



# **Association of Financial Advisers Limited**

## **By-Laws**

**29 30 May November 2020**

**A COMPANY LIMITED BY GUARANTEE NOT HAVING A SHARE CAPITAL**

**Association of Financial Advisers Limited  
ABN 29 008 619 921**

## PAGE CONTENTS OF BY-LAWS

Interpretation.....	3
Membership Criteria and Benefits.....	3
Education and Experience Requirements.....	5
Applications Generally.....	5
Change of Class of Membership.....	6
Post Nominals.....	7
Membership Fees.....	7
Continuing Professional Development.....	7
Board Elections.....	8
Powers of Investigation.....	10
Disciplinary Procedures.....	10
Meetings of Members.....	<u>1344</u>
Notice of Meeting.....	<u>1414</u>
Management Accountability.....	<u>1415</u>
Member Complaints.....	<u>1415</u>
Sponsorship and Funding.....	<u>1415</u>
AFA Code of Conduct – Six Principles of Professionalism.....	<u>1515</u>

## Interpretation

Unless the context requires otherwise, terms defined in clause 1 of the Constitution of the AFA have the same meaning in these By-Laws, and:

**"Career Interest in Financial Services"** means has developed a career in financial services and demonstrates a commitment to financial advice.

**"Code of Conduct"** means the Code of Conduct set out in the Schedule;

**"Disciplinary Committee"** means a Disciplinary Committee convened by the Board under clause 54;

**"FASEA"** means the Financial Adviser Standards and Ethics Authority;

**"Fees"** means the annual subscription fee, levies or other fees payable by a Member or applicant and any fee payable for post nominals;

**"Investigating Officer"** has the meaning given in clause 53;

**"Relevant Discipline"** means finance, financial planning, commerce, economics, business, tax, accounting or law;

**"Returning Officer"** means the person appointed as Returning Officer under clause 34; and

**"Review Committee"** means a Review Committee convened by the Board under clause 59.

Unless the context requires otherwise, capitalised terms used in these By-Laws which are not defined in clause 1 of the Constitution has the meaning given to those terms under the Act.

## Membership Criteria and Benefits

1. The AFA has the following eleven classes of membership:

- i. Practitioner Member;
- ii. New Adviser Member;
- iii. Affiliate Member;
- iv. Life Member;
- v. Associate Member;
- vi. Paraplanner Member;
- vii. Ambassador Member;
- viii. Support Member;
- ix. Corporate Member;
- x. Student Member (Full time University);
- xi. Retired Member; and
- xii. Academic Member.

- i. A **Practitioner Member** is an individual who is authorised to give financial advice either as a representative or authorised representative of an Australian Financial Services Licensee, and who has been qualified to provide financial advice for at least three years. A Practitioner Member:
  - can serve on the Board;
  - can vote in elections and attend and vote at general meetings;
  - can be nominated to serve on any AFA committee; and
  - can use the appropriate post-nominal.
- ii. A **New Adviser Member** is an individual who is authorised to give financial advice as a representative or Authorised Representative of an Australian Financial Services Licensee who has been qualified to provide financial advice for not more than three years (as at the date of applying for or renewing their membership). A New Adviser Member:
  - cannot serve on the Board until they meet the length of service criteria set out in

clause 25;

- can vote in elections and attend and vote at general meetings;
  - can be nominated to serve on any AFA committee; and
  - can use the appropriate post-nominal.
- iii. An **Affiliate Member** is an individual who (although not a practising adviser) has a Career Interest in the Financial Services Industry and is otherwise qualified to provide financial advice. An Affiliate Member:
- cannot stand for election to the Board;
  - can vote in elections and can attend and vote at general meetings;
  - can be nominated to serve on any AFA committee; and
  - can use the appropriate post-nominal.
- iv. A **Life Member** is an individual whom the Board considers has rendered exceptional service, or has special importance, to the AFA and/or the Financial Advice Profession and has been elected as a Life Member by a majority of the Life Membership Nomination Committee (which comprises the National President, the National Vice President, the National Treasurer and three existing Life Members). A Life Member can be a voting member where they continue to meet the education and experience requirements of Clause 2 and continue to comply with the CPD standard in Clause 21. Life members who are unable to meet these standards will be non-voting life members, and will be ineligible to stand for election to the Board or to vote in elections or at general meetings. All life members are entitled to attend general meetings and to be nominated to serve on any AFA committee.
- v. An **Associate Member** is an individual, who has a Career Interest in the Financial Services Industry but who is not currently providing financial advice. Associate members include CEOs and Licensee Management, Wealth Coaches, Centre of Influence Builders, non-practicing Principals, Practice Development Managers, State Managers, Business Development Managers for Product Providers. etc. An Associate Member:
- cannot stand for election to the Board;
  - cannot vote in elections or at general meetings, however can attend general meetings;
  - can be nominated to serve on any AFA committee; and
  - can use the appropriate post-nominal.
- vi. A **Paraplanner Member** is a professional who works within financial services with Financial Advisers, including the preparation of advice documents, who does not provide financial advice to retail clients. This category of member cannot vote in an election or at a general meeting, but can attend a general meeting and serve on any AFA committee.
- vii. An **Ambassador Member** is an individual, who has a Career Interest in the Financial Services Industry but who is not a practising adviser. The Ambassador membership is nominated by a Corporate Member attached to a Corporate Partner Package, to which they are linked and for a period of 12 months, subject to re-nomination by the Partner. The cost of this membership is included in the Partnership package. Nominated Ambassador Members must be approved by the AFA Board.
- This category of member cannot vote in an election or at a general meeting, but can attend a general meeting and serve on any AFA committee. Examples include BDMs, PDMs, account managers, state managers, senior management and the like.
- viii. A **Support Member** is an individual who is an employee of an advice business or a Licensee, who provides support to advisers or the business (Customer Service Assistants, Office Support Staff etc). Neither a practising adviser or a paraplanner can be a Support Member. A Support Member:
- cannot serve on the Board;
  - cannot vote in elections or at general meetings;

- can attend general meetings; and
  - can be nominated to serve on any AFA committee.
- ix. A **Corporate Member** may include Licensees, product providers, fund managers and service providers to the financial services industry. The Corporate Member must nominate (in writing) a natural person as their representative who will have the same membership status and rights as an Associate Member.
- x. A **Student member (Full Time University)** is an individual who is studying full time at a university as at the date of applying for or renewing their membership and is not a practising adviser. A Student Member:
- cannot serve on the Board;
  - cannot vote in elections or at general meetings;
  - can attend general meetings; and
  - can be nominated to serve on any AFA committee.
- xi. A **Retired Member** is an individual who has retired from active participation in the Financial Advice Profession. A Retired Member:
- cannot stand for election to the Board;
  - cannot vote in elections or at general meetings;
  - can attend general meetings; and
  - can serve on any AFA committee.
- xii. An **Academic Member** is an individual who is employed as at the date of applying for or renewing their membership as a teacher or lecturer in an Australian tertiary institution such as a university or a registered training organisation. who is involved in the delivery of education on a financial advice course or a Related Discipline. An Academic Member:
- cannot stand for election to the Board;
  - cannot vote in elections or at general meetings;
  - can attend general meetings; and
  - can serve on any AFA committee.

## Education and Experience Requirements

2. Each Practitioner Member, New Adviser Member, Affiliate Member and voting Life Member will be required to demonstrate that they meet one of the following education and/or experience requirements:

- (a) the Member has been awarded a degree or a post-graduate award in a Relevant Discipline from either an Australian tertiary institution or an equivalent institution;
- (b) the Member has been awarded a diploma or higher award in a Relevant Discipline from either a registered training organisation or another institution as approved by the Board from time to time;
- (c) the Member has the equivalent of six years' full-time experience in the Financial Advice Profession in the eight year period prior to the date of applying for or renewing their membership; or
- (d) such other requirement as may be prescribed by the Board in the By-Laws or the Regulations.

Education standards for financial advisers are currently in transition and all existing advisers will need to have obtained a degree equivalent standard, in accordance with the requirement of FASEA, by 1 January 2026<sup>4</sup>.

## Applications Generally

3. To be eligible for consideration for membership, an applicant must provide to the AFA the following, which must be submitted via electronic means or deposited or sent to the Registered Office of the AFA:

- (a) a completed application form and completed personal declaration form;
- (b) documentary evidence of the applicant's eligibility for the class of membership applied for; and
- (c) payment of the Fees applicable to the class of membership applied for. If a membership application is declined, the Fees paid will be refunded.

**4.** The Board may accept or reject an applicant for membership in its absolute discretion. The AFA must notify an applicant in writing promptly after it has decided whether to accept or reject the applicant's application. The Board is not required to give any reason for the rejection of an applicant, but will give each rejected applicant 14 days to provide a submission in support of their application, if the applicant requests.

**5.** Both new and existing Members will be required to be of good fame and character. Specific questions are raised in the application form and personal declaration form in respect of this, and Members must notify the AFA on an ongoing basis of any changes to their circumstances that may reflect on the AFA's assessment of their fame or character. This includes a banning or enforceable undertaking, awareness of any investigation by a regulator or termination by a licensee for misconduct.

**6.** Practising Members are required to hold appropriate professional indemnity insurance, either directly or through their Australian Financial Services Licensee, and must provide evidence of this to the AFA upon request.

### **Change of Class of Membership**

**7.** A Member may apply to the AFA at any time to change the class of membership to which the Member belongs.

**8.** The procedure relating to an application for a change from a non-voting class of membership to a voting class is the same as if it were an application for membership by a new applicant. If the application is successful, the AFA must update the Register accordingly.

**9.** If the AFA considers, in its absolute discretion, that a Member is eligible for a voting membership class (for example, by having accrued the pre-requisite practising experience), or has ceased to be eligible for a voting membership class, the AFA may request the Member to provide it with the following within 7 clear days of such request:

- (a) a duly completed application form and personal declaration form for the voting membership class (as applicable); or
- (b) documentary evidence that the Member has not ceased to be eligible for their current membership class (as applicable),

and the Member must comply with such request.

**10.** If the AFA considers, in its absolute discretion, that the documentary evidence provided by a Member under clause 9(b) establishes that the Member is no longer eligible for the voting membership class, the AFA may offer the Member the opportunity to transfer to a non-voting category.

**11.** Upon receipt from a Member of an application form in accordance with clause 9(a) which has been completed to the satisfaction of the AFA within the required timeframe, the AFA may transfer the Member to the voting class of membership (as applicable) by updating the Register.

**12.** If a Member fails to comply with clauses 9 to 11, the Member's membership will be automatically cancelled.

**13.** Where a member wishes to transfer from a voting to a non-voting membership category, or from one non-voting category to another non-voting category, they can do this by requesting the transfer in writing to the AFA. Completion of a new application form is not required. Life Members who no longer meet the education and experience requirements in Clause 2 or cease to comply with the CPD standard in Clause 21, should notify the AFA and request to be transferred to the non-voting Life Member category.

**14.** Where there is a change of a Member's membership class, a Fee adjustment may be required. Where a member moves from a voting to non-voting membership category no refund of Fees will apply.

## Post Nominals

**15.** The post nominals that can be used by a Member are as follows:

- (a) FChFP (Fellow Chartered Financial Practitioner)
- (b) ChLP (Chartered Life Practitioner)
- (c) AChFP (Associate Chartered Financial Practitioner)
- (d) FAFA (Fellow of the AFA)

The criteria for (a) are as follows:

The person must be a current financial member and have graduated from the AFA's Fellow Chartered Financial Practitioner course and have at least two years' industry experience. The onus of proof and all costs are the responsibility of the candidate.

The criteria for (b) are as follows:

The person must be a current financial member and have graduated from the AFA's Chartered Life Practitioner course and have at least two years' industry experience. The onus of proof and all costs are the responsibility of the candidate.

The criteria for (c) are as follows:

The person must be a current financial member and have graduated from the AFA's Associate Chartered Financial Practitioner course. The onus of proof and all costs are the responsibility of the candidate.

The criteria for (d) are as follows:

Fellow of the AFA designation can be used by those members to whom it has been previously awarded while the member maintains continuous financial membership, subject to membership fee grace periods.

## Membership Fees

**16.** The Board is to determine the amount of any application or membership Fee, and may determine differing amounts of Fees for different classes of membership.

**17.** The AFA will publish membership forms, details of the Fees for each class of membership and details of any discounted fees (if applicable) on its website.

**18.** Fees may be discounted where an applicant or Member is a full time student, retired, or in other circumstances at the AFA's discretion. An applicant or Member who wishes to receive or renew a discounted rate must produce evidence of the relevant circumstances. Otherwise, except for Retired Members, the discounted rate will revert to the full rate at the time of renewal of membership. Retired practitioners, who cease on the financial adviser register will not be required to pay a membership fee for the first 12 months after their notification to the AFA of their retirement, however no refund will be paid for any remaining paid Practitioner membership period.

**19.** The AFA may in cases of ill health, misfortune, advanced age or on other grounds, refund Fees.

**20.** A Member must pay his or her Fees in advance on either an annual or monthly basis, as applicable, on the date determined by the Board.

## Continuing Professional Development

**21.** Each Practitioner Member, New Adviser Member, Affiliate Member and voting Life Member is required to complete 40 hours of Continuing Professional Development (CPD) each year in accordance with the requirements of FASEA. In addition, Practitioner Members, New Adviser Members and Affiliate Members are also required to comply with the Tax Practitioner Board requirements of 60 hours of

taxation related CPD over a three year period. This may be part of the overall 40 hours per year. CPD activity and content must be relevant and meet the requirements as outlined in FASEA's Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018. AFA Designation holders' CPD requirement is also a minimum of 40 hours per CPD year. Where a member is working part time for the whole of the CPD year, a reduced minimum target of 36 hours may apply, subject to the licensee's prior written consent.

**22.** The AFA may undertake a random audit of Practitioner Members, New Adviser Members, and Affiliate Members to confirm compliance with the CPD obligation. In completing this audit, the AFA will place reliance upon the Australian Financial Services Licensee's records of CPD activity.

## Board Elections

**23.** Nominations for election to the Board must be in writing, addressed to the Returning Officer and emailed or provided to the Registered Office of the AFA not later than 42 days before the day fixed for an AGM.

**24.** The Board may publish Election Guidelines at the time of the call for nominations setting out further details on how the election campaign will be run and information required in a nomination.

**25.** A nominee must be of good standing and must have been a current financial and Practitioner Member (including New Adviser Member) for a period of three (3) continuous and completed years immediately prior to the date of the AGM in which the election is to be held. The Returning Officer will resolve any dispute arising as to whether a Member is of good standing, the nature and class of the membership and the period of membership. To avoid any conflicts of interest, the candidate cannot at the time of his or her nomination be serving on a Board or committee of another professional association. Candidates need to be nominated by another member and seconded by a further member. Candidates will be subject to screening including police checks along with a reference check from a senior manager at their licensee.

**26.** A candidate must furnish a photograph of the candidate together with a statement (maximum 400 words) and an optional video of no more than 2:30 minutes setting out the candidate's qualifications, experience in the Financial Advice Profession and a message in support of their nomination. The Board may in its discretion amend the statement to protect the AFA's interests.

**27.** Candidates are not to use or access any AFA or other mail or email list in order to communicate directly with Members with respect to the election, however are free to communicate with potential voters in an appropriate form with respect to their election campaign. No bulk emails are permitted, however individual emails are acceptable. Candidates can post a maximum of five messages on social media in support of their campaign that links to their candidate statements on the AFA website. Posting the same message on multiple social media platforms counts as multiple posts. A copy of all proposed social media posts is to be provided to the Returning Officer by candidates at least 24 hours prior to the planned time of publishing. The Returning Officer may reject a post where it does not comply with the requirements of the By-Laws or the Election Guidelines or is otherwise contrary to law. No campaign message, including social media posts, should defame or denigrate either the AFA or an opposing candidate.

**28.** The intent of the rules on campaigning is to ensure that Members are not subject to excessive or unsolicited campaigning messages, and that no candidate obtains an unfair advantage via utilisation of email lists. The primary campaigning mechanism should be through formal communication to Members by the AFA.

**29.** Any material breach of the AFA's campaigning policy by any candidate and any Members or organisations actively campaigning on behalf of a candidate may result in the Returning Officer disqualifying a candidate and their nomination being immediately declared invalid. The Returning Officer's decision on this matter will be final.

**30.** The Secretary will prepare ballot papers or an electronic voting mechanism if the number of nominations received requires a ballot to be held, for each of the positions contested, with the ballot decided on a first past the post or simple majority basis.

**31.** All voting Members as at the close of business three days prior to the announcement of the election will be sent an email announcing the election and setting out the details for each of the positions



contested, which includes the following:

- (a) a list of candidates' names in alphabetical order showing their nominators' names and the photograph, statement (as amended) and video (if applicable) provided by the candidate to the AFA under Clause 26;
- (b) a ballot paper; and
- (c) a membership identification form for signature and return.

The Board may alternately choose to run the election process via an appropriate internet solution.

**32.** Each Member who is entitled to vote in an election is entitled to cast a vote for the National President, National Vice President, National Treasurer and the State Director for the State in which the Member has his or her primary place of residence.

**33.** Unless undertaken via electronic means, completed ballot papers must be returned to either the Registered Office or fax number or via email to [returningofficer@afa.asn.au](mailto:returningofficer@afa.asn.au), not less than 72 hours before the appointed time for the AGM, or a longer time if stated on the notice of election (Election Guidelines document). Where the election is undertaken by electronic means, votes must be submitted not less than 72 hours prior to the AGM or as stipulated in the Election Guidelines document.

**34.** The Board will appoint a Returning Officer who may appoint assistants, none of whom can be a Director or a candidate. The Returning Officer may be either a Member, a staff member or an external party.

**35.** The Returning Officer will be responsible for ensuring that arrangements are put in place to ensure that all ballots are appropriately secured prior to and after the official count.

**36.** Counting of the ballot will be carried out under the supervision of the Returning Officer after the close of the ballot and prior to the AGM.

**37.** The Board and the Returning Officer may appoint independent scrutineers to oversee the counting of the ballot. A candidate may appoint an independent scrutineer.

**38.** After the close of the ballots, the Returning Officer must:

- (a) scrutinise the ballot papers and reject informal ballot papers;
- (b) count the votes for each position being contested;
- (c) prepare and sign a declaration of the ballot for each position being contested as to:
  - i. the number of ballot papers lodged;
  - ii. the number of formal votes;
  - iii. the number of informal votes;
  - iv. the number of votes cast for each candidate; and
  - v. the names of those persons elected; and
- (d) provide each declaration to the Chair of the AGM.

Where the ballot is undertaken by electronic means, (a), (c)(ii) and (c)(iii) may not be required.

**39.** A ballot paper, where used, is informal if it is not possible to confirm the membership status of the voter or the identity of the candidate in respect of whom the vote was cast is not clear.

**40.** Any dispute between a scrutineer appointed by a candidate and the Returning Officer or a scrutineer appointed by the Board will be conclusively resolved by the most senior elected Director present who is not a candidate (in the order of National President, National Vice President, National Treasurer and then longest serving State Director).

**41.** The Returning Officer must preserve the ballot papers for at least 3 months after the declaration of the ballot, and then they must be destroyed.

**42.** No election shall be voided on account of any error or omission of the Returning Officer, which did not affect the results of the election.

**43.** The Secretary must retain the ballot declaration notice and all nominations, including every candidate's written consent, in the AFA's records for at least 7 years.

## **Powers of Investigation**

**44.** The AFA may, at any time request a Member to supply such documents, information and material as the AFA considers reasonably necessary to assist it to discharge its objects and to ascertain whether a Member is complying with the Act, the Constitution, the By-Laws and the Regulations or such other standards of conduct set down by the AFA or under law.

**45.** The AFA may request a Member to produce documents, provide access to documents and premises and supply such information and material as the AFA deems reasonably necessary if the AFA considers that the documents, information and material originally provided pursuant to clause 44, warrants further investigation.

**46.** A Member's failure to fully and fairly comply with the AFA's requests under clause 44 and 45 will constitute a disciplinary matter under clause 53.

**47.** The AFA must keep confidential all information obtained under clause 44 and 45, except for the purposes of any disciplinary proceedings.

**48.** The Member is responsible for its own costs incurred in responding to and complying with requests under clause 44 or 45.

## **Disciplinary Procedures**

### **Disciplinary matters to be dealt with by the Board**

**49.** Where the AFA becomes aware that a Member:

- (a) has been convicted under the law of any jurisdiction of any offence in connection with corporations, or an offence involving fraud or dishonesty punishable on conviction by imprisonment;
- (b) is disqualified from managing corporations;
- (c) has:
  - i. had a financial services licence revoked or cancelled,
  - ii. been suspended as a financial services licensee,
  - iii. been banned, disciplined, suspended or terminated from acting as a representative of a licensee or financial adviser by either ASIC or a licensee,
  - iv. been banned from acting as a tax (financial) adviser by the TPB,
  - v. Been expelled by a Code Monitoring Body; or
- (d) has:
  - i. been expelled or suspended from any membership of any other professional association; or
  - ii. had disciplinary action taken against them which has resulted in the Member being banned from the direct participation in the activities of such body, or being banned from being employed by an entity that directly participates in the Financial Service Industry,
- (e) has become bankrupt or insolvent or made any arrangement with his or her creditors; or
- (f) has supplied false or misleading information to the AFA (including by omission) in connection with his or her application for membership; or
- (g) has failed to comply with the AFA's requests under clause 44 and 45, or
- (h) has ceased to be eligible for any class of membership and has failed to notify the AFA,

Where a member is charged with an offence, in any Australian jurisdiction, in connection with

corporations, or an offence involving fraud or dishonesty punishable on conviction by imprisonment, the Board may elect to suspend their membership until the Court process has been completed.

the Board may require written evidence and can nominate persons to gather such evidence confirming or denying that a Member falls within one or more of the categories specified in this clause 49.

**50.** If the Board is satisfied that a Member falls within one or more of the categories specified in clause 49, the Board may:

- (a) terminate the Member's membership of the AFA and remove the Member's name from the Register;
- (b) suspend the membership of the Member;
- (c) reprimand the Member by way of a written caution;
- (d) reprimand the Member by way of issuing an order; and/or
- (e) reprimand the Member in such other manner as the Board deems appropriate at the time.

**51.** Where the Board is considering making a decision under clause 50 to impose a sanction, the Board must inform the Member in writing of that fact and invite the Member to make written submissions as to whether there are any circumstances which the Member believes may affect whether a sanction should be imposed, the type of sanction that should be imposed and the mitigating circumstances affecting the type of sanction. The Member will not be entitled to make submissions as to any other matter. The Board must give an invitation to the Member under this clause at least 14 days before the date the Board is to make its decision. If the Member fails to give written submissions to the Board at least 48 hours before the time specified for the Board's decision, the Board may make its decision without giving the Member additional time to respond and in doing so, the Board can draw an adverse inference from the Member's failure to respond.

**52.** Where the Board has expelled or suspended a Member under clause 50, the Board may, in its absolute discretion, revoke any such suspension or expulsion and reinstate or re-admit the Member to the extent it thinks fit.

### **Disciplinary matters to be dealt with by a Disciplinary Committee**

**53.** Where the Board becomes aware that a Member may:

- (a) have become of unsound mind; or
- (b) have engaged in conduct (whether professional, physical, verbal or sexual) which is in breach of the Constitution or any By-Law or any Regulation, including the Code of Conduct; or
- (c) have engaged in conduct (whether professional, physical, verbal or sexual) which is discreditable to, against the interests of, or brings disrepute to the AFA; or
- (d) not be a fit and proper person to be a Member;

then the Board may ask the National President, the Chief Executive Officer or another person nominated by the Board for that purpose, ("**Investigating Officer**") to investigate any Member who is suspected of being in one or more of the situations in clause 53.

If the Investigating Officer determines on the evidence before them that the Member could reasonably be in one or more of the situations in clause 53, the Investigating Officer may:

- i. recommend to the Board to issue the member with a formal warning (i.e. a reprimand), or
- ii. request the Board to convene a Disciplinary Committee, and refer the matter to the Disciplinary Committee.

Where the Board is considering making a decision under clause 53(i) to issue a formal warning without reference to a Disciplinary Committee, the Board must inform the Member in writing of that fact and invite the Member to make a written submission as to whether there are any circumstances which the Member believes may affect whether a sanction should be imposed, the type of sanction that should be imposed and the mitigating circumstances affecting the type of sanction. The Member will not be entitled to make a submission as to any other matter. The Board must give an invitation to the Member under this clause at least 14 days before the date the Board is to make its decision. If the Member fails to give a written

submission to the Board at least 48 hours before the time specified for the Board's decision, the Board may make its decision without giving the Member additional time to respond and in doing so, the Board can draw an adverse inference from the Member's failure to respond.

**54.** A Disciplinary Committee appointed by the Board must have 3 members, including at least one Director, all of whom must be present to constitute a quorum. The Investigating Officer may not be a member of the Disciplinary Committee, nor may a person with a conflict of interest.

**55.** The Disciplinary Committee must within a reasonable time investigate a matter referred to it by the Investigating Officer and determine, on the evidence before it and by at least a majority of committee members, whether or not the Member is in one or more of the situations in clause 53 and the kind of sanction that is appropriate. The Disciplinary Committee's decision shall be reported to the Board.

**56.** The Disciplinary Committee must give any Member who has been referred to it:

- (a) written notice specifying:
  - i. the circumstances under clause 53 which the Disciplinary Committee believes to have occurred; and
  - ii. that the Disciplinary Committee is considering whether these circumstances have occurred and if so what action should be taken; along with
- (b) an invitation to:
  - i. provide written submissions; and including evidence and arguments regarding the matters under consideration.

**57.** The Disciplinary Committee must give an invitation under clause 56(b) at least 14 days before the date the disciplinary matter will be considered by the Disciplinary Committee. If the Member fails to give written submissions at least 48 hours before the time specified for the Disciplinary Committee's deliberations, the Disciplinary Committee may make a decision without giving the Member additional time to respond and in doing so, the Disciplinary Committee can draw an adverse inference from the Member's failure to respond.

Where, after investigation and deliberation, a Disciplinary Committee determines that a Member falls within one or more of the disciplinary categories set out in clause 53, the Disciplinary Committee may, upon passing a resolution specifying the reason for its action:

- (a) terminate the Member's membership of the AFA and remove the Member's name from the Register; or
- (b) suspend all or any of the Member's rights of membership; or
- (c) reprimand the Member in such other manner as the Disciplinary Committee deems appropriate at the time;

and must notify the Member in writing of the resolution as soon as practicable after the resolution has been passed.

**58.** Any action taken pursuant to Clause 50 or 57 shall not affect the rights of the AFA to recover any Fees or other moneys owing to the AFA from the Member.

**59.** A Member who has been the subject of a decision by the Disciplinary Committee may, by serving written notice on the AFA at the Registered Office within 14 days of the notice of the decision being sent, appeal the decision. Where a Member appeals the decision, the Board must appoint a further committee ("**The Review Committee**") of 3 members (one of whom must be a Director, and none of whom must have served on the original Disciplinary Committee) to review the matter. The Review Committee must give the same notice and invitation to the Member to make submissions as given by the Disciplinary Committee under clause 57.

**60.** The Review Committee must review the Disciplinary Committee's decision and any additional written submission of the Member, and must determine whether it will:

- (a) uphold the Disciplinary Committee's decision;
- (b) quash the Disciplinary Committee's decision; or

- (c) substitute the Disciplinary Committee's decision with its own (including the nature of any sanctions),

and must notify the Member in writing of its decision as soon as practicable after it has made its decision. The decision of the Review Committee will be final and binding on the Member.

**61.** Within four months of the end of each financial year, the AFA will publish a report on complaints that addresses the following:

- (a) The kinds and frequency of complaints received;
- (b) Findings made as a result of the complaints; and
- (c) Action taken as a result of those findings.

62. Commencing from 1 January 2021, the AFA will publish a continuous register of disciplinary action taken against members. The register will be updated within one month of the action being finalised, and the opportunity for appeal having concluded. The information reported will address the following:

- (a) For terminations and suspensions, the name of the member and the reason for the actions.
- (b) For other sanctions, the title and first letter of their surname and a brief description of the action.

Within four months of the end of each financial year, the AFA will publish a report on disciplinary action taken against members.

63. Commencing from 1 January 2021, the AFA will put in place arrangements with licensee partners for the sharing of information with respect to disciplinary action and serious complaints against members.

## Meetings of Members

**62-64.** The Board must call an extraordinary general meeting validly requested by a group of Members with at least 5% of the votes that may be cast at the extraordinary general meeting.

**63-65.** The percentage of votes that Members have under clause ~~6462~~ is to be worked out as at midnight on the day before the meeting is called.

**64-66.** The Board may postpone, cancel or change the venue for an extraordinary general meeting, but a general meeting called pursuant to section 249D, 249E or 249F of the Act may not be cancelled or postponed in breach of any of those provisions and may only be postponed or cancelled as permitted by law.

**65-67.** A person's attendance at a general meeting constitutes a waiver by that person of any objection that the person may have to a failure to give notice, or the giving of an effective notice, of the meeting.

**66-68.** Eligibility to vote at a general meeting will be determined on the basis of those financial voting members who were on the Register at the close of business on the day seven days prior to the meeting.

**67-69.** The Chair of a general meeting may refuse admission, or require to leave and remain out of the meeting, any person:

- (a) seeking to take a pictorial-recording or a sound-recording of the meeting;
- (b) in possession of an article considered by the Chair to be dangerous, offensive or liable to cause disruption;
- (c) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
- (d) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;
- (e) who disrupts the meeting or demands to be heard for a period beyond what the Chair reasonably

considers to be a reasonable period; or

(f) who is not a Member, or a proxy, or attorney of a Member, or a staff member of the AFA.

## Notice of Meeting

**68-70.** Unless the Act permits otherwise, at least 21 days notice of a general meeting must be given to the Members.

**69-71.** A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the business to be transacted at the meeting;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement that a Member entitled to attend and vote is entitled to appoint a proxy and that the proxy need not be a Member.

## Management Accountability

**70-72.** The Chief Executive Officer and senior management of the AFA are accountable to both the Board and the Members through the following Corporate Governance Arrangements:

- The Chief Executive Officer and senior management report to the Executive Committee on a regular basis providing an update on any key business and policy issues.
- Key AFA policies and practices, including the strategic plan and the annual budget are subject to review and approval by the Board.
- All expenditure above the CEO delegation is subject to Board approval prior to payment.
- Clear delegations exist which outline the powers assigned to the Chief Executive Officer.
- The Chief Executive Officer's performance is reviewed on at least an annual basis by the Executive Committee.
- The Chief Executive Officer provides a report to Members at the AGM and is open to questioning by members.

## Member Complaints

**71-73.** Members are entitled to make a complaint with respect to the actions, governance or operations of the AFA. Complaints should be submitted either via email ([complaints@afa.asn.au](mailto:complaints@afa.asn.au)) or in writing to the AFA's registered address. Any complaint from members will be assessed and investigated as per agreed processes, and where the nature of the complaint necessitates independence, a panel of members will investigate the matter.

## Partnership and Funding

**72-74.** The Board may approach businesses to support the AFA's objects through partnering with the AFA and in consideration for such partnership, may offer the following benefits:

- (a) exhibition space,
- (b) tables or delegates at AFA events,
- (c) included Ambassador memberships,
- (d) recognition on the AFA website, and
- (e) advertising materials

at conferences or events conducted by the AFA.

Partners or their individual nominated representatives may be invited to serve on various committees that the Board establish providing that there is clear disclosure of any conflicts of interest that may arise.

### **AFA Code of Conduct – Six Principles of Professionalism**

~~73-75.~~ Each Member must comply with the Code of Conduct at all times.

## **SCHEDULE: CODE OF CONDUCT**

The Association of Financial Advisers (AFA)'s Code of Conduct (**Code**) sets out the minimum professional practice and ethical standards for members of the AFA when providing financial services.

The central objectives of the Code are the achievement of good consumer outcomes and fostering and enhancing the professional reputation of financial advisers.

The Code has six principles:

1. Integrity and professional conduct
2. Best interests
3. Conflicts of interest
4. Informed client consent
5. Service standards
6. Professional expertise

Members must abide by these six principles, the broader Code of Conduct, the Constitution, these By-Laws, the Regulations, their obligations under the Act and all other laws and regulations that apply to financial advice businesses.

### **Principle 1 - Integrity and Professional Conduct**

**Act with the utmost integrity which encompasses the highest standards of professional conduct, honesty, and ethics.**

### **Principle 2 - Best Interests**

**Act in the best interests of your clients in seeking to extend and secure their financial wellbeing.**

### **Principle 3 - Conflicts of Interest**

**Do not allow conflicts of interest to influence your actions inappropriately. Always place the client's interests before your interests.**

### **Principle 4 - Informed Client Consent**

**Educate your clients in financial matters and help them to understand the decisions that they are making.**

### **Principle 5 - Service Standards**

**Provide professional service that is aligned to your clients' circumstances and your agreements with them.**

### **Principle 6 - Professional Expertise**

**Strive to achieve high standards of professional expertise by maintaining and improving your knowledge and skills, and those of your staff.**