soon as practicable to consider the continuation of or lifting of the suspension.

- 2.3.5 Where the Chairperson or Deputy Chairperson of the Tribunal has made an order for suspension of a Member pursuant to Rule 2.3.1, that person must refer the subject matter of the order to the Tribunal within five Business Days and the notice containing the order for suspension and such supporting information as the Chairperson or Deputy Chairperson thinks fit must be provided to the Tribunal Secretary. At the same time Chairperson or Deputy Chairperson must notify the Member who is the subject of the order that they have done so.

Deleted: Investigating Officer... the Investigating Officer may ... of his or her own volition ... [38]

Deleted: business day

Deleted: in which event... the Investigating Officer must forward Investigating Officer... [39]

Deleted:

Deleted: Investigating Officer has

- 2.3.6 Where the Chairperson or Deputy Chairperson has made an order for suspension of a Member pursuant to Rule 2.3.1.1, if the person making the order subsequently forms the opinion that he or she no longer has reasonable grounds to suspect that the Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, and the subject matter of the order has not been referred to the Tribunal pursuant to Rule 2.3.4 or 2.3.5, the Chairperson or Deputy Chairperson may by notice in writing to the Member revoke the order for suspension and that revocation will have immediate effect.

Deleted: Investigating Officer... Investigating Officer... whether or not... has Investigating Officer ... [40]

- 2.3.7 Where an order for suspension pursuant to Rule 2.3.1.1 has been made in respect of a Member, whether or not the subject matter of the order has been referred to the Tribunal pursuant to Rule 2.3.4 or 2.3.5, the Investigating Officer who gave the notice pursuant to Rule 2.3.1 must within five Business Days after making the order for suspension prepare a Notice of Alleged Misconduct against that Member pursuant to Rule 2.4.1 and serve it within a further five Business Days on the Member personally or by registered mail or by post.

Deleted: made ... the order for suspension ... [41]

Deleted: Business Day

Deleted: issue ... Charges ... [42]

Deleted: Misconduct... [43]

Inserted: personally

Deleted: ly ... R... M... within a further five Business Days, failing which the order for suspension will automatically be deemed to have been revoked and to have had no effect from the time of the suspension. ... [44]

Inserted: and to have had no effect from the time of the suspension.

Deleted:

Deleted:

Deleted: and that revocation will take effect five Business Days after the order for suspension was made.

Deleted: Business Day

Deleted: Investigating Officer... as that Member thinks fit... however... Investigating Officer ... [45]

Deleted: 2 ... s... have ... ed ... [46]

- 2.3.8 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 two Business Days prior to the date upon which the suspension order is to take effect to make such representations and to provide such information to the Chairperson or Deputy Chairperson presiding in relation to the suspension order and the Chairperson or Deputy Chairperson must consider, but is not bound by, any representations made by the Member; and
- (b) another member of the Tribunal, not being either the Chairperson or Deputy Chairperson, must sign an endorsement to the suspension order approving the making of it.

SECTION 3 – CANCELLATION OF MEMBERSHIP OR ACCREDITATION AND REFUSED APPLICATIONS FOR MEMBERSHIP OR ACCREDITATION

3.1 Proceedings for cancellation of membership or accreditation

3.1.1 The Membership Secretary may, in his or her absolute discretion, at any time refer to an Investigating Officer or the Tribunal a Member who, in the Membership Secretary's opinion:

- (a) ~~does not meet or no longer meets~~ the requirements of membership in the Association; or
- (b) has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided to the Association.

3.1.3 A referral to an Investigating Officer pursuant to Rule 3.1.1 must be made by notice in writing to the Investigating Officer, and the Membership Secretary must provide a copy of the notice to the affected Member.

Deleted:

3.1.4 A referral to the Tribunal pursuant to Rule 3.1.1 must be made by notice in writing to the Tribunal Secretary, and the Membership Secretary must provide a copy of the notice to the affected Member.

Deleted:

3.2 Refused applications for membership or accreditation

3.2.1 In any case where an application for membership in the Association has been received from an Applicant but refused by the Association, and the Applicant has notified the Association that he, she or it wishes to appeal from the decision to refuse the application, except where the Board has deemed it appropriate in the circumstances for the Board to hear and determine the appeal pursuant to the Constitution, the Membership Secretary must refer the application to either an Investigating Officer or the Tribunal.

3.2.2 The decision whether to refer an application to an Investigating Officer or the Tribunal pursuant to Rule 3.2.1 is a matter within the absolute discretion of the Membership Secretary, however the Membership Secretary must refer the application to one or the other within five ~~Business Days~~ after the Association has been notified that the Applicant wishes to appeal from the decision to refuse the application.

Deleted: Business Day

3.2.3 A referral pursuant to Rule 3.2.1 must be made by notice in writing to the Investigating Officer or the Tribunal Secretary as the case may be, and the Membership Secretary must provide a copy of the notice to the Applicant.

3.3 Referrals to Investigating Officer

3.3.1 Where an Investigating Officer has received a referral pursuant to Rule 3.1.1 or 3.2.1, the Investigating Officer must conduct an investigation of the relevant circumstances, in pursuance of which investigation the Investigating Officer is invested with the powers set out in Rule 2.2.

3.3.2 The Investigating Officer must complete his or her investigation pursuant to Rule 3.3.1 and prepare a written Investigation Report of his or her findings, within 15 Business Days after receiving the referral.

3.3.3 The Investigating Officer must provide copies of the Investigation Report at the same time to:

- (a) the Member or Applicant who is the subject of the Investigation Report; and
- (b) the Tribunal Secretary.

3.3.4 The Investigating Officer must include with the Investigation Report copies of any correspondence received by the Investigating Officer from the Member or Applicant who is the subject of the Investigation Report, or any legal or other representative of the Member or Applicant.

SECTION 4 – MIAA TRIBUNAL

4.1 Composition of the Tribunal

4.1.1 There will be a Tribunal for the purposes of:

- (a) carrying out the functions of the Tribunal pursuant to these Rules and the Tribunal under these Rules may hear and determine any complaints of allegations of Misconduct against any Member relating to any breach of the terms of the Constitution, the MIAA Code of Practice, the COSL Rules or the Disciplinary Rules by any Member; and

- (b) carrying out such other functions as are delegated to it by the Council.

4.1.2 The Tribunal will be referred to as the MIAA Tribunal.

4.1.3 The Council must appoint a Chairperson and a Deputy Chairperson of the Tribunal, each of whom is a legal practitioner of at least five years' standing and has the right to practise law within a State or Territory of Australia. Both persons must be appointed for such period or periods and on such terms of remuneration as are determined by the Council.

4.1.4 The Chairperson and Deputy Chairperson may but need not be Life Members but may not be Full Members or AMCs.

4.1.5 The Tribunal Secretary must maintain a Tribunal Panel, consisting of a list of at least 50 persons selected by the Council, each of whom is in the majority opinion of the Council a person of good character and of good standing and experience in the mortgage industry. Persons selected to be on the Tribunal Panel may, but need not, be members of the Council or a State Council, Members or Officers or employees of Members.

4.1.6 The Council will endeavour to ensure that the Tribunal Panel includes persons resident in each State of Australia.

Deleted: which may but is not required to include his or her recommendation in respect of those findings

Deleted: ,

Deleted:

Deleted: 10

Deleted: Business Day

Deleted: [yes][no recommendation or if there is that part of the report is not to go to the complained of]

Inserted: [yes

Inserted:]

Inserted: [no recommendation or if there is that part of the report is not to go to the complained of]

Deleted: [why]

Inserted: [why]

Deleted: , but need

Deleted: ,

Deleted:

Deleted: , but may not be

Deleted: or

Inserted: or

Deleted: [

Inserted: [

Deleted: [I wonder]

Inserted:

Inserted: [I wonder]

Deleted: 20

Deleted: [

Inserted: [50]

Deleted:]

Deleted: [should not],

Inserted: [should not]

4.1.7 For the purposes of a hearing, the Tribunal must be comprised by:

- (a) the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson; and
 - (b) two persons from the Tribunal Panel, selected by the Tribunal Secretary in consultation with the presiding Chairperson;
- or
- (c) where both the Chairperson and Deputy Chairperson are unable or not prepared to sit on a particular hearing, three persons from the Tribunal Panel, selected by the Tribunal Secretary, one of whom will be designated by the Tribunal Secretary as chairperson for the purposes of that particular hearing; or
 - (d) where the Chairperson determines, in his or her discretion, that it is appropriate to do so having regard to the importance of the matter, the Tribunal may be constituted, by the Chairperson, the Deputy Chairperson and three persons from the Tribunal Panel.

Deleted: c

Deleted: t

Deleted: wo 3?]

Inserted: wo 3?] persons from the Tribunal Panel.

Deleted: .

4.1.8 In the absence of the Chairperson and the Deputy Chairperson, the person designated by the Tribunal Secretary as chairperson for the purposes of a particular hearing must be a legal practitioner of at least five years standing and who has the right to practice law within a State or Territory of Australia.

4.1.9 In selecting the composition of the Tribunal for any particular matter, the Tribunal Secretary will endeavour so far as possible to appoint persons who are resident in the same State as the Member who is the subject of the relevant Notice of Alleged Misconduct.

Deleted: Charges

Deleted: Misconduct

4.2 Proceedings of the Tribunal

4.2.1 Upon receiving a Notice of Alleged Misconduct pursuant to Rule 2.4.2 or a notice pursuant to Rule 2.3.4 or 2.3.5, the Tribunal Secretary must assist the presiding Chairperson to appoint the Tribunal to deal with that particular proceeding, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Investigating Officer in connection with the proceeding.

Deleted: Charges

Deleted: Misconduct

4.2.2 The Chairperson of the Tribunal must convene the Tribunal as quickly as is practicable, which may be done in person or by telephone or audiovisual link as the chairperson considers fit, and:

Deleted: chairperson

Deleted: c

Inserted: c

- (a) where an order for suspension pursuant to Rule 2.3.1 is in effect, and whether or not a notice pursuant to Rule 2.3.4 or 2.3.5 has been received, the Tribunal may make an order that the order for suspension be continued until further order of the Tribunal, or an order that the order for suspension be revoked, without conducting a hearing or receiving evidence or submissions from any party to the proceeding;
- (b) in any proceeding, if the Tribunal has reason to suspect that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, the Tribunal may make an order suspending the Member or Affiliate from membership of the Association;

- (c) in any proceeding, determine whether the proceeding will be dealt with and determined in the absence of the parties, or whether a hearing will be convened.
- 4.2.3 Where the Tribunal has made an order pursuant to Rule 4.2.2(a) or (b), the Tribunal may at any time in the proceeding, prior to issuing its final determination, on the motion of a party or on its own motion make an order revoking or varying its original order pursuant to Rule 4.2.2(a) or (b).
- 4.2.4 Where the Tribunal has made an order pursuant to Rule 4.2.2(a) or (b) in respect of a Member, the Tribunal must immediately notify the Investigating Officer of the order and Rule 2.3.7 will then apply as if the order had been made by the Investigating Officer.
- 4.2.5 Where the Tribunal has determined pursuant to Rule 4.2.2(c) that a proceeding will be conducted in the absence of the parties, the chairperson may notify the Investigating Officer and must notify the Member who is the subject of the proceeding of that determination.
- 4.2.5A Where the Tribunal proposes to deal finally with a matter with a matter before it, the Tribunal may do so without notice to the Investigation Officer or to the parties but the Tribunal must not proceed in this manner unless it proposes to determine a Notice of Alleged Misconduct by dismissing it.
- 4.2.5B Where the Tribunal proposes to deal finally with a matter in the absence of the parties, the Chairperson must notify the party under review and that party may provide submissions and evidence in writing to the chairperson within such period as the chairperson designates.
- 4.2.6 Where the Tribunal is proceeding pursuant to Rule 4.2.5 OR 4.2.5B, the Tribunal must not proceed to determine the Notice of Alleged Misconduct until the period designated by the chairperson for the provision of submissions and evidence has expired and the Tribunal has considered all such material provided to it.
- 4.2.7 Where the Tribunal has determined pursuant to Rule 4.2.2(c) that a hearing will be convened in respect of a proceeding, the chairperson must appoint a date, time and place for the hearing and may give notice in writing of these particulars to the Investigating Officer, and must give notice to the Member who is the subject of the Notice of Alleged Misconduct. The period of notice must be not less than five Business Days prior to the date of the hearing.
- 4.2.7A Where the Tribunal has determined that a hearing will be convened, the role of the Investigation Officer, if invited to do so by the Tribunal, is to be present at the hearing to support the allegations it has made in the Notice of Allegations as an impartial friend of the Tribunal, including by making recommendations to the Tribunal, where invited by the Tribunal to do so.
- 4.2.8 The Tribunal may adjourn, postpone or reconvene a hearing as it thinks fit, provided that reasonable notice is given to the parties of any change to the hearing date.

Deleted: dealt with

Deleted:

Deleted: must

Deleted: [why]

Inserted: [why]

Deleted:

Deleted: Misconduct

Deleted:

Deleted: all

Deleted: ies

Deleted: Charges

Deleted: Misconduct

Deleted: must

Deleted: [why]

Deleted:]

Inserted: [why]

Deleted: Charges

Deleted: Misconduct

Deleted: Business Day

4.3 Proceedings for cancellation of membership or accreditation

4.3.1 Upon receiving a notice pursuant to Rule 3.1.1, or an Investigation Report pursuant to Rule 3.3.3 relating to proceedings against a Member, the Tribunal Secretary must appoint the Tribunal to deal with that particular proceeding, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Association in connection with the proceeding.

4.3.2 The Tribunal must provide to the Member who is the subject of the notice or Investigation Report a reasonable opportunity to make written submissions to the Tribunal as to the reasons why the membership of the Member should not be cancelled. The Tribunal must not hold a hearing in respect of the proceeding and the Member is not entitled to require that a hearing be held unless the Tribunal is satisfied that special circumstances exist justifying the holding of a hearing.

4.3.3 If, having considered any submissions received by it, the Tribunal is of the opinion that the Member:

- (i) does not meet the requirements of membership in the Association; or
- (ii) has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided to the Association;

the Tribunal may cancel the membership of the Member.

4.4 Proceedings in relation to refused applications

4.4.1 Upon receiving a notice pursuant to Rule 3.2.1, or an Investigation Report pursuant to Rule 3.3.3 relating to a refused application by an Applicant, the Tribunal Secretary must assist the presiding chairperson to appoint the Tribunal to deal with that particular matter, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Membership Secretary or the Investigating Officer in connection with the proceeding.

Deleted:

4.4.2 The Tribunal must provide to the Applicant who is the subject of the notice or Investigation Report a reasonable opportunity to make written submissions to the Tribunal as to the reasons why the application by the Applicant for membership in the Association should be allowed. The Tribunal must not hold a hearing in respect of the proceeding and the Applicant is not entitled to require that a hearing be held.

4.4.3 After considering any submissions received by it, the Tribunal may affirm the decision to refuse the application by the Applicant for membership in the Association, or revoke that decision and direct the Association to allow the application for membership as the case may be.

4.5 Conduct of hearings

4.5.1 A hearing of the Tribunal must be held in private except that:

- (a) the Investigating Officer, subject to the approval of the presiding Chairperson, and the Member as of right (if the hearing relates to a Member who is a natural person), or two representatives of the Member (if the hearing relates to a Member that is a Corporation) are entitled to attend;

Deleted: c

Deleted: r

Deleted:

Deleted:

- (b) the Tribunal may allow other representatives of the Association and the Member to attend and make submissions.

4.5.2 A party may be legally represented before the Tribunal provided that:

- (a) the presiding Chairperson is advised not less than two Business Days prior to the date set down for the Tribunal hearing of the intention of the particular party 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 party to have legal representation in which event the legal representative or representatives must depart the hearing and take no further part in it and the hearing must proceed in the absence of that legal representation.

Deleted: [why should others be there]

Inserted: [why should others be there]

Deleted: 1

Deleted: Tribunal Secretary

Deleted: c

Deleted: five

Deleted: Business Day

Deleted: [why have a time limit, either lawyers can attend or not]

Inserted: [why have a time limit, either lawyers can attend or not]

4.5.3 No party may be compelled to appear at a hearing of the Tribunal, but any party to a hearing may provide written submissions and evidence to the chairperson at least three Business Days before the hearing or at the hearing with the leave of the Tribunal.

Deleted: Business Day

Deleted: [Tribunal should be able at its discretion accept material on the day]

4.5.4 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.

Inserted: [Tribunal should be able at its discretion accept material on the day]

4.5.5 The Tribunal must conduct hearings with as little formality and technicality as possible and otherwise may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it.

4.6 General Rules governing the Tribunal

Deleted: r

4.6.1 The laws and rules of evidence do not apply to proceedings before the Tribunal.

4.6.1.1 In considering a matter before it, the Tribunal may take into account details entered into the Register of the Tribunal concerning matters previously dealt with by the Tribunal against a Member, but only for the purposes of considering the orders that the Tribunal may make against a Member, unless the Tribunal determines that the entry in the Register and the facts to which it refers are relevant to establishing whether the Member has engaged in Misconduct and has given the Member an opportunity to address it on that issue.

Deleted: m

Deleted: [any sanction]

Inserted: [any sanction]

Deleted: m

Deleted: m

Deleted: misconduct

Deleted: [agree]

Inserted: [agree]

4.6.2 The Tribunal must act expeditiously in hearing and determining all proceedings before it.

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

4.6.4 The Tribunal may obtain legal advice and have legal advisers in attendance at a hearing.

4.6.5 The Tribunal may conduct hearings or other meetings of the Tribunal in person or by other means provided that all members of the Tribunal are able to hear and speak to each other.

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

4.6.7 All correspondence between a party and the Tribunal must be dealt with on the Tribunal's behalf by the Chairperson or, in the Chairperson's absence, by another member of the Tribunal with the consent of the chairperson.

4.6.8 Where the Tribunal has made a determination pursuant to Rule 4.3.3 or 4.7.2, the Chairperson must notify in writing the Investigating Officer and the Member who is the subject of the proceeding before the Tribunal of the determination, including any finding of Misconduct and any penalty.

4.6.9 Where the Tribunal has made a determination pursuant to Rule 4.4.3, the chairperson must notify in writing the Membership Secretary and the Applicant who is the subject of the proceeding before the Tribunal of the determination.

4.6.10 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 all parties to the proceeding within one month after the date on which the determination is made.

4.6.11 The Tribunal may proceed to determine any matter before it notwithstanding the failure by the Member who is the subject of the Notice of Alleged Misconduct to make submissions or provide documents or information or to appear at a hearing within the period specified for the purpose by the Tribunal.

4.7 Powers of the Tribunal

4.7.1 Any act or omission by an Officer, employee or contractor of a Member is deemed for the purposes of these Rules to be an act or omission by the Member.

4.7.1A The Board or State Council may act under the Constitution to suspend, censure or expel any Member irrespective of any determination or other action that has been, is being or may be taken pursuant to these Disciplinary Rules by the Tribunal or at law.

4.7.2 If the Tribunal considers that the Notice of Allegation has been substantiated but does not propose to determine that a Member has engaged in Misconduct, following submissions from the Member or the Investigation Officer or both that there are exceptional circumstances justifying it doing so, the Tribunal may without proceeding to determine that there has been Misconduct, adjourn the matter to a date to be fixed or dismiss it absolutely or subject to such conditions as the Tribunal may impose in accordance with these Rules.

4.7.3 Subject to Rule 4.7.2 and Rule 4.7.4 if the Tribunal determines that a Member has engaged in Misconduct, the Tribunal shall make a determination of Misconduct against the Member and may impose one or more of the following penalties:

(a) dismiss the matter absolutely or subject to any conditions the Tribunal may impose

(b) counsel the Member

(c) censure the Member

Deleted: [or where it is relevant the Chair has a casting vote]

Deleted: .

Inserted: [or where it is relevant the Chair has a casting vote]

Deleted: c

Deleted: c

Deleted: c

Deleted: [why]

Inserted: [why]

Deleted: Misconduct

Deleted: may but

Deleted: not

Deleted: Charges

Deleted: Misconduct

Deleted: ¶

Formatted: Indent: Left: 0", Hanging: 0.5"

Formatted: Indent: Left: 0", First line: 0"

Formatted: Font color: Red

Deleted: 1A

Inserted: 1A

Deleted: misconduct

Deleted: misconduct

Deleted: 2

Deleted: I

Deleted: Misconduct

Deleted:

Deleted: ¶

Inserted: ¶

¶

Formatted: Indent: Left: 0.39"

Deleted: .

Inserted: . (aaa)

Deleted: aa

Deleted: aa

Deleted: m

Deleted: a

- (d) suspend the Member from membership of the Association, for such period and on such terms or conditions as the Tribunal thinks fit;
- (e) where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Tribunal thinks fit;
- (f) require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct found to have been engaged in;
- (g) 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;
- (h) require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member;
- (i) expel the Member from membership of the Association;
- (j) adjourn the proceeding subject to compliance with such conditions as to sanctions as the Tribunal may otherwise impose in accordance with this Rule.

Deleted: b

Deleted: c

Deleted: da

Deleted: misconduct

Deleted: db

Deleted: d

Deleted: Misconduct

Formatted: Indent: Left: 0.49"

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.49",
Hanging: 0.49"

4.7.4 Where the Tribunal has determined the Member has engaged in Misconduct but there are in the opinion of the Tribunal mitigating factors amounting to special circumstances in the opinion of the Tribunal the Tribunal may 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 whereby the determination of Misconduct by the Tribunal against the Member is to be suspended for any period of time up to 2 years as the Tribunal deems fit from the date of the imposition of the suspended determination of Misconduct and the suspended determination of Misconduct will be of no effect after any such period of suspension imposed expires. However where the Member within the period of any suspended determination is guilty of further engaging in Misconduct the suspended determination of Misconduct penalty shall be of no effect and is to be reconsidered afresh by the Tribunal as to an appropriate penalty at the same time as any further Misconduct engaged in by the Member is being considered by the Tribunal in relation to penalty;
- (b) an admonishment of the Member without any determination of Misconduct by the Tribunal against the Member;
- (c) require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct found to have been engaged in;
- (d) 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) require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member;

Formatted: Indent: Hanging: 0.39"

Formatted: Indent: Left: 0.16",
Hanging: 0.83"Formatted: Indent: Left: 0.5",
Hanging: 0.5"

4.7.5 Prior to taking any action under Rule 4.7.2, Rule 4.7.3 or Rule 4.7.4 the Tribunal must provide such reasonable time as the Tribunal determines for the Member to make such representations and to provide such information to the Tribunal as the Member thinks fit in relation to the action proposed to be taken by the Tribunal.

Deleted: [what about conduct where the tribunal does not want to find misconduct but feels the need to order some sanctions]¶

¶
[also the Tribunal should have the power to follow up its orders and if need be take remedial action]

Deleted: r

Inserted: [what about conduct where the tribunal does not want to find misconduct but feels the need to order some sanctions]¶

¶
[also the Tribunal should have the power to follow up its orders and if need be take remedial action]

Deleted: 3

Deleted: ¶

4.8 Effect of Tribunal determinations

4.8.1 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 or, if the Tribunal does not specify such a date, immediately from the date on which the order is made.

4.8.2 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.

4.8.3 The Tribunal may of its own motion and in its absolute discretion reconsider and vary or overrule any decision or order made by the Tribunal in respect of any penalty imposed by the Tribunal upon a Member under these Rules prior to the 26th day of November 2004.

Formatted: Superscript

4.9 Notification to persons affected by determination

Deleted: ¶

Inserted: ¶

4.9.1 Where the Tribunal makes a determination, decision or order pursuant to the Rules (whether or not that determination, decision or order is then in effect) and the effect of that determination, decision or order is to cause the membership of the Member concerned to be suspended or for the Member to be expelled from membership of the Association, the Tribunal:

- (a) may in any such determination, decision or order make such ancillary orders concerning AMC's who are employed by, or contracted to, the Member concerned as the Tribunal thinks fit and every such ancillary order shall bind every such AMC; and
- (b) must as soon as practicable in such form and manner as it thinks fit notify each such AMC of the effect of the determination, decision or order and the terms of any ancillary order.

Deleted: ¶
[what do we tell the complainant]

Inserted: ¶
[what do we tell the complainant]¶

4.10 Publication of determinations

4.10.1 The Tribunal Secretary must maintain a register of all determinations made by the Tribunal or by the Board pursuant to Rule 4.3.3 or 4.7.2, and make the register available for inspection by Members. The register must, with respect to each determination, include the name of the Member to whom the determination relates, any findings of Misconduct by the Tribunal and any orders made by the Tribunal including any penalties. The register must also include a copy of the reasons for determination issued by the Tribunal.

Deleted: National Council

Deleted: Misconduct

Deleted: any

4.10.2 The Tribunal Secretary must maintain a separate register of all determinations made by the Tribunal pursuant to Rule 4.4.3. The register must, with respect to each determination, include the name of the Applicant to whom the determination

relates and the determination made by the Tribunal. The register must also include a copy of ~~the~~ reasons for determination issued by the Tribunal.

Deleted: any

Deleted: may{

Deleted: }

Inserted: [shall]

4.10.3 The Association ~~shall~~, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally the content of, or an extract from or precis of, any determinations by the Tribunal (other than determinations pursuant to Rule 4.4.3) and the register maintained pursuant to Rule 4.10.1 ~~and of any reasons issued by the Tribunal~~. 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 have to bring action with respect to such publication, whether by suit in defamation or other cause of action.

Formatted: Indent: Left: 0", First line: 0"

4.10.4 Except as provided below, the Association must not publish or otherwise make available to Members, or other persons or the public generally the content of any determinations by the Tribunal pursuant to Rule 4.4.3 or the register maintained pursuant to Rule 4.10.2 (collectively the "Application Records"). The Association must provide access to the Application Records only as follows:

(a) an Applicant must be given access upon request to that part of the Application Records that relates to the Applicant, but not to any other part of the Application Records;

(b) the Membership Secretary, the Tribunal Secretary, the Tribunal, an Investigating Officer and the Council must be given access upon request to the Application Records.

Formatted: Normal, Indent: Left: 0", Hanging: 1.08", Tabs: Not at 0.49"

4.11 Keeping Complainant informed

4.11.1 The Investigating Officer and/or the Tribunal Secretary may keep a complainant informed of progress in handling the complainant's complaint provided always that the Investigating Officer or the Tribunal Secretary as the case may be must not provide any information to a complainant in relation to the progress ~~and outcome~~ of the complaint where in the opinion of the Investigating Officer or the Tribunal Secretary as the case may be:

Deleted: ¶

Formatted: Font: Bold

Deleted: ¶

Formatted: Font: Bold

Deleted: .

Deleted:

Inserted: and outcome

(a) to do so would expose the Investigating Officer, the Tribunal Secretary, the Association or any Officer of the Association ~~or members of the Tribunal~~ to liability for civil damages;

Formatted: Indent: Hanging: 0.51", Tabs: 0.49", List tab + Not at 1"

(b) to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint and the proceedings of the Tribunal; or

(c) to do so would deny procedural fairness to the Member, the subject of the complaint.

4.12 Legal proceedings

4.12.1 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 Councillors of the Association or an Investigating Officer), with respect to the publication or giving of access to any person of material pursuant to

Rules 4.10.1 or 4.10.2, and this Rule may be pleaded as a complete bar to the commencement or continuation of any such proceedings in any jurisdiction.

- 4.12.2 The Association will indemnify each member of the Tribunal and 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 Investigating Officer, a proceeding before the Tribunal or any order, determination or decision made by an Investigating Officer or the Tribunal, and this indemnity will extend to the conduct of the defence of any proceedings and the payment of any costs thereof.

Deleted: cos

- 4.12.3 The indemnity provided pursuant to Rule 4.12.2 does not extend to actions brought by the Association against any person.

SECTION 5 – NON-ACTIVE AMCs

5.1 Automatic suspension of membership of the Association

Deleted:

- 5.1.1 Where an AMC is not, or has ceased for any reason to be, an Officer, employee or contractor of a Member, then the membership of the Association of the AMC is automatically suspended with effect from the date on which the AMC ceased to be an Officer, employee or contractor of a Member.
- 5.1.2 Where the Tribunal has made an order suspending or cancelling the membership of a Member, then the membership of the Association of any AMC who is an Officer, employee or contractor of that Member, and who is not also an Officer, employee or contractor of another Member, is automatically suspended with effect from the date on which the suspension or cancellation of the membership of the Member takes effect.
- 5.1.3 Where an AMC's membership of the Association has been suspended pursuant to Rule 5.1.1 or 5.1.2, the Membership Secretary must record the AMC's name in the membership records of the Association as a Non-active AMC.
- 5.1.4 A Non-active AMC is not entitled to any of the rights or privileges of an AMC, and may not hold himself or herself out to any person or to the public generally as an AMC or as a Member of the Association.
- 5.1.5 A Member may not deal with a Non-active AMC as if the Non-active AMC was an AMC or a Member, and must not hold out a Non-active AMC to any person or to the public generally as an AMC or a Member of the Association.
- 5.1.6 A Non-active AMC may apply for re-accreditation upon obtaining employment with, or being retained as a contractor by, a Member. If no application for re-accreditation has been received from the Non-active AMC within one year after the date on which his or her membership of the Association was suspended, then his or her membership of the Association will be deemed to have been cancelled with effect from the date on which that one year period expires.

Deleted:

Deleted:

SECTION 6 – MATTERS REFERRED TO TRIBUNAL BY CREDIT OMBUDSMAN SERVICE LIMITED

Deleted: MORTGAGE
INDUSTRY

6.1 Referral of matters by Credit Ombudsman

Deleted: Mortgage Industry

- ## SECTION 7 – MATTERS REFERRED TO TRIBUNAL BY COS LIMITED

7.1.1 Notwithstanding any other provision of these Rules, COS Limited may of its own volition and irrespective of whether or not a complaint has been made to it under the COSL Rules in respect of a Member, make a complaint in relation to a Member to the Association to be dealt with in accordance with these Rules.

7.1.2 COS Limited may make a complaint to the Association under these Rules irrespective of whether or not the subject matter of the complaint by COS Limited has been the subject of a complaint by any particular consumer or consumers to COS Limited.

7.1.3 COS Limited may make a complaint in relation to specific conduct or a course of conduct engaged in by the Member who is the subject of the complaint.

Attachment B



MIAA

MORTGAGE INDUSTRY ASSOCIATION OF AUSTRALIA

ADVERTISING GUIDELINES

16.09.2004

PO Box 604
Neutral Bay NSW 2089
T: 1300 554 817
F: 02 9967 2896
www.miaa.com.au

MIAA ADVERTISING GUIDELINES

The purpose of these Advertising Guidelines is to assist MIAA members in framing their advertisements so they do not breach the misleading and deceptive advertising provisions of the Trade Practices Act, the ASIC Act, State consumer protection legislation and the MIAA Code of Practice.

Note: These guidelines are for members' general assistance and do not constitute legal advice. Members should seek their own legal advice on their own specific circumstances or advertising.

The misleading conduct provisions require that a business must not in its business activities engage in any conduct that misleads or deceives or is likely to mislead or deceive consumers. As well as direct advertising, the requirement covers representations made during meetings with customers, over the phone, in brochures, on websites and so on.

The MIAA Code of Practice also requires that a member's advertising will not be 'misleading, dishonest or deceptive'.

It is extremely important that members continually review all advertising and marketing material to ensure that that material complies with relevant legislation. Advertising can be innovative, exciting and competitive; but it must also be honest, balanced and accurate.

Be warned! The penalties for misleading and deceptive advertising and other practices can be very costly.

Some Key Principles

Overall Impression

Whether the 'don't mislead' principle is contravened depends on the overall impression created. A selling approach that seems clear and well structured to its designers may lose its intended message upon presentation to its audience. This can happen for many reasons.

These may include the use of assumptions or pre conceptions of the audience or designers. The impression created by a strong positive statement in the main text of an advertisement may not be overcome by qualifications or exceptions included in the fine print. It is recommended that you take great care in advertising and not be ambiguous with any claims or statements.

Audience

The target audience of an advertising campaign may be very different to the actual audience that receives the message. What matters is the understanding of the audience that actually receives the message.

Members of that audience may be unsophisticated or have limited knowledge of the mortgage industry and its products and services.

Even if only the more susceptible members of your actual audience are misled, the consumer protection legislation and the MIAA Code of Practice will have been breached.

Intent

It is important to realise that purpose or intent does not have to be proved to establish a breach of the misleading conduct laws or the Code. It is the likely effect of the representation that counts. Advertising may be found to be misleading or deceptive irrespective of whether you had any intention to mislead or deceive at all.

Further, it is not necessary for someone to have been misled for a breach to occur. A Court or tribunal may find that the words or other material in an advertisement are capable of misleading or likely to mislead members of the target audience even in the absence of any evidence that particular consumers were misled.

Another point to note is that although a representation to a customer or a statement in an advertisement may be literally true, it may still be in breach. This will be the case if material information is omitted and, as a result, the overall impression created is misleading. Remember that the omission of crucial facts can be as misleading as the inclusion of misleading or inaccurate statements.

Many misleading advertisements do not stem from calculated attempts to deceive, but from the writer's or presenter's mismanagement, inadvertence or naivety.

Remember that how you present a product, service or offer may not be the way it is received by the audience. You need to put yourself in the receiver's position and be objective.

Also note that it is not a defence to say that you corrected the misleading effect of an advertisement before the customer signed up for the product. For a breach of the law to occur, it is enough that the consumer was likely to be misled at the time they initially received the statement or other representation.

Risks to Avoid that are Specific to the Mortgage Industry

Advertising which uses the following words needs to be carefully checked for accuracy and truthfulness:

'Independent' 'Impartial' or 'Unbiased' Advice

Is the advice being given, independent, impartial or unbiased and not influenced by factors other than the consumer's best interest?

If a broker receives commissions or other benefits from a lender there is potential for the broker to be influenced by factors other than the consumer's best interest.

In the MIAA's view, you cannot describe yourself, without qualification, as "independent" and/ or "impartial" and/or "unbiased" if you have a panel of lenders that pay you a commission, and you do not recommend lenders from whom no commission is received.

However, you may be entitled to state that you are impartial or unbiased (assuming you are) in your recommended choice of loans from among your panel of lenders.

In the MIAA's view, the term 'independent' should only be used to emphasise ownership of the entity e.g 'we are an independently owned broker'.

Possible alternative descriptors might be 'professional' or 'MIAA-accredited'

The 'best' deal

It is impossible to demonstrate, at any point of time, in the large and competitive mortgage market that a deal is the 'best' deal.

Advertising should avoid such terminology and similar expressions like 'cheapest' or 'lowest rates'.

Possible alternatives could be - 'We help you find a loan suited to your needs from our panel of lenders'

'Guaranteed'

You should not use the word 'guaranteed' unless you are making a contractually binding promise, and, if so, you must make the precise terms of that promise clear.

Generally, as terms and conditions are too wordy for practical use, the term 'guaranteed' should be avoided.

'Free'

Is the service you are providing really free or are there other costs the consumer might incur or benefits they might be giving up?

You may want to consider different terminology such as 'Our service to you is free but other fees may apply'.

Use of Charts, graphs, images, on-line calculators

Charts, graphs, images or on-line calculators, either by themselves or in combination with each other or with words, may create a misleading impression. You need to ensure that the likely audience will not obtain a misleading impression from the material as a whole. If a calculator or chart is based on assumptions, those assumptions should be stated, particularly if they differ from what the audience might assume.

Subjective statements

You should not use subjective statements such as 'We believe that interest rates will rise in the next three months' unless the stated belief or opinion or point-of-view is held in good faith and is reasonably based.

"Subject to conditions"

Use of 'subject to conditions' and similar phrases is unlikely to protect you from misleading your audience if the terms and conditions of a loan being recommended are less favourable to the consumer than the advertising suggests. If an understanding of the terms and conditions is likely to change the customer's perception of the product or service you are presenting, you probably need to reconsider your advertising strategy.

Where an attractive offer is subject to conditions that are likely to be unattractive from the consumer's perspective, those conditions should be presented as prominently as the offer itself.

Comparative Advertising

If you use comparative advertising, always ensure the claims being made about competitors' products and services, as well as your own, are 100% accurate and that relevant information is not omitted. Extreme caution must be exercised as competitors are most likely to complain!

If you are making comparisons, make sure you are comparing 'apples with apples'.

For instance, it is misleading to say that a line of credit or offset account product can be paid off more quickly than a standard product if this result can only be achieved by making larger or more frequent payments. If you suggest otherwise, you are not comparing 'apples with apples', and may find you have breached the misleading and deceptive conduct provisions.

MIAA CODE
Alternative Remuneration
October 2004

PO Box 604
Neutral Bay NSW 2089
T: 1300 554 817
F: 02 9967 2896
www.miaa.com.au

MIAA CODE ON ALTERNATIVE FORMS OF REMUNERATION

Preamble:

This Code is an adjunct to the MIAA Code of Practice and is to be read in conjunction with, and is underpinned by the principles in, that document.

It recognises the requirements of the MIAA Code of Practice and the NSW Consumer Credit Administration (Finance Brokers) Regulations, 2004 for loan writers to disclose (monetary) commissions and the Regulations' requirement for disclosure of "any interest or relationships of the finance broker that can be reasonably expected to influence the finance broker's recommendation – for example benefits comprising tickets to sporting events, holiday offers, or the provision of services."

The purpose of this document is to identify the types of such alternative forms of remuneration and provide guidelines as to their treatment by MIAA members.

In identifying such payments this Code adopts the criteria in the NSW Consumer Credit Administration (Finance Brokers) Regulations viz 'that can be reasonably expected to influence the finance broker's recommendation.'

Consistent with the above regulations, this Code focuses on alternative forms of remuneration paid to the loan writer who is dealing directly with the consumer.

The Code:

i. Disclosure

Loan writers must disclose in writing to the consumer all material alternative forms of remuneration paid by a lender or credit provider to the loan writer that can be reasonably expected to influence the loan writer's recommendation.

"Material" means any benefit which exceeds \$300 in value.

2. Types of Benefits

The benefits listed below, and benefits of a similar nature, are alternative forms of remuneration which, subject to clause 1 of this Code, must be disclosed in writing to the consumer.

- Sponsorship of seminars, conferences and functions;
- Gifts;

- Payment for office rental;
- Accommodation and entertainment;
- Travel;
- Cash payments and/or goods;
- Computer hardware and software costs;
- Competitions in which a broker/loan writer might be eligible to win a prize subject to achieving certain volume-related targets.

3. Benefits to Broker Groups

This Code recognises that benefits may be given to broker groups of the following or similar nature:

i. Bonus commissions that are volume or product specific

Generally these would be an additional component of commission, a percentage of which may or may not be passed onto the /loan writer, if a specific group target is achieved. In such cases, an individual loan writer may have no control over the reaching of group targets therefore such payments may have no influence over the loan writer's recommendation.

ii. Sponsorship of group conferences, seminars, training or other events

All payments made for sponsorship of group conferences, seminars, training or other events must be included in a register. However such payments are not considered to be payments 'that can be reasonably expected to influence the loan writer's recommendation.'

A register should be maintained by the broker group containing details of such payments or benefits (including name of payee, amount and purpose of payment) and kept at the group's office for seven years.

4. Breaches of this Code

Breaches of this Code will be treated as breaches of the MIAA Code of Practice and as such may be dealt with under the MIAA Disciplinary Rules, or as appropriate, by the Credit Ombudsman.

Attachment D**Hank Spier**

From: "Phil Naylor" <phil@miaa.com.au>
To: "Hank Spier" <spierconsulting@netspeed.com.au>
Sent: Wednesday, February 16, 2005 1:28 PM
Subject: RE: VARIATIONS TO AUTHORISATION

Hank

Further info:

Extract from Board meeting 26 November 2004

Disciplinary Rules

The Board adopted the re-drafted Disciplinary Rules, which had been approved in principle at the 20 August 2004 meeting.

The Board also agreed that the Tribunal should be empowered to act retrospectively to alter penalties in appropriate circumstances, in light of the wider range of penalties now available in the updated rules.

There has been no change to the Code but some minor changes will be made at the upcoming 24/25Feb meeting viz

'Under the MIAA Constitution it is necessary for the Board to approve changes to the Constitution. While a total review of the Code is currently under way, it is appropriate for the Board to approve the following changes (which were either raised at the last Board meeting or are 'clean up' changes) viz

1. COSL type terms and definitions taken from the updated Constitution have replaced MIOS terms.
2. There is a new vicarious liability clause 54A. (the old 54 is now 54B).

'54A.A Member is vicariously liable for any acts or omissions howsoever arising of any employee that may embarrass, impugn or discredit the MIAA or bring the MIAA or the mortgage industry into disrepute and any such acts or omissions by that employee are deemed to be a breach of this Code of Practice by the Member.'

3. A correction has been made by adding the word 'must' to clause 55 which was missing.
4. References to 'National Council' have been replaced by 'the Board' and the 'Board' definition has been inserted.

Phil

Phil Naylor
Chief Executive Officer
Mortgage Industry Association of Australia
Tel: 1300 554 817 Direct 61+2 8905 1301
Fax: 61+2 99672896
PO Box 604 Neutral Bay NSW 2089

www.miaa.com.au

2/16/2005

**** NOTICE****

If you receive this email by mistake, please notify us and do not make any use of the email. We do not waive any privilege, confidentiality or copyright associated with it. Any information given pertaining to laws relevant to the mortgage industry is given as general information only. The MIAA does not accept liability for people relying on this information. The recipient should obtain their own legal advice.

From: Hank Spier [mailto:spierconsulting@netspeed.com.au]

Sent: Wednesday, 16 February 2005 8:54 am

To: Phil Naylor

Subject: VARIATIONS TO AUTHORISATION

PHIL I do not need you to sign anything but can I get copies of the Board resolutions where the changes to the Constitution, Code of Practice and Disciplinary rules were agreed to.

HANK

2/16/2005

Hank Spier

From: "Phil Naylor" <phil@miaa.com.au>
To: "Hank Spier" <spierconsulting@netspeed.com.au>
Cc: "Melvin Parun" <melvin@miaa.com.au>
Sent: Wednesday, February 16, 2005 9:43 AM
Subject: RE: VARIATIONS TO AUTHORISATION

Hank

Here are the detailed amendments

AMENDMENTS TO MIAA CONSTITUTION

SPECIAL BUSINESS – MIAA ANNUAL GENERAL MEETING 25 NOVEMBER 2004

1. 'Director' and 'Board'

The National Council already has the legal responsibilities of a board and all national councillors are directors at law.

It is proposed therefore to recognise these legal realities by changing the words 'National Council' to 'Board' and 'National Councillor' to 'Director' wherever appearing in the Constitution.

2. 'MIOS (Mortgage Industry Ombudsman Service)' and 'COSL (Credit Ombudsman Service Limited)'

In July 2003, MIOS (Mortgage Industry Ombudsman Service) changed its name to 'COSL (Credit Ombudsman Service Limited)'

It is proposed to amend the Constitution changing the references in it to reflect the change in name.

3. Membership Criteria

It is proposed that the following changes be made:

Clause 6.3.1 Preamble

'A person cannot become or remain a Full Member unless the person:' (new words underlined)

Currently the clause imposes criteria on joining but makes no provision to ensure the member continues to comply with that criteria after joining.

Clause 6.3.1 (c)

(a) 'is at all times during the currency of any membership of the Association 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; (new words underlined)

This change recognises the reality that large institutions are able to self- insure

New Clause 6.3.2

'The Board may make other provisions relating to the criteria which must be met before any person becomes or

2/16/2005

remains a Full Member.'

This change reflects the provision already applying to AMCs in clause 6.4.2 providing the Board with the powers to add to membership criteria.

Clause 6.4.1 Preamble

'A person cannot become or remain an Accredited Mortgage Consultant unless the person:' (new words underlined)

Currently the clause imposes criteria on joining but makes no provision to ensure the member continues to comply with that criteria after joining.

New Clause 6.4.2

'The Board may make other provisions relating to the criteria which must be met before any person becomes or remains a Full Member.'

This change reflects the provision already applying to AMCs in clause 6.4.2 but with the same wording as is proposed in clause 6.3.2 for Full Members.

3a. ASSOCIATE MEMBERS USE OF LOGO

It is proposed that the existing Clause 6.5 (c) "An Associate Member shall not be entitled to use any MIAA logo or otherwise publicly proclaim himself, herself or itself as a Member of the Association' be replaced with:

"The terms and conditions of an Associate Member using an MIAA logo and publicly proclaiming itself as a Member of the Association shall be determined by the Board from time to time."

4. APPEALS AGAINST DECISIONS DECLINING MEMBERSHIP

New Clause 7.4 (d)

'The following paragraphs (e) – (g) inclusive shall have no effect while ever there are promulgated Disciplinary Rules pursuant to clause 14 in force except in so far as the Board may in circumstances it deems appropriate exercise any or all of the powers in this clause 7.4.'

Currently clause 7.4 provides that appeals against state councils declining a membership application are to be heard by the National Council (Board). However since the Disciplinary Rules were established under Clause 14, this power is now carried out pursuant to those Rules by the MIAA Tribunal. The proposed amendment however enables the Board to continue to exercise that power where it deems appropriate

5. OBLIGATIONS ON MEMBERS

Clause 9.1

'Each Member must not engage in Misconduct as defined in clause 39.1 and in breach of the terms of the Constitution, the MIAA Code of Practice, the COSL Rules, or the Disciplinary Rules including but without limitation the following obligations the Member:'

This proposed amendment ensures that each member must not act in a manner amounting to Misconduct as defined.

6. MEMBER DISCIPLINE

Clause 13

'This clause 13 shall have no effect while ever there are promulgated Disciplinary Rules pursuant to clause 14 in force except in so far as the Board may in circumstances it deems appropriate exercise any or all of the powers in this clause'.

Currently clause 13 provides a procedure for the National and State Councils to handle disciplinary matters. However since the Disciplinary Rules were established under Clause 14, this power is now carried out pursuant to those Rules by the MIAA Tribunal. The proposed amendment however enables the Board to continue to exercise that power where it deems appropriate.

7. STATE COUNCILLORS

Clause 21.1

'The minimum number of State Councillors (not including alternate State Councillors) is 4 and the maximum number of State Councillors (not including alternate State Councillors) is 10 provided that where a State Division has been established covering a state and a territory of Australia, the maximum number of State Councillors (not including alternate State Councillors) is 12, with up to 10 being elected by members in the state and up to 2 being elected by members in the territory.'

This proposed amendment ensures that in those divisions which comprise a state and a territory (viz NSW/ACT and SA/NT), there is representation from both the state and the territory on the State Council.

8. PUBLICATION AND REPORTING

Clause 38.1

'Where a Member has been suspended or expelled by a confirming resolution pursuant to clause 13 or 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.'

This newly worded provision replaces the previous subclauses 38.1 and 38.2 and clarifies the information to be provided to ASIC. These previous provisions included requirements for information that ASIC does not require the association to provide.

9. MISCONDUCT

Clause 39.1

The existing definition of 'Misconduct' has been altered slightly to correct references to legislation.

Phil

Phil Naylor
Chief Executive Officer
Mortgage Industry Association of Australia
Tel: 1300 554 817 **Direct** 61+2 8905 1301
Fax: 61+2 99672896
PO Box 604 Neutral Bay NSW 2089

www.miaa.com.au

**** NOTICE****

If you receive this email by mistake, please notify us and do not make any use of the email. We do not waive any privilege, confidentiality or copyright associated with it. Any information given pertaining to laws relevant to the mortgage industry is given as general information only. The MIAA does not accept liability for people relying on this information. The recipient should obtain their own legal advice.

From: Hank Spier [mailto:spierconsulting@netspeed.com.au]

Sent: Wednesday, 16 February 2005 8:54 am

To: Phil Naylor

Subject: VARIATIONS TO AUTHORISATION

PHIL I do not need you to sign anything but can I get copies of the Board resolutions where the changes to the Constitution, Code of Practice and Disciplinary rules were agreed to.

HANK

2/16/2005

Hank Spier

From: "Phil Naylor" <phil@miaa.com.au>
To: "Hank Spier" <spierconsulting@netspeed.com.au>
Sent: Wednesday, February 16, 2005 9:20 AM
Attach: CONSTITUTIONAGM251104.doc
Subject: RE: VARIATIONS TO AUTHORISATION

Hank

Here is the extract of the resolutions from the AGM and the detailed amendments to the Constitution will follow in a separate email :

Also attached is the marked up Const with the new changes.

Extract from Minutes of MIAA AGM 25 November 2004

'SPECIAL BUSINESS

Constitution Amendments

It was resolved by the meeting:

'That the proposed amendments to the Constitution 1-9 inclusive as detailed in item 8 of the AGM Notice of Meeting be adopted.'

Ratification of Elections in SA/NT and NSW/ACT

It was resolved by the meeting:

'That the election of territory representatives in the divisions of NSW/ACT and SA/NT in anticipation of amendments to clause 21.1 of the Constitution be ratified.'

Phil Naylor
Chief Executive Officer
Mortgage Industry Association of Australia
Tel: 1300 554 817 Direct 61+2 8905 1301
Fax: 61+2 99672896
PO Box 604 Neutral Bay NSW 2089

www.miaa.com.au

**** NOTICE****

If you receive this email by mistake, please notify us and do not make any use of the email. We do not waive any privilege, confidentiality or copyright associated with it. Any information given pertaining to laws relevant to the mortgage industry is given as general information only. The MIAA does not accept liability for people relying on this information. The recipient should obtain their own legal advice.

From: Hank Spier [mailto:spierconsulting@netspeed.com.au]
Sent: Wednesday, 16 February 2005 8:54 am
To: Phil Naylor
Subject: VARIATIONS TO AUTHORISATION

2/16/2005

PHIL I do not need you to sign anything but can I get copies of the Board resolutions where the changes to the Constitution, Code of Practice and Disciplinary rules were agreed to.

HANK

2/16/2005

MIAA Code of Practice

(Interim – adopted by MIAA Board 27 May 2003 and amended by the MIAA Board on 25

February 2005)

Formatted: Left

Deleted: National Council

CONTENTS

Page

Introduction to the MIAA Code of Practice

- What is the Mortgage Industry Association of Australia?
- Who are the Members of the Mortgage Industry Association of Australia?
- MIAA Members and the Finance Market Place

Overview of the MIAA Code of Practice

- What is a “Code of Practice”?

Consumer complaints Handling

- Internal Disputes Resolution
- External Disputes Resolution

MIAA Code of Practice

- Part 1. Preliminary
- Part 2. Essential Requirements to become and remain a Member to whom the Code applies
- Part 3. Practice Standards for MIAA Members
- Part 4. Dictionary
- Part 5. Promulgation
- Schedule 1 – Points of Contact

Introduction to the MIAA Code of Practice

What is the Mortgage Industry Association of Australia?

The Mortgage Industry Association of Australia ("the MIAA") was incorporated as a company limited by guarantee in 1982. The MIAA comprises individuals and organizations Australia wide who are specialists in the finance sector, particularly housing finance.

Who are the Members of the Mortgage Industry Association of Australia?

Membership of the MIAA comprises the following classes of Member:

- Full Members
- Life Members
- Honorary Members
- Accredited Mortgage Consultants ("AMC")
- Other classes of Member established by the Board from time to time.

Deleted: National Council

Full Members and Life Members of the MIAA may be individuals, or small or large organisations. AMCs are individuals employed by or contracted to a Member other than an AMC.

The range of MIAA Membership is very broad and includes:-

- **"Mortgage Originators"**, ie Members who bring together potential borrowers and credit providers (sometimes also known as "Mortgage Finance Intermediaries" or "Mortgage Introducers")
- **"Mortgage Managers"**, ie Members who manage mortgages on behalf of credit providers
- Members who are **"Lenders"** or **"Credit Providers"**, eg banks, credit unions, building societies, mortgage funders, superannuation funds and other providers of credit
- **"Finance Brokers"**, ie Members who bring together potential borrowers and credit providers in respect of lease, hire purchase and rental transactions
- Members who provide lenders' mortgage insurance
- Members who issue, purchase, market or invest in mortgage loans or mortgage related securities, such as professional market investors and mortgage securitizers.
- Members who enhance the credit quality of mortgage loans or mortgage related securities or who regularly assist the industry generally, such as lawyers and valuers

The relative sizes of MIAA Members and the roles they perform can vary quite considerably. But all Members have one thing in common – a commitment to ensuring good industry practice and fair dealing within the Mortgage Industry. This broad range of individuals and corporations and the functions that they perform make up the **"Mortgage Industry"**.

MIAA Members and the Finance Market Place

Housing and other finance is no longer obtained solely from the traditional sources of finance such as Banks, Building Societies and Credit Unions. There are now many other organizations providing finance.

Although many Lenders still provide their own “face to face” dealings with consumers, the Mortgage Industry has seen a rapid growth in the activities and status of mortgage intermediaries. These intermediaries bring together the consumer and the Lender. They play a key role in assisting a consumer to obtain the kind of finance that is best suited to their own particular circumstances, i.e. *appropriate* finance.

Once a mortgage loan has been made, a consumer will often deal with a Mortgage Manager who takes on the responsibility to manage the mortgage on behalf of the Lender. The Mortgage Manager may well have ongoing dealings with a consumer particularly if a consumer needs some assistance because of financial difficulties.

With so many different operators in the marketplace for finance and with so many different products available, a consumer can sometimes feel daunted by the prospect of raising finance. It is important that consumers are given access to a broad range of choices. Consumers looking for a loan need to feel confident in proceeding with what is usually the most significant financial transaction in their lives - confident also in the knowledge that the person with whom they are dealing has a commitment to good industry practice and fair dealing.

The MIAA believes that consumers benefit significantly from a healthy competitive spirit in the marketplace for finance. The active involvement of individuals and small corporations in competition with each other and with large corporations and Lenders means that consumers have a wider choice of financial products at a competitively set price.

Overview of the MIAA Code of Practice

What is a “Code of Practice”?

A “Code of Practice” is a developed statement of principles dealing with industry practices designed to set a standard of good industry practice and fair dealing between consumers and MIAA Members. The Code of Practice aims to instill public confidence in the operations of Members. Although the Code of Practice is not legislation like an Act of Parliament, it is binding on Members.

The MIAA Code of Practice is intended to complement the Corporations Act 2001, the Uniform Consumer Credit Code (“UCCC”), the Australian Securities and Investments Commission Act 2001, the Trade Practices Act 1974 and other Fair Trading legislation. The MIAA supports Government legislation and believes that by Members making a commitment to good industry practice and fair dealing in the finance marketplace, and putting that commitment into practice, the confidence of both consumers and the public generally, will be enhanced.

Finance plays a pivotal role in the Australian economy. It is imperative that consumers have confidence in their dealings with Mortgage Originators, Credit Providers, Mortgage Managers, Finance Brokers, AMCs and others in the Mortgage Industry.

Membership of the MIAA is “accreditation” that a person has met the MIAA’s standards to be admitted as a Member and so has the right to publicly proclaim membership of the MIAA. The MIAA believes that this is not simply an empty phrase. It is the outward sign of a Member’s commitment to good industry practice and fair dealing. The Accreditation “Member of the Mortgage Industry Association of Australia” or “Accredited Mortgage Consultant” stands as the sign of a skilled professional who not only has this commitment but who puts that commitment into practice. Accreditation must have value to both Consumers and to Members of the MIAA themselves.

The MIAA Code of Practice which follows specifies minimum standards of professional conduct and good industry practice to be adhered to by Members. It also specifies minimum requirements of professional qualifications and/or experience and Professional Indemnity Insurance that apply to Members.

Consumer Complaints Handling

Internal Disputes Resolution

Complaints against Members are dealt with under two separate procedures:

- Internal Disputes Resolution (“IDR”) Procedures covering complaints made directly to the Member concerned, and
- an independent External Disputes Resolution Service

The Board of the MIAA has promulgated IDR Procedures with which every Member must comply.

Deleted: National Council

A copy of the MIAA IDR Procedures can be obtained from one of the contact points shown in Schedule 1 or by visiting the MIAA web site at www.miaa.com.au.

External Disputes Resolution - COS

Under powers contained in its Constitution, Credit Ombudsman Service Limited (“COS Limited”) has established the Credit Ombudsman Service (“COS”). The Credit Ombudsman Service Rules made by COS Limited (“COSL Rules”) spell out how COS will deal with complaints by consumers against Members (other than AMCs), and also how disputes will be resolved.

The COSL Rules do not apply to the acts or omissions of AMCs. The AMC’s employer or contracted Member remains fully responsible for the acts or omissions of their AMCs. Therefore every reference in this Code of Practice or in the COSL Rules to a “Member to whom the COSL Rules apply” is a reference only to a Member other than an AMC. But even though an AMC cannot be the subject of a complaint under the COSL Rules, each and every

Deleted: MIOS

Deleted: Mortgage Industry Ombudsman

Deleted: MIOS Limited

Deleted: Mortgage Industry

Deleted: MIOS

Deleted: for the purposes of MIOS

Deleted: MIOS

Deleted: MIOS

Deleted: MIOS Rules

Deleted: MIOS Rules

Deleted: MIOS Rules

Deleted: MIOS Rules

AMC is bound by the MIAA Constitution to comply with the MIAA Code of Practice in all respects. An AMC who breaches the Code of Practice can be dealt with under the MIAA's own Disciplinary Rules.

The ~~COSL~~ Rules do not apply to a consumer who is a party to a transaction that involves or may involve the provision of credit secured by way of mortgage over property other than residential real estate, eg by way of mortgage over commercial real estate.

Deleted: MIOS Rules

A copy of the ~~COSL~~ Rules can be obtained from one of the contact points shown in Schedule 1 or by visiting the ~~COS Limited~~ web site at [**] or the MIAA web site at www.miaa.com.au.

Deleted: MIOS Rules

Deleted: MIOS Limited

MIAA Code of Practice

Part 1. Preliminary

Name of Code

1. This Code is the MIAA Code of Practice.

Objectives of the Code

2. The objectives of the Code are:
 - to establish professional standards of consumer/Member dealings in the Mortgage Industry
 - to promote commitment by MIAA Members to compliance with laws and regulations in the spirit of those laws and regulations
 - to promote the maintenance of the high public standing of MIAA Membership accreditation
 - to promote ethical and fair business practices to the benefit of consumers and the public and Members
 - to promote education and professional programs for Members

Ongoing relevance of the Code

3. The MIAA will actively review changes in the Mortgage Industry and mortgage practice with a view to ensuring the maintenance of good Mortgage Industry practice at all times and will amend this Code where this a need or benefit to consumers in doing so.

Application of the Code

4. This Code of Practice applies to and is binding on every
 - Mortgage Originator
 - Mortgage Manager, and
 - Credit Providerwho is a Full Member or Life Member of the MIAA and who acts for a party to a transaction which involves or may involve the provision of credit secured by way of mortgage over real estate.

5. The Code also applies to and is binding on every
 - Finance Broker who is a Member of the MIAA; and
 - AMC.
7. Where this Code refers to a "Member" it means a Member of the MIAA to whom the Code applies and by which is bound. Sometimes the word "Member" has a slightly different meaning but in this case this will be indicated in the context in which the word appears. Where this Code imposes an obligation on a "Mortgage Originator", "Credit Provider", "Mortgage Manager", or "Finance Broker", that obligation applies only if the person referred to is a Member to whom the Code applies and by which is bound.
8. This Code applies to and binds and continues to apply to and to bind a Member to whom the Code applies notwithstanding that the Member has ceased for any reason to be a Member of the MIAA after the date (or when more than one on the last of such dates) upon which the facts giving rise to the complaint by the consumer occurred.
9. The Board may from time to time prescribe that this Code applies to a particular class of transaction not otherwise referred to in this Code. Any such prescription shall as between a Member and MIAA, or as between Members, be final and binding.

Deleted:

Deleted: National Council

Part 2. Essential Requirements to become and remain a Member to whom the Code Applies

Qualifications and Experience of Mortgage Originators and Finance Brokers

10. A Mortgage Originator, Mortgage Manager, Finance Broker or AMC must have qualifications or experience relevant to the functions to be performed and to the satisfaction of the Board. An applicant for membership as a Mortgage Originator, Mortgage Manager, Finance Broker or AMC must be able to demonstrate either mortgage lending, finance broking or mortgage management experience satisfactory to the Board, or be the holder of educational qualifications recognised by the Board.
11. Mortgage Originators, Mortgage Managers, Finance Brokers and AMCs must also keep up to date with the laws and practices in the Mortgage Industry as they change and evolve. Mortgage Managers, Finance Brokers and AMCs must undertake continuing education programs recognised by the Board and earn sufficient "accreditation points" to maintain membership.
12. The categories of operations of Members are many and varied and can be quite specialised. Most Members, who are not Mortgage Originators, Mortgage Managers, Finance Brokers or AMCs, are already subject to, or have available to them, continuing education programs for their particular area of operations. Where appropriate, the MIAA may supplement such programs with the MIAA's own programs designed specifically for the Mortgage Industry.
13. Mortgage Originators, Mortgage Managers and Finance Brokers must ensure that at all times they employ operatives and engage agents who have the qualifications or experience necessary to deal competently and professionally with consumers.

Deleted: National Council

Deleted: National Council

Deleted: National Council

Deleted: National Council

Professional Indemnity Insurance

14. Members who are Mortgage Originators, Mortgage Managers or Finance Brokers, that are Members, must at all times maintain Professional Indemnity insurance:
 - of not less than \$1 million, and
 - endorsed to cover a Determination made by the Credit Ombudsman, and
 - unless the Board specifies otherwise, with an extension for Fidelity cover of not less than \$100,000.
15. The terms and conditions of that insurance must at all times meet other minimum standards as set by the Board from time to time.
16. An AMC must be employed by or contracted to only one Full Member of the MIAA whether on a full time, part time or casual basis. Each AMC must be personally covered by Professional Indemnity Insurance for not less than \$1 million for each and every transaction facilitated by that person.

Deleted: Mortgage Industry

Deleted: National Council

Deleted: National Council

17. The purpose of the requirement for Professional Indemnity Insurance is to ensure that any third party who has suffered a loss due to some act or default of a Member has recourse to the proceeds of the insurance policy irrespective of the Member's own financial capacity to meet a successful claim against that Member.

Part 3. Practice Standards for MIAA Members

18. The Practice Standards set out hereunder apply to and bind Members of the MIAA, subject to the provisions of this Code of Practice.
19. In these Standards, "Residential Loan Member" means a Member who acts for a party to a transaction which involves or may involve the provision of credit secured by way of mortgage over residential real estate; "Commercial Loan Member" means a Member who acts for a party to a transaction which involves or may involve the provision of credit secured over real estate other than residential real estate. Where the word "Member" is used, the Practice Standard applies to and binds all Members except in clauses [] to [] where "Member" means Member to whom the COSL Rules apply, or as otherwise specified.

Deleted: MIOS Rules

Compliance with Laws and the MIAA Code of Practice

20. A Member must always comply with this Code, the Corporations Act 2001, the Uniform Consumer Credit Code, the Trade Practices Act 1974 and other Fair Trading legislation, and other laws and regulations applying to a loan transaction from the time of loan enquiry until the loan is discharged.

Appropriate Finance

21. A Residential Loan Member must suggest or recommend to an applicant only those arrangements for mortgage finance that the Member genuinely and reasonably believes are appropriate to the needs of that applicant.
22. A Residential Loan Member must, before a consumer signs a Letter of Engagement with the Member, provide to the consumer a recommendation that where the Member is acting as agent for a Credit Provider the applicant should seek and rely upon their own enquiries about the competitiveness and suitability of the Loan.

Loan Applications

23. A Member must always disclose to an applicant all relevant details known to the Member about a proposed loan at the time of application.
24. A Residential Loan Member must always make such enquiries as are necessary to determine an applicant's capacity to repay the proposed loan.
25. A Residential Loan Member must submit a loan application to the Credit Provider, whenever possible, within five (5) business days (but in any case promptly) after receipt of a duly completed application, supplying all information required by the Credit Provider to make the decision whether or not to grant the loan applied for.
26. A Commercial Loan Member must submit a loan application to the Credit Provider promptly after receipt of a duly completed application, supplying all information required by the Credit Provider to make the decision to make the loan applied for.
27. A Member must always keep an applicant informed of all relevant information known

to the Member relating to a proposed loan to the extent that that information applies to that applicant.

Outcome of Loan Application

28. A Residential Loan Member must advise an applicant of the outcome of the loan application, whenever possible, within five (5) business days (but in any case promptly), of the loan decision being notified by the Credit Provider to the Member.
29. A Commercial Loan Member must advise an applicant of the outcome of the loan application promptly after the loan decision being provided by the Credit Provider to the Member.
30. A Residential Loan Member must refund amounts which may be due to the applicant, whenever possible, within two (2) business days (but in any case promptly) of the decision to decline the loan application being notified to the applicant.
31. A Commercial Loan Member must refund amounts which may be due to the applicant as provided for in any agreement between the applicant and the Commercial Loan Member or otherwise promptly after the decision to decline the loan application is notified to the applicant.

Confidentiality

32. A Member must at all times keep confidential information provided by an applicant and will only disclose information as may be required by law or as authorized by the applicant.

Fees and Commissions

33. If a fee or ongoing commission will or may be paid by or to the Member for or in connection with a loan or an application for a loan, the Member must always disclose to the applicant:
 - (a) that fact; and
 - (b) the person by whom the fee or commission is payable; and
 - (c) the person to whom the commission is payable; and
 - (d) the amount of the fee or commission if ascertainable; and
 - (e) if the fee or commission is un-ascertainable, the basis of or formula for such fee or commission;

but this paragraph does not apply to:

- (f) fees payable by a supplier under a merchant service agreement with a credit provider;
- (g) the amount payable in connection with a credit related insurance contract; or
- (h) commission paid to employees of the Member.

34. A Member must never charge an applicant a non-refundable application fee for a loan submission where the Member knows or suspects that there is little or no chance of the loan being approved.

Skill, Care and Diligence

35. A Member must act with all due skill, care and diligence in their Mortgage Industry dealings.
36. A Member must always ensure that they, their associates and staff are thoroughly knowledgeable in those areas and aspects of the Mortgage Industry in which they participate.
37. A Member must undertake all necessary education and other MIAA endorsed programs to maintain and further their and their staff's professionalism.
38. A Member must take all reasonable steps to ensure that the finance applied for is obtained and property settlement completed in a timely fashion.

Honest and Honourable Dealings

39. A Member must establish and maintain honest and honourable relationships with all persons with whom they may come into contact in the course of their professional and commercial activities.
40. A Member must express written terms and conditions of their services in plain language and provide a fair and balanced view of the relationship between the applicant or borrower and the Member.
41. A Member must tell an applicant or borrower how any variation of the terms and conditions of their services will be notified and will give the applicant or borrower reasonable notice before any variation takes effect.
42. A Member must not engage in any acts or omissions of a misleading, dishonest, deceptive or fraudulent nature.
43. A Member must ensure that a Member's advertising will not be misleading, dishonest or deceptive.

Complaints Handling

44. A Member must always tell a consumer who makes a complaint by telephone the name of the Member's "Complaints Contact Person".
45. A Member must always ensure that the Complaints Contact Person has the authority to determine and respond to any complaint made by a consumer.
46. A Member must always maintain a written policy on complaints handling which must be provided to the Complaints Contact Person.

47. A Member must ensure that a consumer is treated courteously when making a complaint to a Member.
48. A Member must not, subject to statutory requirements, impose any fee on a consumer who makes a complaint.
49. A Member must always tell a consumer about the COS and about how, and to whom, to make a complaint whenever a consumer informs the Member that the consumer believes that the complaint has not been dealt with satisfactorily by the Complaints Contact Person.
50. A Member must keep displayed in the Member's offices a leaflet publicising the COS.
51. A Member must always respond in writing to the Scheme Manager, whenever possible, within fifteen (15) business days (but in any case promptly) after receipt by a Member of a written complaint referred to that Member by the Scheme Manager for response.
52. A Member must always maintain a record of written complaints made against that Member in the form and manner stipulated by the Board from time to time.

Deleted: Mortgage Industry Ombudsman Service

Deleted: Mortgage Industry Ombudsman Service

Deleted: National Council

Conflict of Interest

53. A Member must frankly and fully disclose 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 concern a consumer.

Member vicarious liability and Member Dealing with MIAA and Other Members

- 54A. A Member is vicariously liable for any acts or omissions of any employee or representative that embarrasses, impugns or discredits the MIAA or brings the MIAA or the mortgage industry into disrepute or may do any of those things. Any such acts or omissions are deemed to be a breach of this Code of Practice by the Member.
- 54B. A Member must always conduct that Member's business in accordance with the Memorandum and Articles of Association of the MIAA and this Code of Practice, act in a professional and courteous manner towards consumers and fellow Members, and refrain from any conduct which may embarrass, impugn or discredit the MIAA or bring the MIAA into disrepute.
55. A Member must immediately advise any other MIAA Member in a lending transaction of any financial interest, relationship or association whatsoever with an applicant or borrower or guarantor or any other party in relation to the loan.

Deleted: 1

Formatted: Font: 14 pt

Formatted: Indent: Left: 0", First line: 0", Tabs: 0", Left + Not at 0.49"

Deleted:

Formatted: Indent: Left: 0", Hanging: 0.5", Don't adjust right indent when grid is defined, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers, Tabs: Not at 0.49"

Deleted:

Moneys Held on Trust

56. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise), whenever possible, by the next business

day (or in any case promptly) deposit any money received or held by the Member on trust for a consumer into a trust account maintained by that Member with an authorised deposit-taking institution which account must not contain any moneys other than moneys received or held on trust by the Member for consumers.

57. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deliver money received or held by the Member on trust for any third party (other than a consumer) to that third party or, at the Member's election, deposit that money into an account maintained by an authorised deposit-taking institution nominated by the third party for the purpose.
58. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise) at all times keep such books and records as correctly record and explain the transactions relating to money received or held by the Member on trust for a consumer or a third party (other than a consumer) from time to time.
59. A Member who is a Mortgage Originator, or Finance Broker must (unless in a particular case by law required otherwise) ensure that the Member's trust account is audited by a registered company auditor, and a written report thereon prepared by the auditor, within such period as the Board may from time to time prescribe. Deleted: National Council
60. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise) within such period as the Board may from time to time prescribe lodge with the National Secretariat the written report by the auditor containing such matters as the Board may from time to time prescribe. Deleted: National Council
Deleted: National Council
61. A Member who is an Accredited Mortgage Consultant ("AMC") must not request, require or induce a consumer to pay or deliver money to that Accredited Mortgage Consultant in relation to a loan transaction except as may be authorised in writing by that AMC's employer or principal.
62. A Member who is an Accredited Mortgage Consultant ("AMC") must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deposit any money received or held by that AMC on trust for a consumer into a trust account maintained by the Member by whom or to whom that AMC is employed or contracted (as the case may be) with an authorised deposit taking institution which account must not contain any moneys other than moneys received or held on trust by that Member for consumers.
63. A Member who is an Accredited Mortgage Consultant ("AMC") must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deliver money received or held by that AMC on trust for any third party (other than a consumer) to that third party or, at the AMC's election, deposit that money into an account maintained by an authorised deposit taking institution nominated by the third party for the purpose.
64. A Member who is an Accredited Mortgage Consultant ("AMC") must (unless in a particular case by law required otherwise), whenever possible, at all times keep such

books and records as correctly record and explain the receipt, depositing and delivery of money received or held by that AMC on trust for a consumer, or a third party (other than a consumer), from time to time.

Part 4 Dictionary

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

"AMC"	an Accredited Mortgage Consultant being an individual who is a Member employed by or contracted to another Member other than an AMC;
"Business"	every business, trade, profession or occupation continuously carried on and whether or not for profit;
"Board"	<u>the board of directors of the Association from time to time;</u>
"Code of Practice" or "Code"	this Code of Practice as promulgated by the MIAA and as revised and re-promulgated by the MIAA from time to time;
"Credit Provider"	an individual, corporation or other entity that lends or provides credit;
"consumer"	a member of the public who deals with a MIAA Member whether as a borrower, guarantor, prospective borrower, or prospective guarantor, or who in any other way seeks the services of a Member in the ordinary course of that Member's business in the Mortgage Industry;
"COS Limited"	<u>Credit Ombudsman Service Limited or its successor in title;</u>
"COS"	<u>the service for dispute and complaint handling established by COS Limited;</u>
"COSL Board"	<u>the board of directors of COS Limited established under its Constitution;</u>
"COSL Rules"	<u>the Credit Ombudsman Service Rules made by COS Limited;</u>
"Determination"	an agreement, settlement or award made pursuant to the <u>COSL Rules;</u>
"Finance Broker"	a Member who brings together potential borrowers and Credit Providers in respect of lease, hire purchase and rental transactions;
"Individual"	a natural person, or a partnership or other incorporated body consisting only of natural persons;
"Member"	an individual corporation or other entity that is a member of the MIAA;
"MIAA"	the Mortgage Industry Association of Australia;
"Mortgage Industry"	the environment and operations of Mortgage Originators, Mortgage Managers, Lenders, Finance

Deleted: MIOS Rules

Deleted: "MIOS" - the Mortgage Industry Ombudsman Service;
 "MIOS Board" - the board of directors of MIOS Limited established under its Constitution;
 "MIOS Limited" - Mortgage Industry Ombudsman Service Limited or its successors in title;

Deleted: "MIOS Rules" or "Rules" - rules made by the MIOS Board for the purposes of MIOS;

	Brokers and others more particularly described in the Introduction;
"Mortgage Manager"	a Member who manages mortgages on behalf of a Credit Provider;
"Mortgage Originator"	a Member who brings together potential borrowers and Credit Providers;
"Mortgage Services"	any services provided to consumers by a Member in the ordinary course of its business in the Mortgage Industry;
"National Secretariat"	the National Secretariat of the MIAA;
"Practice Standards"	the standards of good industry practice specified in Part 3;
"Scheme Manager"	the Scheme Manager appointed by the <u>COSL Board</u> ;
"State"	includes Territory of the Commonwealth of Australia.

Deleted: "National Council" - the National Council of the MIAA;

Deleted: MIOS Board

Part 5 Promulgation

66. This Code of Practice (Edition 2) is promulgated by resolution of the Board dated [].

Deleted: National Council

Notes:

1. In this Code of Practice a reference to money received or held on trust is a reference to money received or held by a Member to which that Member is not wholly entitled both at law and in equity.

Statement of Interpretation Adopted by MIAA Board 27 May 2003

Deleted: National Council

(To be read in conjunction with MIAA Code adopted by the Board 27 May 2003)

Deleted: National Council

"A. Commission Disclosure"

A member will have satisfied clause 33 of the Code of Practice and will not be guilty of Misconduct if:

- (a) *where the member is paid by or on behalf of the lender, the member discloses that:*
 - (i) *a commission may be paid;*
 - (ii) *the commission will be paid by or on behalf of the lender (there is no need to identify the name of the lender);*
 - (iii) *that the commission is payable to the member;*
 - (iv) *the amount of the fee or commission if ascertainable;*
 - (v) *if the fee or commission is unascertainable, a statement that the commission comprises (as appropriate):*
 - *an upfront payment equal to a percentage of the principal sum; and*
 - *an ongoing commission throughout the term of the loan based on a percentage of the amount owing from time to time.*

Where the member is a mortgage manager or aggregator who distributes loans through sub-originators, and the mortgage manager or aggregator does not deal directly with the relevant customer, that member will not need to make a disclosure under clause 33. In these circumstances the relevant disclosure will be made by the sub-originator who deals with the customer. In reaching this conclusion the Council notes that the Consumer Credit Code will require the lender to comply with s 15(M) of the Consumer Credit Code in relation total commissions paid by the lender.

- (b) *Where a member is being paid a commission by a manager or an aggregator the member must disclose the following:*
 - a commission may be paid;*
 - the commission will be paid by or on behalf of the lender, manager, or aggregator (there is no need to identify the name of the lender, manager, or aggregator);*
 - that the commission is payable to the member;*
 - the amount of the fee or commission if ascertainable;*
 - if the fee or commission is unascertainable, a statement that the commission comprises (as appropriate):*
 - *an upfront payment equal to a percentage of the principal sum; and*

- *an ongoing commission throughout the term of the loan based on a percentage of the amount owing from time to time.*

The Council approves the form of disclosure attached. Members can use any form of disclosure so long as it complies with the above interpretation of clause 33.

Sample form of disclosure

[BROKER NAME] arranges loans for borrowers.

In providing these services [BROKER NAME] is an independent contractor.

You acknowledge that we may be paid a commission by funders, managers, product suppliers or other people with whom we do business. We also may pay referral fees or commissions to people who referred you to us. No commission is payable by you.

In respect of most loans, we may be paid an upfront commission, which is a percentage of your loan amount, and a trail commission, which is a percentage of the ongoing loan balance. In respect of other products and services we may be paid a commission which may consist of an initial commission plus an ongoing commission calculated by reference to the loan or product amount. It is not practical at the date of this disclosure to specify the exact amount of commission payable.

[BROKER NAME] is a member of the Mortgage Industry Association of Australasia, the peak body for mortgage intermediaries. We and any of our representatives will comply with the Code of Practice binding on its members. We will use our experience to present to you products which we consider are suitable for your requirements, but the final choice to acquire any of those products is yours.

B. Fidelity insurance

Failure to obtain an extension for fidelity cover of not less than \$100,000 as prescribed by clause 14 of the Code of Practice will not be considered Misconduct where trust monies are not received."

C. Member Keeping/Advising/Telling an Applicant/borrower/Customer

The responsibility for providing the advice under 27, 28, 29, 41, 44 and 49 of the Code of Practice shall be deemed to be limited to the person or organization directly dealing with the borrower/customer as per the disclosure of commission requirements."

MIAA Code of Practice

(Interim – adopted by MIAA Board 27 May 2003 and amended by the MIAA Board on 25 February 2005)

CONTENTS

Page

Introduction to the MIAA Code of Practice

- What is the Mortgage Industry Association of Australia?
- Who are the Members of the Mortgage Industry Association of Australia?
- MIAA Members and the Finance Market Place

Overview of the MIAA Code of Practice

- What is a “Code of Practice”?

Consumer complaints Handling

- Internal Disputes Resolution
- External Disputes Resolution

MIAA Code of Practice

- Part 1. Preliminary
- Part 2. Essential Requirements to become and remain a Member to whom the Code applies
- Part 3. Practice Standards for MIAA Members
- Part 4. Dictionary
- Part 5. Promulgation
- Schedule 1 – Points of Contact

Introduction to the MIAA Code of Practice

What is the Mortgage Industry Association of Australia?

The Mortgage Industry Association of Australia ("the MIAA") was incorporated as a company limited by guarantee in 1982. The MIAA comprises individuals and organizations Australia wide who are specialists in the finance sector, particularly housing finance.

Who are the Members of the Mortgage Industry Association of Australia?

Membership of the MIAA comprises the following classes of Member:

- Full Members
- Life Members
- Honorary Members
- Accredited Mortgage Consultants ("AMC")
- Other classes of Member established by the Board from time to time.

Full Members and Life Members of the MIAA may be individuals, or small or large organisations. AMCs are individuals employed by or contracted to a Member other than an AMC.

The range of MIAA Membership is very broad and includes:-

- **"Mortgage Originators"**, ie Members who bring together potential borrowers and credit providers (sometimes also known as "Mortgage Finance Intermediaries" or "Mortgage Introducers")
- **"Mortgage Managers"**, ie Members who manage mortgages on behalf of credit providers
- Members who are **"Lenders"** or **"Credit Providers"**, eg banks, credit unions, building societies, mortgage funders, superannuation funds and other providers of credit
- **"Finance Brokers"**, ie Members who bring together potential borrowers and credit providers in respect of lease, hire purchase and rental transactions
- Members who provide lenders' mortgage insurance
- Members who issue, purchase, market or invest in mortgage loans or mortgage related securities, such as professional market investors and mortgage securitizers.
- Members who enhance the credit quality of mortgage loans or mortgage related securities or who regularly assist the industry generally, such as lawyers and valuers

The relative sizes of MIAA Members and the roles they perform can vary quite considerably. But all Members have one thing in common – a commitment to ensuring good industry practice and fair dealing within the Mortgage Industry. This broad range of individuals and corporations and the functions that they perform make up the **"Mortgage Industry"**.

MIAA Members and the Finance Market Place

Housing and other finance is no longer obtained solely from the traditional sources of finance such as Banks, Building Societies and Credit Unions. There are now many other organizations providing finance.

Although many Lenders still provide their own “face to face” dealings with consumers, the Mortgage Industry has seen a rapid growth in the activities and status of mortgage intermediaries. These intermediaries bring together the consumer and the Lender. They play a key role in assisting a consumer to obtain the kind of finance that is best suited to their own particular circumstances, i.e. *appropriate* finance.

Once a mortgage loan has been made, a consumer will often deal with a Mortgage Manager who takes on the responsibility to manage the mortgage on behalf of the Lender. The Mortgage Manager may well have ongoing dealings with a consumer particularly if a consumer needs some assistance because of financial difficulties.

With so many different operators in the marketplace for finance and with so many different products available, a consumer can sometimes feel daunted by the prospect of raising finance. It is important that consumers are given access to a broad range of choices. Consumers looking for a loan need to feel confident in proceeding with what is usually the most significant financial transaction in their lives - confident also in the knowledge that the person with whom they are dealing has a commitment to good industry practice and fair dealing.

The MIAA believes that consumers benefit significantly from a healthy competitive spirit in the marketplace for finance. The active involvement of individuals and small corporations in competition with each other and with large corporations and Lenders means that consumers have a wider choice of financial products at a competitively set price.

Overview of the MIAA Code of Practice

What is a “Code of Practice”?

A “Code of Practice” is a developed statement of principles dealing with industry practices designed to set a standard of good industry practice and fair dealing between consumers and MIAA Members. The Code of Practice aims to instill public confidence in the operations of Members. Although the Code of Practice is not legislation like an Act of Parliament, it is binding on Members.

The MIAA Code of Practice is intended to complement the Corporations Act 2001, the Uniform Consumer Credit Code (“UCCC”), the Australian Securities and Investments Commission Act 2001, the Trade Practices Act 1974 and other Fair Trading legislation. The MIAA supports Government legislation and believes that by Members making a commitment to good industry practice and fair dealing in the finance marketplace, and putting that commitment into practice, the confidence of both consumers and the public generally, will be enhanced.

Finance plays a pivotal role in the Australian economy. It is imperative that consumers have confidence in their dealings with Mortgage Originators, Credit Providers, Mortgage Managers, Finance Brokers, AMCs and others in the Mortgage Industry.

Membership of the MIAA is “accreditation” that a person has met the MIAA’s standards to be admitted as a Member and so has the right to publicly proclaim membership of the MIAA. The MIAA believes that this is not simply an empty phrase. It is the outward sign of a Member’s commitment to good industry practice and fair dealing. The Accreditation “Member of the Mortgage Industry Association of Australia” or “Accredited Mortgage Consultant” stands as the sign of a skilled professional who not only has this commitment but who puts that commitment into practice. Accreditation must have value to both Consumers and to Members of the MIAA themselves.

The MIAA Code of Practice which follows specifies minimum standards of professional conduct and good industry practice to be adhered to by Members. It also specifies minimum requirements of professional qualifications and/or experience and Professional Indemnity Insurance that apply to Members.

Consumer Complaints Handling

Internal Disputes Resolution

Complaints against Members are dealt with under two separate procedures:

- Internal Disputes Resolution (“IDR”) Procedures covering complaints made directly to the Member concerned, and
- an independent External Disputes Resolution Service

The Board of the MIAA has promulgated IDR Procedures with which every Member must comply.

A copy of the MIAA IDR Procedures can be obtained from one of the contact points shown in Schedule 1 or by visiting the MIAA web site at www.miaa.com.au.

External Disputes Resolution - COS

Under powers contained in its Constitution, Credit Ombudsman Service Limited (“COS Limited”) has established the Credit Ombudsman Service (“COS”). The Credit Ombudsman Service Rules made by COS Limited (“COSL Rules”) spell out how COS will deal with complaints by consumers against Members (other than AMCs), and also how disputes will be resolved.

The COSL Rules do not apply to the acts or omissions of AMCs. The AMC’s employer or contracted Member remains fully responsible for the acts or omissions of their AMCs. Therefore every reference in this Code of Practice or in the COSL Rules to a “Member to whom the COSL Rules apply” is a reference only to a Member other than an AMC. But even though an AMC cannot be the subject of a complaint under the COSL Rules, each and every

AMC is bound by the MIAA Constitution to comply with the MIAA Code of Practice in all respects. An AMC who breaches the Code of Practice can be dealt with under the MIAA's own Disciplinary Rules.

The COSL Rules do not apply to a consumer who is a party to a transaction that involves or may involve the provision of credit secured by way of mortgage over property other than residential real estate, eg by way of mortgage over commercial real estate.

A copy of the COSL Rules can be obtained from one of the contact points shown in Schedule 1 or by visiting the COS Limited web site at www.creditombudsman.com.au or the MIAA web site at www.miaa.com.au.

MIAA Code of Practice

Part 1. Preliminary

Name of Code

1. This Code is the MIAA Code of Practice.

Objectives of the Code

2. The objectives of the Code are:
 - to establish professional standards of consumer/Member dealings in the Mortgage Industry
 - to promote commitment by MIAA Members to compliance with laws and regulations in the spirit of those laws and regulations
 - to promote the maintenance of the high public standing of MIAA Membership accreditation
 - to promote ethical and fair business practices to the benefit of consumers and the public and Members
 - to promote education and professional programs for Members

Ongoing relevance of the Code

3. The MIAA will actively review changes in the Mortgage Industry and mortgage practice with a view to ensuring the maintenance of good Mortgage Industry practice at all times and will amend this Code where there is a need or benefit to consumers in doing so.

Application of the Code

4. This Code of Practice applies to and is binding on every
 - Mortgage Originator
 - Mortgage Manager, and
 - Credit Provider
 who is a Full Member or Life Member of the MIAA and who acts for a party to a transaction which involves or may involve the provision of credit secured by way of mortgage over real estate.

5. The Code also applies to and is binding on every
 - Finance Broker who is a Member of the MIAA; and
 - AMC.
7. Where this Code refers to a “Member” it means a Member of the MIAA to whom the Code applies and by which is bound. Sometimes the word “Member” has a slightly different meaning but in this case this will be indicated in the context in which the word appears. Where this Code imposes an obligation on a “Mortgage Originator”, “Credit Provider”, “Mortgage Manager”, or “Finance Broker”, that obligation applies only if the person referred to is a Member to whom the Code applies and by which is bound.
8. This Code applies to and binds and continues to apply to and to bind a Member to whom the Code applies notwithstanding that the Member has ceased for any reason to be a Member of the MIAA after the date (or when more than one on the last of such dates) upon which the facts giving rise to the complaint by the consumer occurred.
9. The Board may from time to time prescribe that this Code applies to a particular class of transaction not otherwise referred to in this Code. Any such prescription shall as between a Member and MIAA, or as between Members, be final and binding.

Part 2. Essential Requirements to become and remain a Member to whom the Code Applies

Qualifications and Experience of Mortgage Originators and Finance Brokers

10. A Mortgage Originator, Mortgage Manager, Finance Broker or AMC must have qualifications or experience relevant to the functions to be performed and to the satisfaction of the Board. An applicant for membership as a Mortgage Originator, Mortgage Manager, Finance Broker or AMC must be able to demonstrate either mortgage lending, finance broking or mortgage management experience satisfactory to the Board, or be the holder of educational qualifications recognised by the Board.
11. Mortgage Originators, Mortgage Managers, Finance Brokers and AMCs must also keep up to date with the laws and practices in the Mortgage Industry as they change and evolve. Mortgage Managers, Finance Brokers and AMCs must undertake continuing education programs recognised by the Board and earn sufficient "accreditation points" to maintain membership.
12. The categories of operations of Members are many and varied and can be quite specialised. Most Members, who are not Mortgage Originators, Mortgage Managers, Finance Brokers or AMCs, are already subject to, or have available to them, continuing education programs for their particular area of operations. Where appropriate, the MIAA may supplement such programs with the MIAA's own programs designed specifically for the Mortgage Industry.
13. Mortgage Originators, Mortgage Managers and Finance Brokers must ensure that at all times they employ operatives and engage agents who have the qualifications or experience necessary to deal competently and professionally with consumers.

Professional Indemnity Insurance

14. Members who are Mortgage Originators, Mortgage Managers or Finance Brokers, that are Members, must at all times maintain Professional Indemnity insurance:
 - of not less than \$1 million, and
 - endorsed to cover a Determination made by the Credit Ombudsman, and
 - unless the Board specifies otherwise, with an extension for Fidelity cover of not less than \$100,000.
15. The terms and conditions of that insurance must at all times meet other minimum standards as set by the Board from time to time.
16. An AMC must be employed by or contracted to only one Full Member of the MIAA whether on a full time, part time or casual basis. Each AMC must be personally covered by Professional Indemnity Insurance for not less than \$1 million for each and every transaction facilitated by that person.

17. The purpose of the requirement for Professional Indemnity Insurance is to ensure that any third party who has suffered a loss due to some act or default of a Member has recourse to the proceeds of the insurance policy irrespective of the Member's own financial capacity to meet a successful claim against that Member.

Part 3. Practice Standards for MIAA Members

18. The Practice Standards set out hereunder apply to and bind Members of the MIAA, subject to the provisions of this Code of Practice.
19. In these Standards, "Residential Loan Member" means a Member who acts for a party to a transaction which involves or may involve the provision of credit secured by way of mortgage over residential real estate; "Commercial Loan Member" means a Member who acts for a party to a transaction which involves or may involve the provision of credit secured over real estate other than residential real estate. Where the word "Member" is used, the Practice Standard applies to and binds all Members except in clauses [] to [] where "Member" means Member to whom the COSL Rules apply, or as otherwise specified.

Compliance with Laws and the MIAA Code of Practice

20. A Member must always comply with this Code, the Corporations Act 2001, the Uniform Consumer Credit Code, the Trade Practices Act 1974 and other Fair Trading legislation, and other laws and regulations applying to a loan transaction from the time of loan enquiry until the loan is discharged.

Appropriate Finance

21. A Residential Loan Member must suggest or recommend to an applicant only those arrangements for mortgage finance that the Member genuinely and reasonably believes are appropriate to the needs of that applicant.
22. A Residential Loan Member must, before a consumer signs a Letter of Engagement with the Member, provide to the consumer a recommendation that where the Member is acting as agent for a Credit Provider the applicant should seek and rely upon their own enquiries about the competitiveness and suitability of the Loan.

Loan Applications

23. A Member must always disclose to an applicant all relevant details known to the Member about a proposed loan at the time of application.
24. A Residential Loan Member must always make such enquiries as are necessary to determine an applicant's capacity to repay the proposed loan.
25. A Residential Loan Member must submit a loan application to the Credit Provider, whenever possible, within five (5) business days (but in any case promptly) after receipt of a duly completed application, supplying all information required by the Credit Provider to make the decision whether or not to grant the loan applied for.
26. A Commercial Loan Member must submit a loan application to the Credit Provider promptly after receipt of a duly completed application, supplying all information required by the Credit Provider to make the decision to make the loan applied for.
27. A Member must always keep an applicant informed of all relevant information known

to the Member relating to a proposed loan to the extent that that information applies to that applicant.

Outcome of Loan Application

28. A Residential Loan Member must advise an applicant of the outcome of the loan application, whenever possible, within five (5) business days (but in any case promptly), of the loan decision being notified by the Credit Provider to the Member.
29. A Commercial Loan Member must advise an applicant of the outcome of the loan application promptly after the loan decision being provided by the Credit Provider to the Member.
30. A Residential Loan Member must refund amounts which may be due to the applicant, whenever possible, within two (2) business days (but in any case promptly) of the decision to decline the loan application being notified to the applicant.
31. A Commercial Loan Member must refund amounts which may be due to the applicant as provided for in any agreement between the applicant and the Commercial Loan Member or otherwise promptly after the decision to decline the loan application is notified to the applicant.

Confidentiality

32. A Member must at all times keep confidential information provided by an applicant and will only disclose information as may be required by law or as authorized by the applicant.

Fees and Commissions

33. If a fee or ongoing commission will or may be paid by or to the Member for or in connection with a loan or an application for a loan, the Member must always disclose to the applicant:

- (a) that fact; and
- (b) the person by whom the fee or commission is payable; and
- (c) the person to whom the commission is payable; and
- (d) the amount of the fee or commission if ascertainable; and
- (e) if the fee or commission is un-ascertainable, the basis of or formula for such fee or commission;

but this paragraph does not apply to:

- (f) fees payable by a supplier under a merchant service agreement with a credit provider;
- (g) the amount payable in connection with a credit related insurance contract; or
- (h) commission paid to employees of the Member.

34. A Member must never charge an applicant a non-refundable application fee for a loan submission where the Member knows or suspects that there is little or no chance of the loan being approved.

Skill, Care and Diligence

35. A Member must act with all due skill, care and diligence in their Mortgage Industry dealings.
36. A Member must always ensure that they, their associates and staff are thoroughly knowledgeable in those areas and aspects of the Mortgage Industry in which they participate.
37. A Member must undertake all necessary education and other MIAA endorsed programs to maintain and further their and their staff's professionalism.
38. A Member must take all reasonable steps to ensure that the finance applied for is obtained and property settlement completed in a timely fashion.

Honest and Honourable Dealings

39. A Member must establish and maintain honest and honourable relationships with all persons with whom they may come into contact in the course of their professional and commercial activities.
40. A Member must express written terms and conditions of their services in plain language and provide a fair and balanced view of the relationship between the applicant or borrower and the Member.
41. A Member must tell an applicant or borrower how any variation of the terms and conditions of their services will be notified and will give the applicant or borrower reasonable notice before any variation takes effect.
42. A Member must not engage in any acts or omissions of a misleading, dishonest, deceptive or fraudulent nature.
43. A Member must ensure that a Member's advertising will not be misleading, dishonest or deceptive.

Complaints Handling

44. A Member must always tell a consumer who makes a complaint by telephone the name of the Member's "Complaints Contact Person".
45. A Member must always ensure that the Complaints Contact Person has the authority to determine and respond to any complaint made by a consumer.
46. A Member must always maintain a written policy on complaints handling which must be provided to the Complaints Contact Person.

47. A Member must ensure that a consumer is treated courteously when making a complaint to a Member.
48. A Member must not, subject to statutory requirements, impose any fee on a consumer who makes a complaint.
49. A Member must always tell a consumer about the COS and about how, and to whom, to make a complaint whenever a consumer informs the Member that the consumer believes that the complaint has not been dealt with satisfactorily by the Complaints Contact Person.
50. A Member must keep displayed in the Member's offices a leaflet publicising the COS.
51. A Member must always respond in writing to the Scheme Manager, whenever possible, within fifteen (15) business days (but in any case promptly) after receipt by a Member of a written complaint referred to that Member by the Scheme Manager for response.
52. A Member must always maintain a record of written complaints made against that Member in the form and manner stipulated by the Board from time to time.

Conflict of Interest

53. A Member must frankly and fully disclose 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 concern a consumer.

Member vicarious liability and Member Dealing with MIAA and Other Members

- 54A. A Member is vicariously liable for any acts or omissions of any employee or representative that embarrasses, impugns or discredits the MIAA or brings the MIAA or the mortgage industry into disrepute or may do any of those things. Any such acts or omissions are deemed to be a breach of this Code of Practice by the Member.
- 54B. A Member must always conduct that Member's business in accordance with the Memorandum and Articles of Association of the MIAA and this Code of Practice, act in a professional and courteous manner towards consumers and fellow Members, and refrain from any conduct which may embarrass, impugn or discredit the MIAA or bring the MIAA into disrepute.
55. A Member must immediately advise any other MIAA Member in a lending transaction of any financial interest, relationship or association whatsoever with an applicant or borrower or guarantor or any other party in relation to the loan.

Moneys Held on Trust

56. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise), whenever possible, by the next business

day (or in any case promptly) deposit any money received or held by the Member on trust for a consumer into a trust account maintained by that Member with an authorised deposit-taking institution which account must not contain any moneys other than moneys received or held on trust by the Member for consumers.

57. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deliver money received or held by the Member on trust for any third party (other than a consumer) to that third party or, at the Member's election, deposit that money into an account maintained by an authorised deposit-taking institution nominated by the third party for the purpose.
58. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise) at all times keep such books and records as correctly record and explain the transactions relating to money received or held by the Member on trust for a consumer or a third party (other than a consumer) from time to time.
59. A Member who is a Mortgage Originator, or Finance Broker must (unless in a particular case by law required otherwise) ensure that the Member's trust account is audited by a registered company auditor, and a written report thereon prepared by the auditor, within such period as the Board may from time to time prescribe.
60. A Member who is a Mortgage Originator or Finance Broker must (unless in a particular case by law required otherwise) within such period as the Board may from time to time prescribe lodge with the National Secretariat the written report by the auditor containing such matters as the Board may from time to time prescribe.
61. A Member who is an Accredited Mortgage Consultant ("AMC") must not request, require or induce a consumer to pay or deliver money to that Accredited Mortgage Consultant in relation to a loan transaction except as may be authorised in writing by that AMC's employer or principal.
62. A Member who is an Accredited Mortgage Consultant ("AMC") must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deposit any money received or held by that AMC on trust for a consumer into a trust account maintained by the Member by whom or to whom that AMC is employed or contracted (as the case may be) with an authorised deposit taking institution which account must not contain any moneys other than moneys received or held on trust by that Member for consumers.
63. A Member who is an Accredited Mortgage Consultant ("AMC") must (unless in a particular case by law required otherwise), whenever possible, by the next business day (or in any case promptly) deliver money received or held by that AMC on trust for any third party (other than a consumer) to that third party or, at the AMC's election, deposit that money into an account maintained by an authorised deposit taking institution nominated by the third party for the purpose.
64. A Member who is an Accredited Mortgage Consultant ("AMC") must (unless in a particular case by law required otherwise), whenever possible, at all times keep such

books and records as correctly record and explain the receipt, depositing and delivery of money received or held by that AMC on trust for a consumer, or a third party (other than a consumer), from time to time.

Part 4 Dictionary

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

“AMC”	an Accredited Mortgage Consultant being an individual who is a Member employed by or contracted to another Member other than an AMC;
“Business”	every business, trade, profession or occupation continuously carried on and whether or not for profit;
“Board”	the board of directors of the Association from time to time;
“Code of Practice” or “Code”	this Code of Practice as promulgated by the MIAA and as revised and re-promulgated by the MIAA from time to time;
“Credit Provider”	an individual, corporation or other entity that lends or provides credit;
“consumer”	a member of the public who deals with a MIAA Member whether as a borrower, guarantor, prospective borrower, or prospective guarantor, or who in any other way seeks the services of a Member in the ordinary course of that Member’s business in the Mortgage Industry;
“COS Limited”	Credit Ombudsman Service Limited or its successor in title;
“COS”	the service for dispute and complaint handling established by COS Limited;
“COSL Board”	the board of directors of COS Limited established under its Constitution;
“COSL Rules”	the Credit Ombudsman Service Rules made by COS Limited;
“Determination”	an agreement, settlement or award made pursuant to the COSL Rules;
“Finance Broker”	a Member who brings together potential borrowers and Credit Providers in respect of lease, hire purchase and rental transactions;
“Individual”	a natural person, or a partnership or other incorporated body consisting only of natural persons;
“Member”	an individual corporation or other entity that is a member of the MIAA;
“MIAA”	the Mortgage Industry Association of Australia;
“Mortgage Industry”	the environment and operations of Mortgage Originators, Mortgage Managers, Lenders, Finance

	Brokers and others more particularly described in the Introduction;
“Mortgage Manager”	a Member who manages mortgages on behalf of a Credit Provider;
“Mortgage Originator”	a Member who brings together potential borrowers and Credit Providers;
“Mortgage Services”	any services provided to consumers by a Member in the ordinary course of its business in the Mortgage Industry;
“National Secretariat”	the National Secretariat of the MIAA;
“Practice Standards”	the standards of good industry practice specified in Part 3;
"Scheme Manager"	the Scheme Manager appointed by the COSL Board;
“State”	includes Territory of the Commonwealth of Australia.

Part 5 Promulgation

66. This Code of Practice (Edition 2) is promulgated by resolution of the Board dated [].

Notes:

1. In this Code of Practice a reference to money received or held on trust is a reference to money received or held by a Member to which that Member is not wholly entitled both at law and in equity.

Edition 2 – Promulgated [].

Statement of Interpretation Adopted by MIAA Board 27 May 2003

(To be read in conjunction with MIAA Code adopted by the Board 27 May 2003)

" A. Commission Disclosure

A member will have satisfied clause 33 of the Code of Practice and will not be guilty of Misconduct if:

- (a) where the member is paid by or on behalf of the lender, the member discloses that:*
 - (i) a commission may be paid;*
 - (ii) the commission will be paid by or on behalf of the lender (there is no need to identify the name of the lender);*
 - (iii) that the commission is payable to the member;*
 - (iv) the amount of the fee or commission if ascertainable;*
 - (v) if the fee or commission is unascertainable, a statement that the commission comprises (as appropriate):*
 - an upfront payment equal to a percentage of the principal sum; and*
 - an ongoing commission throughout the term of the loan based on a percentage of the amount owing from time to time.*

Where the member is a mortgage manager or aggregator who distributes loans through sub-originators, and the mortgage manager or aggregator does not deal directly with the relevant customer, that member will not need to make a disclosure under clause 33. In these circumstances the relevant disclosure will be made by the sub-originator who deals with the customer. In reaching this conclusion the Council notes that the Consumer Credit Code will require the lender to comply with s 15(M) of the Consumer Credit Code in relation total commissions paid by the lender.

- (b) Where a member is being paid a commission by a manager or an aggregator the member must disclose the following:*
 - a commission may be paid;*
 - the commission will be paid by or on behalf of the lender, manager, or aggregator (there is no need to identify the name of the lender, manager, or aggregator);*
 - that the commission is payable to the member;*
 - the amount of the fee or commission if ascertainable;*
 - if the fee or commission is unascertainable, a statement that the commission comprises (as appropriate):*
 - an upfront payment equal to a percentage of the principal sum; and*

- *an ongoing commission throughout the term of the loan based on a percentage of the amount owing from time to time.*

The Council approves the form of disclosure attached. Members can use any form of disclosure so long as it complies with the above interpretation of clause 33.

Sample form of disclosure

[BROKER NAME] arranges loans for borrowers.

In providing these services [BROKER NAME] is an independent contractor.

You acknowledge that we may be paid a commission by funders, managers, product suppliers or other people with whom we do business. We also may pay referral fees or commissions to people who referred you to us. No commission is payable by you.

In respect of most loans, we may be paid an upfront commission, which is a percentage of your loan amount, and a trail commission, which is a percentage of the ongoing loan balance. In respect of other products and services we may be paid a commission which may consist of an initial commission plus an ongoing commission calculated by reference to the loan or product amount. It is not practical at the date of this disclosure to specify the exact amount of commission payable.

[BROKER NAME] is a member of the Mortgage Industry Association of Australasia, the peak body for mortgage intermediaries. We and any of our representatives will comply with the Code of Practice binding on its members. We will use our experience to present to you products which we consider are suitable for your requirements, but the final choice to acquire any of those products is yours.

B. Fidelity insurance

Failure to obtain an extension for fidelity cover of not less than \$100,000 as prescribed by clause 14 of the Code of Practice will not be considered Misconduct where trust monies are not received."

C. Member Keeping/Advising/Telling an Applicant/borrower/Customer

The responsibility for providing the advice under 27, 28, 29, 41, 44 and 49 of the Code of Practice shall be deemed to be limited to the person or organization directly dealing with the borrower/customer as per the disclosure of commission requirements."



DISCIPLINARY RULES

Made by Decision of the Board: 27.05.2003

Amended by the Board: 26.11.2004

PO Box 604
Neutral Bay NSW 2089
T: 1300 554 817
F: 02 9967 2896
www.miaa.com.au

SECTION 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Rules, unless the contrary intention appears:

"AMC" means an Accredited Mortgage Consultant as defined in the Constitution;

"Applicant" means a person who has lodged an application with the Association to be accepted as a Member;

"Association" means Mortgage Industry Association of Australia ABN 62 006 085 552;

"Board" means the Board of the Association as defined in the Constitution;

"Business Day" means 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;

"Chairperson" means the Chairperson of the Tribunal as constituted in respect of a particular proceeding;

"Constitution" means the Constitution of the Association as amended from time to time;

"Complainant" means the person or organisation making a complaint against a Member.

"Corporation" means corporation as defined in the Corporations Act 2001 of the Commonwealth;

"COS Limited" means Credit Ombudsman Service Limited or its successor in title;

"COSL Referral" means a complaint referred to the Association pursuant to the Credit Ombudsman Service Rules in connection with a complaint made by a consumer about the conduct of a Member and which complaint specifically calls for the suspension of a Member's membership or the expulsion from membership of a Member or other disciplinary action permitted under the Rules;

"COSL Rules" means the Credit Ombudsman Service Rules made by COS Limited;

"Credit Ombudsman" means the Credit Ombudsman appointed pursuant to the Constitution of COS Limited and the COSL Rules;

"COS" means the service for complaint and dispute handling established by COS Limited;

"Deputy Chairperson" means the Deputy Chairperson of the Tribunal as constituted in respect of a particular proceeding;

"Investigating Officer" means a person appointed pursuant to sub-rule 2.1.1;

"Member" means a Member of the Association as defined in the Constitution;

"Membership Secretary" means the person appointed to that position by the Association from time to time;

MIAA MIAA Code of Practice means any MIAA Code of Practice promulgated by the Board from time to time pursuant to the Constitution;

"Misconduct" means:

- (a) conduct involving fraud or dishonesty;
- (b) refusal or failure to comply with a provision of the Constitution, the MIAA Code of Practice, the COSL Rules, or the Disciplinary Rules;
- (c) misrepresentation of material facts in relation to an application for membership of the Association;
- (d) misrepresentation of material facts in relation to accreditation as an Accredited Mortgage Consultant;
- (e) misrepresentation of material facts concerning continuing professional development points earned or to be earned as a Member;
- (f) misrepresentation of material facts in relation to any borrower, guarantor, proposed borrower or proposed guarantor;
- (g) conduct involving a breach of any legislation or delegated legislation governing or relating to conduct by participants in the Mortgage Industry including but not limited to the Uniform Consumer Credit Code, Financial Transactions Reports Act 1988 of the Commonwealth, Corporations Act 2001 of the Commonwealth, (NSW) Consumer Credit Administration Act 1995 and corresponding legislation in other States and Territories, Trade Practices Act 1974 of the Commonwealth and corresponding fair trading legislation in the States and Territories, Australian Securities and Investments Commission Act 2001 of the Commonwealth, Privacy Act 1988 of the Commonwealth, and the criminal Statutes of the Commonwealth and of the States and of the Territories;
- (h) whether or not any conduct referred to in paragraphs (a) to (g) is involved, conduct:
 - (i) which indicates a failure to understand or practice the principles of honesty and fair dealing in relation to other participants in the Mortgage Industry, to Regulatory Authorities, to the Association, to Customers, or to the public;
 - (ii) which indicates a substantial or consistent failure to reach reasonable standards of efficiency and competence in the conduct of business in the Mortgage Industry; or
 - (iii) conduct prejudicial to the reputation or interests of the Association being conduct prescribed by the Board which is substantially prejudicial to that reputation or those interests ;
- (i) such other conduct (whether by way of act or omission) as the Board may from time to time prescribe as Misconduct under the Constitution for the purposes of these Rules .

"Non-active AMC" means a person whose membership of the Association has been suspended pursuant to Rule 5.1.1 or 5.1.2;

"Officer" means officer as defined in the Corporations Act 2001 of the Commonwealth;

"Respondent" means the person or organisation against which an allegation of Misconduct has been made;

"Rules" means these Disciplinary Rules as amended from time to time;

"State Council" means a State Council of the Association as defined in the Constitution;

"Tribunal" means the MIAA Tribunal established pursuant to Rule 4.1.1;

"Tribunal Secretary" means the person appointed to that position from time to time by the Association.

1.2 Interpretation

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 or permit any document to be served on, given, sent or dispatched to any person, where any such expression or any other expression is used (in this Rule referred to as "served"), irrespective of whether any such document is actually received by the person the document is deemed as having been duly served by delivering such document to the person personally or 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.
- (f) where in these Rules any period of time is designated in Business Days, dating from a given day, act, or event, the time shall, unless the contrary intention appears, be reckoned exclusive of such day or of the day of such act or event;
- (g) where a time period is designated in Business Days, that period terminates at 12.00 pm on the last Business Day of the period;
- (h) if there is an inconsistency between the provisions of the Rules and the Constitution then the provisions of the Constitution are to prevail

SECTION 2 –

INVESTIGATIONS, INCLUDING OF COMPLAINTS

2.1 Receipt of complaints

- 2.1.1 The Board must appoint one or more persons to the position of Investigating Officer, but the persons so appointed may be individuals or a company or partnership. Each individual person appointed to the position of Investigating Officer, or if the Investigation Officer is not a natural person, each individual appointed or engaged to assist the Investigation Officer must have legal, accounting or auditing qualifications or experience

to the satisfaction of the Board and shall not be a Full Member of MIAA or an AMC. The powers of an Investigating Officer may be exercised by each person so appointed.

- 2.1.1A The role of the Investigation Officer is to investigate complaints and suspected breaches of the Constitution, the MIAA Code of Practice, and to investigate referrals and applications concerning membership in accordance with these Rules, and where required, to assist the Tribunal, as an impartial friend of the Tribunal, in proceedings coming before or before the Tribunal.
- 2.1.2 A complaint received by the Association from any person, including but not limited to any Member or COS Limited, or to a State Council or the Board, in relation to conduct of a Member, must be referred directly to an Investigating Officer. A complaint may be received and acted upon regardless of its origin or form, and regardless of whether the complainant is identified in the complaint
- 2.1.3 Subject to Rule 2.1.3A, the Investigating Officer must not decide to conduct an investigation, including an investigation in his or her own discretion, whether the investigation will arise from a complaint or at the motion of the Investigation Officer:
- (a) unless he or she suspects on a bona fide basis that a Member may have committed Misconduct;
 - (b) if he or she is of the opinion that it is more appropriate that the complaint be dealt with by a Court or another independent complaints, disciplinary, conciliation, or arbitration body or procedure;
 - (c) if the complainant seeks any compensation or reimbursement whatsoever and the complainant is not alleging that a Member has committed Misconduct;
 - (d) if the act or omission giving rise to the complaint occurred before the date of commencement of the Rules
 - (e) if the subject matter of the particular complaint was comprised in a complaint by the same person (or any one or more of them) previously considered by the Investigating Officer or the Disciplinary Tribunal unless the Investigating Officer is of the opinion that relevant new evidence is available;
 - (f) if the Investigating Officer is of the opinion, following consultation with the Chair of the Disciplinary Tribunal, that the complaint is frivolous or vexatious or is being pursued by the complainant in a frivolous or vexatious manner or for an improper purpose.
- 2.1.3A If a complaint is referred to the Investigating Officer by COS, or by the MIAA through a State Council or the Board, ASIC or by another regulatory body, the Investigating Officer must conduct an investigation into the complaint.
- 2.1.4 Subject to Rule 2.1.4B, the Investigating Officer may, before deciding to conduct an investigation, require that the complainant provide a complaint in written form and particulars of the complainant's identity and where in the Investigating Officer's opinion it is necessary so to do to afford procedural fairness to the Member the subject of the complaint, the complainant's written consent to the disclosure of his, her or its identity.
- 2.1.4A In all cases, the Investigating Officer will keep the identity of the complainant confidential except where the complainant has consented in writing to the disclosure of his, her or its identity.
- 2.1.4B Rule 2.1.4 does not prevent the Investigation Officer from conducting an investigation or from referring a matter to the Tribunal on the initiative of the Investigation Officer where

there has been no complaint but the Investigation Officer suspects on a bona fide basis that a Member may have committed Misconduct.

- 2.1.5 Where the Investigating Officer is of the opinion that disclosure of the identity of the complainant is necessary to afford procedural fairness to the Member the subject of the complaint, but the complainant refuses to provide such written consent, and Investigating Officer is not able to substantiate the subject matter of the complaint by independent means, without reference to the identity of the complainant, the Investigating Officer must not take any further action in relation to the complaint other than to advise the complainant that no further action will be taken in relation to the complaint.

2.2 Powers of Investigating Officer

- 2.2.1 The Investigating Officer may use all lawful means to conduct the investigation of a complaint and may conduct the investigation in any manner, using commonly accepted investigative techniques that the Investigating Officer considers fit.
- 2.2.2 The Investigating Officer may inspect the Association's membership and other records.
- 2.2.3 The Investigating Officer may require a Member to produce to the Investigating 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 Investigating Officer's reasonable opinion be potentially relevant to the subject matter of a current investigation being conducted by the Investigating Officer. A Member who receives such a notice must produce the documents required to the Investigating Officer within the shortest time that is practicable.
- 2.2.4 The Investigating Officer may require a Member who is a natural person to attend on him or her for the purpose of being interviewed, by way of written notice in writing to the Member specifying the date, time and place of the interview and notifying the Member that he or she may have a legal representative present at the interview. A Member who receives such a notice must attend the interview and must answer all questions asked of him or her in the interview.
- 2.2.5 The Investigating Officer may issue a notice in writing to a Member that is a Corporation requiring that the Member make available for interview any Officer of the Member, or requesting that the Member make available for interview any employee of the Member as specified in the notice. The Member must upon receiving such a notice cause the Officer specified to attend the interview, and must use its best efforts to ensure that each employee specified attends the interview. Any such notice issued by the Investigating Officer in relation to an employee must include a notification to the Member that:
- (a) the Investigating Officer does not have the power to compel the employee specified in the notice to be interviewed; and
 - (b) any employee who agrees to be interviewed may have a legal representative present at the interview.
- 2.2.6 An interview conducted by the Investigating Officer must be recorded on tape or computer disc, and a copy made available to the Member and any other person interviewed upon request.
- ## **2.3 Power to suspend**
- 2.3.1 If at any time in the course of an investigation the Investigating Officer suspects on reasonable grounds that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, the Investigating Officer may, by notice in writing setting out the reasons, refer the matter to the Chairperson or Deputy Chairperson of the Tribunal with a copy to be forwarded to the Member.

- 2.3.1.1 The Chairperson or Deputy Chairperson may upon receipt of a notice pursuant to Rule 2.3.1 from the Investigation Officer make an order suspending the Member from membership of the Association, and subject to Rule 2.3.8 such notice has effect from the date determined or, if a date is not specified, immediately from the date on which the order is made.
- 2.3.2 An order for suspension made by the Chairperson or Deputy Chairperson pursuant to Rule 2.3.1.1 will remain in effect until revoked by that person or the Tribunal.
- 2.3.3 A Member who is the subject of an order for suspension made pursuant to Rule 2.3.1.1 may, by notice in writing to the Investigating Officer or to the Secretary to the Tribunal, require that the subject matter of the order be referred to the Tribunal.
- 2.3.4 Where the Investigating Officer has received a notice in writing pursuant to Rule 2.3.3, the Investigating Officer must forward the notice together with the notice containing the order for suspension and such supporting information as the Investigating Officer thinks fit, to the Tribunal Secretary within two Business Days.
- 2.3.4.1 Where the Secretary to the Tribunal has received a notice from a Member pursuant to Rule 4.3.3, the Secretary must within two Business Days notify the Chairperson or the Deputy Chairperson, as the case may be, being the person who did not make the Order under Rule 2.3.1.1 to suspend the Member and the person receiving the notice must arrange for the Secretary to convene the Tribunal as soon as practicable to consider the continuation of or lifting of the suspension.
- 2.3.5 Where the Chairperson or Deputy Chairperson of the Tribunal has made an order for suspension of a Member pursuant to Rule 2.3.1, that person must refer the subject matter of the order to the Tribunal, within five Business Days and the notice containing the order for suspension and such supporting information as the Chairperson or Deputy Chairperson thinks fit must be provided to the Tribunal Secretary. At the same time Chairperson or Deputy Chairperson must notify the Member who is the subject of the order that they have done so.
- 2.3.6 Where the Chairperson or Deputy Chairperson has made an order for suspension of a Member pursuant to Rule 2.3.1.1, if the person making the order subsequently forms the opinion that he or she no longer has reasonable grounds to suspect that the Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, and the subject matter of the order has not been referred to the Tribunal pursuant to Rule 2.3.4 or 2.3.5, the Chairperson or Deputy Chairperson may by notice in writing to the Member revoke the order for suspension and that revocation will have immediate effect.
- 2.3.7 Where an order for suspension pursuant to Rule 2.3.1.1 has been made in respect of a Member, whether or not the subject matter of the order has been referred to the Tribunal pursuant to Rule 2.3.4 or 2.3.5, the Investigating Officer who gave the notice pursuant to Rule 2.3.1 must within five Business Days after making the order for suspension prepare a Notice of Alleged Misconduct against that Member pursuant to Rule 2.4.1 and serve it within a further five Business Days on the Member personally or by registered mail or by post.
- 2.3.8 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 two Business Days prior to the date upon which the suspension order is to take effect to make such representations and to provide such information to the Chairperson or Deputy Chairperson presiding in relation to the suspension order and the Chairperson or Deputy Chairperson must consider, but is not bound by, any representations made by the Member; and

- (b) another member of the Tribunal, not being either the Chairperson or Deputy Chairperson must sign an endorsement to the suspension order approving the making of it.
- 2.3.9 The Chairperson or Deputy Chairperson, as the case may be, must in each particular case maintain a record of those Tribunal members who are contacted by them for the purpose of signing the endorsement aforesaid, and of those Tribunal members who so sign.
- 2.4 Notice of Alleged Misconduct and Investigation Report**
- 2.4.1 Where, upon investigation of a complaint, the Investigating Officer considers that a Member may have engaged in Misconduct, the Investigating Officer must prepare a written Notice of Alleged Misconduct which must include particulars of the allegations of any of breach of the Constitution or of the MIAA Code of Practice, as the case may be, that is being made. The Investigating Officer must at the same time prepare a written Investigation Report, containing a detailed report in support of the Notice of Alleged Misconduct.
- 2.4.2 The Investigating Officer must provide copies of the Notice of Alleged Misconduct and Investigation Report at the same time to:
 - (a) the Member who is the subject of the Notice of Alleged Misconduct; and
 - (b) the Chairperson of the Tribunal
- 2.4.3 The Investigating Officer must include with the Investigation Report copies of any correspondence received by the Investigating Officer from the Member who is the subject of the Notice of Alleged Misconduct, or any legal or other representative of the Member, and from the complainant except in a case where the written consent of the complainant under Rule 2.1.5 is not required or is not necessary.
- 2.4.4 Where pursuant to this Rule 2.4 the Investigating Officer may issue a Notice of Alleged Misconduct, the Investigating Officer may:
 - (a) prepare and provide an amended Notice or Notices of Alleged Misconduct; or
 - (b) a further Notice or Notices of Alleged Misconduct; or
 - (c) with the leave of the Tribunal, withdraw a Notice of Alleged Misconduct as the case may require, from time to time.
- 2.4.5 Where the MIAA Tribunal is considering an Allegation of Misconduct 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 a fresh Notice of Alleged Misconduct or an additional or amended Notice of Alleged Misconduct and serve it on the Member. The Tribunal may then proceed to deal with the matter in accordance with these Rules.

SECTION 3 – CANCELLATION OF MEMBERSHIP OR ACCREDITATION AND REFUSED APPLICATIONS FOR MEMBERSHIP OR ACCREDITATION

- 3.1 Proceedings for cancellation of membership or accreditation**
- 3.1.1 The Membership Secretary may, in his or her absolute discretion, at any time refer to an Investigating Officer or the Tribunal a Member who, in the Membership Secretary's opinion:
 - (a) does not meet or no longer meets the requirements of membership in the Association; or

- (b) has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided to the Association.
- 3.1.3 A referral to an Investigating Officer pursuant to Rule 3.1.1 must be made by notice in writing to the Investigating Officer, and the Membership Secretary must provide a copy of the notice to the affected Member.
- 3.1.4 A referral to the Tribunal pursuant to Rule 3.1.1 must be made by notice in writing to the Tribunal Secretary, and the Membership Secretary must provide a copy of the notice to the affected Member.
- 3.2 Refused applications for membership or accreditation**
- 3.2.1 In any case where an application for membership in the Association has been received from an Applicant but refused by the Association, and the Applicant has notified the Association that he, she or it wishes to appeal from the decision to refuse the application, except where the Board has deemed it appropriate in the circumstances for the Board to hear and determine the appeal pursuant to the Constitution, the Membership Secretary must refer the application to either an Investigating Officer or the Tribunal.
- 3.2.2 The decision whether to refer an application to an Investigating Officer or the Tribunal pursuant to Rule 3.2.1 is a matter within the absolute discretion of the Membership Secretary, however the Membership Secretary must refer the application to one or the other within five Business Days after the Association has been notified that the Applicant wishes to appeal from the decision to refuse the application.
- 3.2.3 A referral pursuant to Rule 3.2.1 must be made by notice in writing to the Investigating Officer or the Tribunal Secretary as the case may be, and the Membership Secretary must provide a copy of the notice to the Applicant.
- 3.3 Referrals to Investigating Officer**
- 3.3.1 Where an Investigating Officer has received a referral pursuant to Rule 3.1.1 or 3.2.1, the Investigating Officer must conduct an investigation of the relevant circumstances, in pursuance of which investigation the Investigating Officer is invested with the powers set out in Rule 2.2.
- 3.3.2 The Investigating Officer must complete his or her investigation pursuant to Rule 3.3.1 and prepare a written Investigation Report of his or her findings, within 15 Business Days after receiving the referral.
- 3.3.3 The Investigating Officer must provide copies of the Investigation Report at the same time to:
 - (a) the Member or Applicant who is the subject of the Investigation Report; and
 - (b) the Tribunal Secretary.
- 3.3.4 The Investigating Officer must include with the Investigation Report copies of any correspondence received by the Investigating Officer from the Member or Applicant who is the subject of the Investigation Report, or any legal or other representative of the Member or Applicant.

SECTION 4 – MIAA TRIBUNAL

4.1 Composition of the Tribunal

- 4.1.1 There will be a Tribunal for the purposes of:
 - (a) carrying out the functions of the Tribunal pursuant to these Rules and the Tribunal under these Rules may hear and determine any complaints of allegations of Misconduct against any Member relating to any breach of the terms of the Constitution, the MIAA Code of Practice, the COSL Rules or the Disciplinary Rules by any Member; and

- (b) carrying out such other functions as are delegated to it by the Board.
- 4.1.2 The Tribunal will be referred to as the MIAA Tribunal.
- 4.1.3 The Board must appoint a Chairperson and a Deputy Chairperson of the Tribunal, each of whom is a legal practitioner of at least five years' standing and has the right to practise law within a State or Territory of Australia. Both persons must be appointed for such period or periods and on such terms of remuneration as are determined by the Board.
- 4.1.4 The Chairperson and Deputy Chairperson may but need not be Life Members but may not be Full Members or AMCs.
- 4.1.5 The Tribunal Secretary must maintain a Tribunal Panel, consisting of a list of at least 50 persons selected by the Board, each of whom is in the majority opinion of the Board a person of good character and of good standing and experience in the mortgage industry. Persons selected to be on the Tribunal Panel may, but need not, be members of the Board or a State Council, Members or Officers or employees of Members.
- 4.1.6 The Board will endeavour to ensure that the Tribunal Panel includes persons resident in each State of Australia.
- 4.1.7 For the purposes of a hearing, the Tribunal must be comprised by:
 - (a) the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson; and
 - (b) two persons from the Tribunal Panel, selected by the Tribunal Secretary in consultation with the presiding Chairperson;or
 - (c) where both the Chairperson and Deputy Chairperson are unable or not prepared to sit on a particular hearing, three persons from the Tribunal Panel, selected by the Tribunal Secretary, one of whom will be designated by the Tribunal Secretary as chairperson for the purposes of that particular hearing; or
 - (d) where the Chairperson determines, in his or her discretion, that it is appropriate to do so having regard to the importance of the matter, the Tribunal may be constituted, by the Chairperson, the Deputy Chairperson and three persons from the Tribunal Panel.
- 4.1.8 In the absence of the Chairperson and the Deputy Chairperson, the person designated by the Tribunal Secretary as chairperson for the purposes of a particular hearing must be a legal practitioner of at least five years standing and who has the right to practice law within a State or Territory of Australia.
- 4.1.9 In selecting the composition of the Tribunal for any particular matter, the Tribunal Secretary will endeavour so far as possible to appoint persons who are resident in the same State as the Member who is the subject of the relevant Notice of Alleged Misconduct.
- 4.2 Proceedings of the Tribunal**
 - 4.2.1 Upon receiving a Notice of Alleged Misconduct pursuant to Rule 2.4.2 or a notice pursuant to Rule 2.3.4 or 2.3.5, the Tribunal Secretary must assist the presiding Chairperson to appoint the Tribunal to deal with that particular proceeding, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Investigating Officer in connection with the proceeding.
 - 4.2.2 The Chairperson of the Tribunal must convene the Tribunal as quickly as is practicable, which may be done in person or by telephone or audiovisual link as the chairperson considers fit, and:

- (a) where an order for suspension pursuant to Rule 2.3.1 is in effect, and whether or not a notice pursuant to Rule 2.3.4 or 2.3.5 has been received, the Tribunal may make an order that the order for suspension be continued until further order of the Tribunal, or an order that the order for suspension be revoked, without conducting a hearing or receiving evidence or submissions from any party to the proceeding;
 - (b) in any proceeding, if the Tribunal has reason to suspect that a Member has committed, or been directly or indirectly involved in the commission of, an act involving fraud or dishonesty, the Tribunal may make an order suspending the Member or Affiliate from membership of the Association;
 - (c) in any proceeding, determine whether the proceeding will be dealt with and determined in the absence of the parties, or whether a hearing will be convened.
- 4.2.3 Where the Tribunal has made an order pursuant to Rule 4.2.2(a) or (b), the Tribunal may at any time in the proceeding, prior to issuing its final determination, on the motion of a party or on its own motion make an order revoking or varying its original order pursuant to Rule 4.2.2(a) or (b).
- 4.2.4 Where the Tribunal has made an order pursuant to Rule 4.2.2(a) or (b) in respect of a Member, the Tribunal must immediately notify the Investigating Officer of the order and Rule 2.3.7 will then apply as if the order had been made by the Investigating Officer.
- 4.2.5 Where the Tribunal has determined pursuant to Rule 4.2.2(c) that a proceeding will be conducted in the absence of the parties, the chairperson may notify the Investigating Officer and must notify the Member who is the subject of the proceeding of that determination.
- 4.2.5A Where the Tribunal proposes to deal finally with a matter with a matter before it, the Tribunal may do so without notice to the Investigation Officer or to the parties but the Tribunal must not proceed in this manner unless it proposes to determine a Notice of Alleged Misconduct by dismissing it.
- 4.2.5B Where the Tribunal proposes to deal finally with a matter in the absence of the parties, the Chairperson must notify the party under review and that party may provide submissions and evidence in writing to the chairperson within such period as the chairperson designates.
- 4.2.6 Where the Tribunal is proceeding pursuant to Rule 4.2.5 OR 4.2.5B, the Tribunal must not proceed to determine the Notice of Alleged Misconduct until the period designated by the chairperson for the provision of submissions and evidence has expired and the Tribunal has considered all such material provided to it.
- 4.2.7 Where the Tribunal has determined pursuant to Rule 4.2.2(c) that a hearing will be convened in respect of a proceeding, the chairperson must appoint a date, time and place for the hearing and may give notice in writing of these particulars to the Investigating Officer and must give notice to the Member who is the subject of the Notice of Alleged Misconduct. The period of notice must be not less than five Business Days prior to the date of the hearing.
- 4.2.7A Where the Tribunal has determined that a hearing will be convened, the role of the Investigation Officer, if invited to do so by the Tribunal, is to be present at the hearing to support the allegations it has made in the Notice of Allegations as an impartial friend of the Tribunal, including by making recommendations to the Tribunal, where invited by the Tribunal to do so.
- 4.2.8 The Tribunal may adjourn, postpone or reconvene a hearing as it thinks fit, provided that reasonable notice is given to the parties of any change to the hearing date.

4.3 Proceedings for cancellation of membership or accreditation

- 4.3.1 Upon receiving a notice pursuant to Rule 3.1.1, or an Investigation Report pursuant to Rule 3.3.3 relating to proceedings against a Member, the Tribunal Secretary must appoint the Tribunal to deal with that particular proceeding, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Association in connection with the proceeding.
- 4.3.2 The Tribunal must provide to the Member who is the subject of the notice or Investigation Report a reasonable opportunity to make written submissions to the Tribunal as to the reasons why the membership of the Member should not be cancelled. The Tribunal must not hold a hearing in respect of the proceeding and the Member is not entitled to require that a hearing be held unless the Tribunal is satisfied that special circumstances exist justifying the holding of a hearing.
- 4.3.3 If, having considered any submissions received by it, the Tribunal is of the opinion that the Member:
- (i) does not meet the requirements of membership in the Association; or
 - (ii) has made a material misrepresentation (whether by way of statement or omission) on an application form or other document provided to the Association;

the Tribunal may cancel the membership of the Member.

4.4 Proceedings in relation to refused applications

- 4.4.1 Upon receiving a notice pursuant to Rule 3.2.1, or an Investigation Report pursuant to Rule 3.3.3 relating to a refused application by an Applicant, the Tribunal Secretary must assist the presiding chairperson to appoint the Tribunal to deal with that particular matter, and provide to each member of the Tribunal all of the documents provided to the Tribunal Secretary by the Membership Secretary or the Investigating Officer in connection with the proceeding.
- 4.4.2 The Tribunal must provide to the Applicant who is the subject of the notice or Investigation Report a reasonable opportunity to make written submissions to the Tribunal as to the reasons why the application by the Applicant for membership in the Association should be allowed. The Tribunal must not hold a hearing in respect of the proceeding and the Applicant is not entitled to require that a hearing be held.
- 4.4.3 After considering any submissions received by it, the Tribunal may affirm the decision to refuse the application by the Applicant for membership in the Association, or revoke that decision and direct the Association to allow the application for membership as the case may be.

4.5 Conduct of hearings

- 4.5.1 A hearing of the Tribunal must be held in private except that:
- (a) the Investigating Officer, subject to the approval of the presiding Chairperson, and the Member as of right (if the hearing relates to a Member who is a natural person), or two representatives of the Member (if the hearing relates to a Member that is a Corporation) are entitled to attend;
 - (b) the Tribunal may allow other representatives of the Association and the Member to attend and make submissions.
- 4.5.2 A party may be legally represented before the Tribunal provided that:
- (a) the presiding Chairperson is advised not less than two Business Days prior to the date set down for the Tribunal hearing of the intention of the particular party 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 party to have legal representation in which event the legal representative or representatives must depart the hearing and take no further part in it and the hearing must proceed in the absence of that legal representation.

- 4.5.3 No party may be compelled to appear at a hearing of the Tribunal, but any party to a hearing may provide written submissions and evidence to the chairperson at least three Business Days before the hearing or at the hearing with the leave of the Tribunal.
- 4.5.4 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.
- 4.5.5 The Tribunal must conduct hearings with as little formality and technicality as possible and otherwise may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it.

4.6 General Rules governing the Tribunal

- 4.6.1 The laws and rules of evidence do not apply to proceedings before the Tribunal.
- 4.6.1.1 In considering a matter before it, the Tribunal may take into account details entered into the Register of the Tribunal concerning matters previously dealt with by the Tribunal against a Member, but only for the purposes of considering the orders that the Tribunal may make against a Member, unless the Tribunal determines that the entry in the Register and the facts to which it refers are relevant to establishing whether the Member has engaged in Misconduct and has given the Member an opportunity to address it on that issue.
- 4.6.2 The Tribunal must act expeditiously in hearing and determining all proceedings before it.
- 4.6.3 The Tribunal must act without bias and treat all parties with fairness and in accordance with the rules of natural justice.
- 4.6.4 The Tribunal may obtain legal advice and have legal advisers in attendance at a hearing.
- 4.6.5 The Tribunal may conduct hearings or other meetings of the Tribunal in person or by other means provided that all members of the Tribunal are able to hear and speak to each other.
- 4.6.6 All determinations and decisions of the Tribunal must be made by simple majority vote of the members of the Tribunal.
- 4.6.7 All correspondence between a party and the Tribunal must be dealt with on the Tribunal's behalf by the Chairperson or, in the Chairperson's absence, by another member of the Tribunal with the consent of the chairperson.
- 4.6.8 Where the Tribunal has made a determination pursuant to Rule 4.3.3 or 4.7.2, the Chairperson must notify in writing the Investigating Officer and the Member who is the subject of the proceeding before the Tribunal of the determination, including any finding of Misconduct and any penalty.
- 4.6.9 Where the Tribunal has made a determination pursuant to Rule 4.4.3, the chairperson must notify in writing the Membership Secretary and the Applicant who is the subject of the proceeding before the Tribunal of the determination.
- 4.6.10 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 all parties to the proceeding within one month after the date on which the determination is made.

- 4.6.11** The Tribunal may proceed to determine any matter before it notwithstanding the failure by the Member who is the subject of the Notice of Alleged Misconduct to make submissions or provide documents or information or to appear at a hearing within the period specified for the purpose by the Tribunal.

4.7 Powers of the Tribunal

- 4.7.1** Any act or omission by an Officer, employee or contractor of a Member is deemed for the purposes of these Rules to be an act or omission by the Member.

- 4.7.1A** The Board or State Council may act under the Constitution to suspend, censure or expel any Member irrespective of any determination or other action that has been, is being or may be taken pursuant to these Disciplinary Rules by the Tribunal or at law.

- 4.7.2** If the Tribunal considers that the Notice of Allegation has been substantiated but does not propose to determine that a Member has engaged in Misconduct, following submissions from the Member or the Investigation Officer or both that there are exceptional circumstances justifying it doing so, the Tribunal may without proceeding to determine that there has been Misconduct, adjourn the matter to a date to be fixed or dismiss it absolutely or subject to such conditions as the Tribunal may impose in accordance with these Rules.

- 4.7.3** Subject to Rule 4.7.2 and Rule 4.7.4 if the Tribunal determines that a Member has engaged in Misconduct, the Tribunal shall make a determination of Misconduct against the Member and may impose one or more of the following penalties:

- (a) dismiss the matter absolutely or subject to any conditions 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 or conditions as the Tribunal thinks fit;
- (e) where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Tribunal thinks fit;
- (f) require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct found to have been engaged in;
- (g) 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;
- (h) require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member;
- (i) expel the Member from membership of the Association;
- (j) adjourn the proceeding subject to compliance with such conditions as to sanctions as the Tribunal may otherwise impose in accordance with this Rule.

- 4.7.4** Where the Tribunal has determined the Member has engaged in Misconduct but there are in the opinion of the Tribunal mitigating factors amounting to special circumstances in the opinion of the Tribunal the Tribunal may 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 whereby the determination of Misconduct by the Tribunal against the Member is to be suspended for any period of time up to

2 years as the Tribunal deems fit from the date of the imposition of the suspended determination of Misconduct and the suspended determination of Misconduct will be of no effect after any such period of suspension imposed expires. However where the Member within the period of any suspended determination is guilty of further engaging in Misconduct the suspended determination of Misconduct penalty shall be of no effect and is to be reconsidered afresh by the Tribunal as to an appropriate penalty at the same time as any further Misconduct engaged in by the Member is being considered by the Tribunal in relation to penalty;

- (b) an admonishment of the Member without any determination of Misconduct by the Tribunal against the Member;
- (c) require the Member to take such steps as the Tribunal may determine to correct the effects of any Misconduct found to have been engaged in;
- (d) 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) require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future acts of Misconduct by the Member;

4.7.5 Prior to taking any action under Rule 4.7.2, Rule 4.7.3 or Rule 4.7.4 the Tribunal must provide such reasonable time as the Tribunal determines for the Member to make such representations and to provide such information to the Tribunal as the Member thinks fit in relation to the action proposed to be taken by the Tribunal.

4.8 Effect of Tribunal determinations

4.8.1 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 or, if the Tribunal does not specify such a date, immediately from the date on which the order is made.

4.8.2 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.

4.8.3 The Tribunal may of its own motion and in its absolute discretion reconsider and vary or overrule any decision or order made by the Tribunal in respect of any penalty imposed by the Tribunal upon a Member under these Rules prior to the 26th day of November 2004.

4.9 Notification to persons affected by determination

4.9.1 Where the Tribunal makes a determination, decision or order pursuant to the Rules (whether or not that determination, decision or order is then in effect) and the effect of that determination, decision or order is to cause the membership of the Member concerned to be suspended or for the Member to be expelled from membership of the Association, the Tribunal:

- (a) may in any such determination, decision or order make such ancillary orders concerning AMCs who are employed by, or contracted to, the Member concerned as the Tribunal thinks fit and every such ancillary order shall bind every such AMC; and
- (b) must as soon as practicable in such form and manner as it thinks fit notify each such AMC of the effect of the determination, decision or order and the terms of any ancillary order.

4.10 Publication of determinations

- 4.10.1 The Tribunal Secretary must maintain a register of all determinations made by the Tribunal or by the Board pursuant to Rule 4.3.3 or 4.7.2, and make the register available for inspection by Members. The register must, with respect to each determination, include the name of the Member to whom the determination relates, any findings of Misconduct by the Tribunal and any orders made by the Tribunal including any penalties. The register must also include a copy of the reasons for determination issued by the Tribunal.
- 4.10.2 The Tribunal Secretary must maintain a separate register of all determinations made by the Tribunal pursuant to Rule 4.4.3. The register must, with respect to each determination, include the name of the Applicant to whom the determination relates and the determination made by the Tribunal. The register must also include a copy of the reasons for determination issued by the Tribunal.
- 4.10.3 The Association shall, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally the content of, or an extract from or precis of, any determinations by the Tribunal (other than determinations pursuant to Rule 4.4.3) and the register maintained pursuant to Rule 4.10.1 and of any reasons issued by the Tribunal. 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 have to bring action with respect to such publication, whether by suit in defamation or other cause of action.
- 4.10.4 Except as provided below, the Association must not publish or otherwise make available to Members, or other persons or the public generally the content of any determinations by the Tribunal pursuant to Rule 4.4.3 or the register maintained pursuant to Rule 4.10.2 (collectively the "Application Records"). The Association must provide access to the Application Records only as follows:
- (a) an Applicant must be given access upon request to that part of the Application Records that relates to the Applicant, but not to any other part of the Application Records;
 - (b) the Membership Secretary, the Tribunal Secretary, the Tribunal, an Investigating Officer and the Board must be given access upon request to the Application Records.

4.11 Keeping Complainant Informed

- 4.11.1 The Investigating Officer and/or the Tribunal Secretary may keep a complainant informed of progress in handling the complainant's complaint provided always that the Investigating Officer or the Tribunal Secretary as the case may be must not provide any information to a complainant in relation to the progress and outcome of the complaint where in the opinion of the Investigating Officer or the Tribunal Secretary as the case may be:

- (a) to do so would expose the Investigating Officer, the Tribunal Secretary, the Association or any Officer of the Association or members of the Tribunal to liability for civil damages;
- (b) to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint and the proceedings of the Tribunal; or
- (c) to do so would deny procedural fairness to the Member, the subject of the complaint.

4.12 Legal proceedings

- 4.12.1 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 Councillors of the Association or an Investigating Officer), with respect to the publication or giving of access to any person of material pursuant to Rules 4.10.1 or 4.10.2, and this Rule may be pleaded as a complete bar to the commencement or continuation of any such proceedings in any jurisdiction.
- 4.12.2 The Association will indemnify each member of the Tribunal and 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 Investigating Officer, a proceeding before the Tribunal or any order, determination or decision made by an Investigating Officer or the Tribunal, and this indemnity will extend to the conduct of the defence of any proceedings and the payment of any costs thereof.
- 4.12.3 The indemnity provided pursuant to Rule 4.12.2 does not extend to actions brought by the Association against any person.

SECTION 5 – NON-ACTIVE AMCs

5.1 Automatic suspension of membership of the Association

- 5.1.1 Where an AMC is not, or has ceased for any reason to be, an Officer, employee or contractor of a Member, then the membership of the Association of the AMC is automatically suspended with effect from the date on which the AMC ceased to be an Officer, employee or contractor of a Member.
- 5.1.2 Where the Tribunal has made an order suspending or cancelling the membership of a Member, then the membership of the Association of any AMC who is an Officer, employee or contractor of that Member, and who is not also an Officer, employee or contractor of another Member, is automatically suspended with effect from the date on which the suspension or cancellation of the membership of the Member takes effect.
- 5.1.3 Where an AMC's membership of the Association has been suspended pursuant to Rule 5.1.1 or 5.1.2, the Membership Secretary must record the AMC's name in the membership records of the Association as a Non-active AMC.
- 5.1.4 A Non-active AMC is not entitled to any of the rights or privileges of an AMC, and may not hold himself or herself out to any person or to the public generally as an AMC or as a Member of the Association.
- 5.1.5 A Member may not deal with a Non-active AMC as if the Non-active AMC was an AMC or a Member, and must not hold out a Non-active AMC to any person or to the public generally as an AMC or a Member of the Association.
- 5.1.6 A Non-active AMC may apply for re-accreditation upon obtaining employment with, or being retained as a contractor by, a Member. If no application for re-accreditation has been received from the Non-active AMC within one year after the date on which his or

her membership of the Association was suspended, then his or her membership of the Association will be deemed to have been cancelled with effect from the date on which that one year period expires.

SECTION 6 – MATTERS REFERRED TO TRIBUNAL BY CREDIT OMBUDSMAN SERVICE LIMITED

6.1 Referral of matters by Credit Ombudsman

- 6.1.1 The Tribunal Secretary must accept and act upon a COSL Referral in the manner following.
- 6.1.2 The Tribunal Secretary must as soon as practicable after its receipt, refer any COSL Referral to the Investigating Officer and every such COSL Referral shall be dealt with in all respects as if the COSL Referral were a complaint made under the Rules.
- 6.1.3 Upon receipt of a COSL Referral the Tribunal Secretary must as soon as practicable acknowledge to the Scheme Manager receipt of the COSL Referral and advise the complainant referred to in the COSL Referral of the referral of the COSL Referral to the Tribunal Secretary and of the procedure to be followed in dealing with the complainant's complaint.
- 6.1.4 A complainant who is the subject of a COSL Referral may not seek any compensation or other reimbursement whatsoever under the Rules irrespective of whether or not the complainant has received compensation pursuant to an Award by the Credit Ombudsman.

SECTION 7 – MATTERS REFERRED TO TRIBUNAL BY COS LIMITED

7.1 Referral of matters by COS Limited

- 7.1.1 Notwithstanding any other provision of these Rules, COS Limited may of its own volition and irrespective of whether or not a complaint has been made to it under the COSL Rules in respect of a Member, make a complaint in relation to a Member to the Association to be dealt with in accordance with these Rules.
- 7.1.2 COS Limited may make a complaint to the Association under these Rules irrespective of whether or not the subject matter of the complaint by COS Limited has been the subject of a complaint by any particular consumer or consumers to COS Limited.
- 7.1.3 COS Limited may make a complaint in relation to specific conduct or a course of conduct engaged in by the Member who is the subject of the complaint.