

Constitution of
[insert name of new association]

ABN 62 054 174 453

A company limited by guarantee

Draft 13 December 2022

Effective [insert]

Approved [insert]

Contents

History of the Association	5
Preliminary	6
1. Name of the Association	6
2. Type of the Association	6
3. Limited liability of Members	6
4. The guarantee	6
5. Definitions	6
Objects and structure	6
6. Objects	6
7. Not-for-profit	7
8. Amending the constitution	7
Members	7
9. Membership	7
10. Register of Members	8
11. Who can be a Member	8
12. How to apply to become a Member	8
13. Directors decide whether to approve membership	8
14. When a person becomes a Member	9
15. When a person stops being a Member	9
Dispute resolution and disciplinary procedures	9
16. Disciplining Members	9
General meetings of members	10
17. General meetings called by Directors	10
18. General meetings called by Members	10
19. Annual general meeting	10
20. Notice of general meetings	11
21. Quorum at general meetings	12
22. Auditor's right to attend meetings	12
23. Using technology to hold meetings	12
24. Chairperson for general meetings	13
25. Role of the chairperson	13
26. Adjournment of meetings	13
Members' resolutions and statements	13
27. Members' resolutions and statements	13

28. Association must give notice of proposed resolution or distribute statement	14
Voting at general meetings	14
29. How many votes a Member has	14
30. Challenge to Member's right to vote	14
31. How voting is carried out	15
32. When and how a vote in writing must be held	15
33. Direct Voting	15
34. Appointment of proxy	16
35. Voting by proxy	17
Directors	17
36. Number of Directors	17
37. Election and appointment of Directors	17
38. No alternate Directors	18
39. Election of chairperson and deputy chairperson	18
40. Term of office	18
41. When a Director stops being a Director	19
Powers of Directors	20
42. Powers of Directors	20
43. Delegation of Directors' powers	20
44. Payments to Directors	20
45. Execution of documents	21
Duties of Directors	21
46. Duties of Directors	21
47. Conflicts of interest	21
Directors' meetings	22
48. When the Directors meet	22
49. Calling Directors' meetings	22
50. Chairperson for Directors' meetings	22
51. Quorum at Directors' meetings	22
52. Using technology to hold Directors' meetings	22
53. Passing Directors' resolutions	22
54. Circular resolutions of Directors	22
Secretary	23
55. Appointment and role of secretary	23
Minutes and records	23
56. Minutes and records	23

57. Financial and related records	24
Regulations	24
58. Regulations	24
Chapters, communities and other Member groups	25
59. Chapters, communities and other Member groups	25
Notice	25
60. What is notice	25
61. Notice to the Association	25
62. Notice to Members	26
63. When notice is taken to be given	26
Financial year	26
64. Company's financial year	26
Indemnity, insurance and access	26
65. Indemnity	26
66. Insurance	27
67. Directors' access to documents	27
Winding up	27
68. Surplus Assets not to be distributed to Members	27
69. Distribution of Surplus Assets	27
Confidentiality and public statements	27
70. Confidentiality	27
71. Public statements	28
Definitions and interpretation	28
72. Definitions	28
73. Interpretation	29
Transitional provisions	30
74. Transitional board structure	30
75. Definitions	30
76. Application of regulations	30
77. Effect of Transitional Provisions	30

History of the Association

- (A) The Association is born out of a merger of the Financial Planning Association of Australia Limited (FPA) and The Association of Financial Advisers Limited (AFA), two of Australia's largest and longest standing associations of financial planners and advisers.
- (B) The FPA was a professional association formed in 1992 as a merger between The Australian Society of Investment and Financial Advisers and the International Association of Financial Planning. In 1999 the CFP Professional Education Program was launched. As Australia's leading professional association for financial planners, the FPA represented the interests of the public and (at the time of the merger) almost 11,000 members. Since its formation, the FPA worked towards changing the face of financial planning, from an industry to a profession that earned consumer confidence and trust, and advocated that better financial advice would influence the financial wellbeing of all Australians.
- (C) The AFA was a professional association for financial advisers that dated back to 1946. The AFA was a national membership entity that operated in each state of Australia and across the full spectrum of advice types. The AFA had a long history of advocating for the best interests of financial advisers and their clients, through working with the government, regulators and other stakeholders. The AFA had a long legacy of operating in the life insurance sector, however substantially broadened its member base over a number of decades. The AFA had had a strong focus on promoting the value of advice and recognising award winning advisers over many years. The AFA had strong foundations in believing in advocacy for members and creating events and other opportunities to enable members to grow and share best practice.
- (D) Following the merger, the Association will carry on the heritage of both legacy associations and continue to represent financial planners and advisers across Australia, now with a stronger professional voice.

Preliminary

1. Name of the Association

The name of the Association is [insert].

2. Type of the Association

The Association is a not-for-profit public company limited by guarantee.

3. Limited liability of Members

The liability of Members is limited to the amount of the guarantee in clause 4 (The guarantee).

4. The guarantee

Each Member must contribute an amount not more than \$100 to the property of the Association if the Association is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Association incurred before the Member stopped being a Member, or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 72 (Definitions) and 73 (Interpretation).

Objects and structure

6. Objects

The objects for which the Association is established include to:

- (a) represent the interests of our Members, in their relations with governments, regulators, the community, other professional associations and other stakeholders;
- (b) act in the public interest so that clients of Members and prospective clients obtain fair and competent financial advice and to suppress Malpractice;
- (c) enhance public awareness of, and confidence in, the Profession;
- (d) promote and ensure compliance with high standards of professional and ethical conduct within the Profession and by Members;
- (e) provide access to the CFP® designation as the peak designation for the Profession
- (f) facilitate continuing professional development and other professional designation programs for the Profession;
- (g) to provide forums of various types for the discussion of financial advice, best practice, professional affairs, interests and duties;
- (h) support and encourage communities, chapters and groups within the membership of the Association;
- (i) facilitate grassroots engagement with and between members to foster a sense of

community and common purpose within the Association; and

- (j) provide various services relevant to the Members or the Profession as the Directors determine from time to time.

7. Not-for-profit

The income and property of the Association is to be applied solely towards the promotion of the activities of the Association and no portion thereof is to be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members, except for paying a Member in good faith for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Association.

8. Amending the constitution

The Members may amend this constitution by passing a special resolution.

Members

9. Membership

9.1 The Members of the Association are:

- (a) those persons who are Members at the time this constitution is adopted, and
- (b) any other person that the Directors subsequently admit as a Member, in accordance with this constitution and any regulations.

9.2 Members include Ordinary Members and Affiliate Members, which are mutually exclusive.

9.3 The rights and obligations of a Member (whether an Ordinary Member or Affiliate Member) are:

- (a) those identical with the rights and obligations of a member of a company limited by guarantee under the Corporations Act; and
- (b) those specified in this constitution and any regulations.

9.4 Subject to clause 58.7, the Directors may, from time to time, determine and vary by way of regulations:

- (a) the various classes of membership of the Association, which can be organised in “categories” and “sub-categories” or otherwise at the sole discretion of the Directors;
- (b) any restriction in the number of Members or the number of Members within each class, if any;
- (c) the eligibility criteria for admission to each class;
- (d) the rights, privileges, benefits and obligations attached to being a Member in each class;
- (e) whether Members in each class are Ordinary Members or Affiliate Members;
- (f) any fees applicable to a class of membership;
- (g) any procedure and other rules for application, re-instatement or re-admission to membership;

- (h) any procedure and other rules for or change of class of membership;
- (i) any procedure and other rules for resignation, suspension and termination of membership;
- (j) any rules and procedure regarding life membership and honorary membership; and
- (k) any other matters ancillary to the matters above or otherwise relating to the membership of this Association except to the extent such matter is fully covered in this constitution.

9.5 Determination by the Directors under clause 9.4 is a procedure for varying or cancelling rights of Members in a class of Members for the purposes of section 246B(1) of the Corporations Act (or any applicable successor or replacement provision of the Corporations Act), except where the variation or cancellation has the effect of depriving an Ordinary Member of their membership of the Association.

9.6 The membership of the Association is personal to the Member and not transferable.

10. Register of Members

The Association must establish, maintain and provide access to a register of Members in accordance with the requirements of the Corporations Act.

11. Who can be a Member

11.1 Any person who:

- (a) agrees to be bound by this constitution and any other regulations applicable for a class of membership; and
- (b) meets the eligibility criteria for a class of membership,

is eligible to apply for membership in that class.

11.2 The Directors may prescribe a reasonable time within which a Member must notify the Association of any changes to any information reasonably affecting their ongoing compliance with the applicable eligibility criteria after the effective date of the change.

11.3 A Member's membership is subject to and conditional on their ongoing compliance with the applicable eligibility criteria and any obligation to pay membership fees from time to time, and any such non-compliance will subject that Member to suspension or termination of membership as prescribed by this constitution or any regulations.

12. How to apply to become a Member

12.1 A person may apply to become as a Member by submitting to the Association an application (including any supporting documentation) in the form prescribed by the Directors along with any applicable fees.

12.2 An applicant for membership of this Association must also comply with any applicable procedure prescribed by the regulations.

13. Directors decide whether to approve membership

13.1 The Directors must consider an application for membership within a reasonable time after the Association receives the application.

13.2 The Directors may accept or reject an application for membership in their sole discretion.

- 13.3 If the Directors approve an application, the Association must within a reasonable time:
- (a) enter the new Member on the register of Members, and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14 (When a person becomes a Member)).
- 13.4 If the Directors reject an application, the Association must write to the applicant within a reasonable time to tell them that their application has been rejected, but does not have to give reasons.

14. When a person becomes a Member

Other than existing Members at the time of adoption of this constitution, an applicant will become a Member when they are entered on the register of Members.

15. When a person stops being a Member

A person stops being a Member if and when:

- (a) the person dies;
- (b) the person's resignation of membership takes effect in accordance with this constitution and any regulations;
- (c) an Automatic Termination Event occurs in respect of that person; or
- (d) that person's membership is terminated as a result of disciplinary actions under clause 16 (Disciplining Members).

Dispute resolution and disciplinary procedures

16. Disciplining Members

The Directors may determine the following matters by way of regulations:

- (a) the circumstances that may give rise to investigative or disciplinary proceedings;
- (b) the procedures for investigating, handling and resolving complaints and other disciplinary matters against Members, including for breaches of this constitution, the Corporations Act, the Professional Code, any other regulations and such other matters as the Directors may determine from time to time;
- (c) the nature, and imposition, of sanctions (including monetary penalties) against a Member;
- (d) the identification, investigation, handling and resolution of academic transgressions by Members;
- (e) establishing committees or bodies responsible for administering the investigative and disciplinary procedures determined by the Directors from time to time;
- (f) the obligations of Members to assist the Association in discharging its investigative and disciplinary objects, including obligations to produce and allow access to documents and information in connection with the Association's investigations or a disciplinary proceeding;

- (g) the hearing and determination of complaints and other disciplinary matters in relation to Members by an external party (including under an externally approved code or scheme), including the arrangements to facilitate this; and
- (h) the publication and dissemination of details (including details of the Member(s) involved and the orders or sanctions made in relation to the Member(s)) of any investigations or disciplinary proceedings.

General meetings of members

17. General meetings called by Directors

- 17.1 The Directors may call a general meeting.
- 17.2 If Members with at least 5% of the votes that may be cast at a general meeting make a written request to the Association for a general meeting to be held, the Directors must:
- (a) within 21 days of the Members' request, give all Members notice of a general meeting, and
 - (b) hold the general meeting within 2 months of the Members' request.
- 17.3 The percentage of votes that Members have (in clause 17.2) is to be worked out as at midnight before the Members request the meeting.
- 17.4 The Members who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request; and
 - (c) give the request to the Association.
- 17.5 Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

18. General meetings called by Members

- 18.1 If the Directors do not call the meeting within 21 days of being requested under clause 17.2, 50% or more of the Members who made the request may call and arrange to hold a general meeting.
- 18.2 To call and hold a meeting under clause 18.1 the Members must:
- (a) as far as possible, follow the procedures for general meetings set out in this constitution;
 - (b) call the meeting using the list of Members on the Association's Member register, which the Association must provide to the Members making the request at no cost, and
 - (c) hold the general meeting within three months after the request was given to the Association.
- 18.3 The Association must pay the Members who request the general meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

19. Annual general meeting

- 19.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year.
- 19.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include any matters that the Corporations Act does not require to be specified in a notice of meeting.
- 19.3 Before or at the annual general meeting, the Directors must give information to the Members on the Association's activities and finances during the period since the last annual general meeting.
- 19.4 The chairperson of the annual general meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Association.

20. Notice of general meetings

- 20.1 Notice of a general meeting must be given to:
- (a) each Member;
 - (b) each Director; and
 - (c) the auditor (if any).
- 20.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 20.3 Subject to clause 20.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the Members agree beforehand, or
 - (b) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 20.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director;
 - (b) appoint a Director in order to replace a Director who was removed, or
 - (c) remove an auditor.
- 20.5 Notice of a general meeting must include:
- (a) 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) the general nature of the meeting's business;
 - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution; and
 - (d) a statement that the Members who are entitled to vote at the general meeting have the right to appoint proxies and that, if Member appoints a proxy:
 - (i) the proxy does not need to be a Member of the Association;

- (ii) the proxy form must be delivered to the Association at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
- (iii) the proxy form must be delivered to the Association at least 48 hours before the meeting.

20.6 If a general meeting is adjourned (put off) for one month or more, the Members must be given new notice of the resumed meeting.

21. Quorum at general meetings

21.1 For a general meeting to be held, at least 20 Members who are entitled to vote at that general meeting (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one Member).

21.2 A Member is also taken to be present at a general meeting if the Member has lodged a valid Direct Vote in relation to the general meeting under clause 33 (Direct Voting).

21.3 No business may be conducted at a general meeting if a quorum is not present.

21.4 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week;
- (b) if the time is not specified – the same time; and
- (c) if the place is not specified – the same place.

21.5 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

22. Auditor's right to attend meetings

22.1 The auditor of the Association (if any) is entitled to attend any general meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor of the Association.

22.2 The Association must give the auditor of the Association (if any) any communications relating to the general meeting that a Member of the Association is entitled to receive.

23. Using technology to hold meetings

23.1 The Association may hold a general meeting:

- (a) at one or more physical venues;
- (b) at one or more physical venues and using virtual meeting technology; or
- (c) using virtual meeting technology only, which for the avoidance of doubt is permitted by this constitution.

23.2 The virtual meeting technology referred to in clause 23.1 may be any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard. Anyone using this technology is taken to be present in person at the meeting.

24. Chairperson for general meetings

- 24.1 The Chairperson is entitled to chair general meetings.
- 24.2 The Deputy Chairperson, or if there is more than one Deputy Chairperson, the Deputy Chairperson determined by the other Directors who are present, is entitled to chair general meetings if the Chairperson:
- (a) is not present within 30 minutes after the starting time set for the meeting; or
 - (b) is otherwise unable to unwilling to act as chairperson for the meeting.
- 24.3 The Directors present at a general meeting may elect a Director among themselves to be the chairperson for that meeting, if:
- (a) there is no Chairperson or Deputy Chairperson; or
 - (b) none of the Chairperson or Deputy Chairperson(s) is present within 30 minutes after the starting time set for the meeting; or
 - (c) none of the Chairperson or Deputy Chairperson(s) present wishes to act as chairperson of the meeting.
- 24.4 The Members present and entitled to vote at a general meeting may choose a Director, and if no Director is present, a Member, to be the chairperson for that meeting if none of clauses 24.1 through 24.3 applies.

25. Role of the chairperson

- 25.1 The chairperson of the general meeting is responsible for the conduct of the general meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the auditor of the Association (if any)).
- 25.2 The chairperson of the general meeting has a casting vote.

26. Adjournment of meetings

- 26.1 If a quorum is present, a general meeting must be adjourned if a majority of Members present direct the chairperson of the general meeting to adjourn it.
- 26.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

27. Members' resolutions and statements

- 27.1 Members with the requisite votes or in the requisite number under the Corporations Act, may give:
- (a) written notice to the Association of a resolution they propose to move at a general meeting, and/or
 - (b) a written request to the Association that the Association give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting.
- 27.2 A notice of a resolution under clause 27.1(a) must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.

- 27.3 A request to distribute a statement under clause 27.1(b) must set out the statement to be distributed and be signed by the Members making the request.
- 27.4 Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 27.5 The percentage of votes that Members have (as described in clause 27.1) is to be worked out as at midnight before the request or notice is given to the Association.
- 27.6 If the Association has been given notice of a resolution under clause 27.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 27.7 This clause does not limit any other right that a Member has to propose a resolution at a general meeting.

28. Association must give notice of proposed resolution or distribute statement

- 28.1 If the Association has been given a notice or request under clause 27 (Members' resolutions and statements):
- (a) in time to send the notice of proposed resolution or a copy of the statement to Members with a notice of meeting, it must do so at the Association's cost, or
 - (b) too late to send the notice of proposed resolution or a copy of the statement to Members with a notice of meeting, then the Ordinary Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Association in giving Members notice of the proposed resolution or a copy of the statement. However, at a general meeting, the Ordinary Members may pass a resolution that the Association will pay these expenses.
- 28.2 The Association does not need to send the notice of proposed resolution under clause 27.1(a) or a copy of the statement under clause 27.1(b) to Members if:
- (a) it is more than 1,000 words long;
 - (b) the Directors consider it may be defamatory;
 - (c) clause 28.1(b) applies, and the Ordinary Members who proposed the resolution or made the request have not paid the Association enough money to cover the cost of sending the notice of the proposed resolution or a copy of the statement to Members; or
 - (d) in the case of a proposed resolution under clause 27.1(a), the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the Members.

Voting at general meetings

29. How many votes a Member has

Each Member who is entitled to vote at a general meeting has one vote. For the avoidance of doubt, despite anything to the contrary in this constitution, an Affiliate Member is not entitled to vote at a general meeting.

30. Challenge to Member's right to vote

- 30.1 A Member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.

30.2 If a challenge is made under clause 30.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

31. How voting is carried out

31.1 Voting must be conducted and decided by:

- (a) a show of hands
- (b) a vote in writing, or
- (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.

31.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

31.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.

31.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

32. When and how a vote in writing must be held

32.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) at least five Members present and entitled to vote;
- (b) Members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
- (c) the chairperson.

32.2 A vote in writing must be taken when and how the chairperson directs, unless clause 32.3 applies.

32.3 A vote in writing must be held immediately if it is demanded under clause 32.1:

- (a) for the election of a chairperson under clause 24.3, or
- (b) to decide whether to adjourn the meeting.

32.4 A demand for a vote in writing may be withdrawn.

33. Direct Voting

33.1 Despite anything to the contrary in this constitution, the board may decide that a Member who is entitled to attend and vote on a resolution at a general meeting may cast their votes by sending them to the Association before the meeting by physical means, electronic means or

both. A vote cast in accordance with any such determination is referred to in this constitution as a **Direct Vote**.

33.2 The board may determine rules and procedures (consistent with the provisions of this constitution, the Corporations Act and any relevant regulations) for the casting of Direct Votes, including rules and procedures for:

- (a) the form, method and manner of voting by Direct Votes (including in respect of the withdrawal of any Direct Vote); and
- (b) when Direct Votes must be received by the company to be valid and effective.

33.3 Direct Votes will be counted if a resolution is decided by show of hands or a vote in writing, as follows:

- (a) subject to clause 33.2 and clause 33.4, votes cast by Direct Vote by a Member entitled to vote on the resolution will be counted as if the Member had cast the votes at the meeting;
- (b) a Direct Vote received by the Association on a resolution that is amended is taken to be a Direct Vote on that resolution as amended, unless the chairperson of the meeting determines that this is not appropriate; and
- (c) receipt of a Direct Vote from a Member has the effect of revoking (or, in the case of a standing appointment, suspending) the appointment of a proxy or representative made by the Member under an instrument received by the Association before the Direct Vote was received.

33.4 A Direct Vote received by the Association is automatically withdrawn and not counted if:

- (a) the Member attends the meeting in person and registers to vote at the meeting (including by representative); or
- (b) the Association receives from the Member a further Direct Vote or Direct Votes (in which case the most recent Direct Vote is counted in lieu of the prior Direct Vote).

34. Appointment of proxy

34.1 A Member may appoint a proxy to attend and vote at a general meeting on their behalf.

34.2 A proxy does not need to be a Member.

34.3 A proxy appointed to attend and vote for a Member has the same rights as the Member to:

- (a) speak at the meeting;
- (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
- (c) join in to demand a vote in writing under clause 32.1.

34.4 An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:

- (a) the Member's name and address;
- (b) the Association's name;
- (c) the proxy's name or the name of the office held by the proxy; and

(d) the meeting(s) at which the appointment may be used.

34.5 A proxy appointment may be standing (ongoing).

34.6 Proxy forms must be received by the Association at the address stated in the notice under clause 20.5(d) or at the Association's registered address at least 48 hours before a meeting.

34.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

34.8 Unless the Association receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:

(a) dies;

(b) is mentally incapacitated;

(c) revokes the proxy's appointment; or

(d) revokes the authority of a representative or agent who appointed the proxy.

34.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

35. Voting by proxy

35.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).

35.2 When a vote in writing is held, a proxy:

(a) does not need to vote, unless the proxy appointment specifies the way they must vote;

(b) if the way they must vote is specified on the proxy form, must vote that way; and

(c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

Directors

36. Number of Directors

The Association must have at least three and no more than nine Directors.

37. Election and appointment of Directors

37.1 The Ordinary Members will elect 6 Directors.

37.2 Subject to clause 37.5, the Directors may (but need not) appoint up to 3 additional Directors.

37.3 Subject to clauses 37.4 and 37.5, a person is eligible for election as an Elected Director of the Association if they:

(a) are an Ordinary Member;

(b) are nominated in accordance with this constitution and any applicable regulations; and

- (c) meet any additional eligibility requirements under any applicable regulations.
- 37.4 At least four Elected Directors must be Practising CERTIFIED FINANCIAL PLANNER® professionals at the commencement of their term and must be Practising throughout their term in office except for no more than 2 periods of up to 90 days (or such other periods as determined by the Directors by way of regulations from time to time).
- 37.5 A majority of the Directors must be Practising throughout their term in office except for no more than 2 periods of up to 90 days (or such other periods as determined by the Directors by way of regulations from time to time).
- 37.6 Subject to clause 58.7, the Directors may, from time to time, determine and vary by way of regulations:
- (a) the procedures for the nomination and election of Elected Directors;
 - (b) the procedures and rules pertaining to the appointment of any Appointed Directors and their removal;
 - (c) any additional eligibility requirements (such as qualifications, skills and experience) for Directors; and
 - (d) any other matters ancillary to the matters above or otherwise relating to the Directors except to the extent such matter is fully covered in this constitution.
- 37.7 The Directors may appoint a person as a Director to fill a casual vacancy if that person meets the eligibility requirements for the Director that is being replaced.
- 37.8 If the number of Directors is reduced to fewer than three or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.
- 38. No alternate Directors**
- None of the Directors may appoint an alternate to exercise any of the Director's powers.
- 39. Election of chairperson and deputy chairperson**
- 39.1 The Directors may elect a Director as the Association's chairperson (**Chairperson**).
- 39.2 The Directors may elect one or more other Directors as the Association's deputy chairperson(s) (**Deputy Chairpersons**).
- 39.3 The Deputy Chairperson(s) exercise all of the chairperson's powers and functions where the Chairperson is not willing or able to do so.
- 39.4 Where there are more than one Deputy Chairpersons, they should exercise their powers and functions jointly (except where only one Deputy Chairperson is willing and able to do so).
- 39.5 The Directors may, from time to time, determine and vary by way of regulations:
- (a) the procedures and rules pertaining to the election of the Chairperson and Deputy Chairpersons(s); and
 - (b) any other matters relating to the Chairperson and Deputy Chairpersons except to the extent such matter is fully covered in this constitution

40. Term of office

- 40.1 An Elected Director's term of office:
- (a) starts at the end of the annual general meeting at which they are announced to be elected; and
 - (b) subject to clause 40.2, ends at the end of the third annual general meeting after the annual general meeting at which they are announced to be elected.
- 40.2 Any Director appointed to fill a casual vacancy of an Elected Director will retire at the time that the term of the Elected Director who is being replaced would have ended.
- 40.3 A Director whose term ends under clause 40.1 may nominate for election or re-election or be re-appointed, subject to clause 40.5.
- 40.4 Subject to clause 40.5(b), the term of office of an Appointed Director is determined by the Directors making the appointment.
- 40.5 The Directors are subject to the following term limits:
- (a) no Elected Director may hold office for more than two terms consecutively; and
 - (b) no Director may hold office for more than ten years in total.
- 40.6 For the purposes of clause 40.5, any time in office for filling a casual vacancy is to be disregarded.
- 40.7 For the purposes of clause 40.5(b), any time in office as a director of the AFA is deemed to be time in office as a Director.

41. When a Director stops being a Director

- 41.1 A Director stops being a Director if they:
- (a) retire from office;
 - (b) give written notice of resignation as a Director to the Association;
 - (c) die;
 - (d) are removed as a Director by a resolution of the Ordinary Members;
 - (e) in the case of an Elected Director, stop being an Ordinary Member of the Association;
 - (f) no longer meet the applicable eligibility requirement under this constitution and the applicable regulations;
 - (g) are removed by a resolution of the Directors after being absent for 2 consecutive Directors' meetings without approval from the Directors;
 - (h) become ineligible to be a Director under the Corporations Act; or
 - (i) as a result of any disciplinary procedures under this constitution and the applicable regulations.
- 41.2 A Director may be suspended from office (and may be reinstated afterwards):
- (a) during any investigations by the Directors in respect of potential disqualifying circumstances; and

- (b) as a result of any disciplinary procedures under this constitution and the applicable regulations.

Powers of Directors

42. Powers of Directors

- 42.1 The Directors are responsible for managing and directing the activities of the Association to achieve the objects set out in clause 6 (Objects).
- 42.2 The Directors may exercise all the powers of the Association except for powers that, under the Corporations Act or this constitution, may only be exercised by Members.
- 42.3 The Directors must decide on the responsible financial management of the Association including:
 - (a) any suitable written delegations of power under clause 43 (Delegation of Directors' powers), and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 42.4 Without limiting the generality of clause 42.2, the Directors may from time to time authorise the establishment of one or more advisory committees, which:
 - (a) may advise the Directors on subjects affecting the Association, as the Directors may determine from time to time; and
 - (b) will comprise such persons (who may or may not be Members) and follow such procedures as the Directors may determine.
- 42.5 The Directors cannot remove a Director except in accordance with this constitution and any applicable regulations.
- 42.6 The Directors cannot remove an auditor. Auditors may only be removed by a resolution of the Members at a general meeting.

43. Delegation of Directors' powers

- 43.1 The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Association (such as a chief executive officer) or any other person, as they consider appropriate.
- 43.2 The delegation must be recorded in the Association's minute book.

44. Payments to Directors

- 44.1 The Directors may, for acting as Directors, be paid such annual remuneration (**Director's Fees**) as is reasonable in the circumstances.
- 44.2 In addition to Director's Fees, the Association may:
 - (a) pay a Director for work they do for the Association, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Association.
- 44.3 Any payment made under clause 44.2 must be approved by the Directors.

- 44.4 The Association may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this constitution.

45. Execution of documents

Without limiting any other manner of executing documents available to the Association, the Association may execute a document without using a common seal if the document is signed by:

- (a) two Directors of the Association, or
- (b) a Director and the secretary.

Duties of Directors

46. Duties of Directors

The Directors must comply with their duties as Directors under legislation and common law (judge-made law).

47. Conflicts of interest

- 47.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the other Directors, or
- (b) if all of the Directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.

- 47.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

- 47.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under clause 47.4:

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter.

- 47.4 A Director may still be present and vote if:

- (a) their interest arises because they are a Member of the Association, and the other Members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Association (see clause 66 (Insurance));
- (c) their interest relates to a payment by the Association under clause 65 (Indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- (d) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
- (e) the Directors who do not have a material personal interest in the matter pass a resolution that:

- (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Association, and
- (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

Directors' meetings

48. When the Directors meet

The Directors may decide how often, where and when they meet.

49. Calling Directors' meetings

49.1 A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.

49.2 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

50. Chairperson for Directors' meetings

50.1 The Chairperson is entitled to chair Directors' meetings.

50.2 The Directors at a Directors' meeting may choose a Director to be the chairperson for that meeting if the Chairperson and Deputy Chairpersons are:

- (a) not present within 30 minutes after the starting time set for the meeting, or
- (b) present but do not want to act as chairperson of the meeting.

51. Quorum at Directors' meetings

51.1 Unless the Directors determine otherwise, the quorum for a Directors' meeting is a majority (more than 50%) of Directors.

51.2 A quorum must be present for the whole Directors' meeting.

52. Using technology to hold Directors' meetings

52.1 The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all Directors.

52.2 The Directors' agreement under clause 52.1 may be a standing (ongoing) one.

52.3 A Director may only withdraw their agreement under clause 52.1 within a reasonable period before the meeting.

53. Passing Directors' resolutions

A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.

54. Circular resolutions of Directors

54.1 The Directors may pass a resolution without a Directors' meeting being held if:

- (a) all of the Directors who would be entitled to receive notice of a meeting of the Directors and to vote on that resolution are given a document setting out that resolution; and
 - (b) 75% of the Directors other than:
 - (i) a Director on leave of absence approved by the Directors;
 - (ii) a Director who disqualifies himself or herself from considering the resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (iii) a Director who the Directors reasonably believe is not entitled to vote on the resolution in question,assent to that resolution; and
 - (c) the Directors who assent to that resolution would have constituted a quorum at a meeting of the Directors held to consider that resolution.
- 54.2 Two or more copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- 54.3 The resolution is passed when the last of the Directors who constitute the requisite majority assents.
- 54.4 A Director may signify assent to a document by:
- (a) signing the document; or
 - (b) by notifying the Association of the Director's assent in person or by post, electronic, telephone or other method of written, audio or audio visual communication.
- 54.5 Where a Director signifies assent to a document otherwise than by signing the document, the Director must confirm his or her assent by signing the document as soon as practicable and no later than the next meeting of the Directors attended by that Director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- 54.6 Where a document is assented to in accordance with this clause 54 (Circular resolutions of Directors), the document is to be taken as a minute of the passing of the resolution.

Secretary

55. Appointment and role of secretary

- 55.1 The Association must have at least one secretary, who may also be a Director.
- 55.2 A secretary must be appointed by the Directors (after giving the Association their signed consent to act as secretary of the Association) and may be removed by the Directors.
- 55.3 The Directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 55.4 The role of the secretary includes maintaining the minutes and other records of general meetings (including notices of meetings), Directors' meetings and circular resolutions.

Minutes and records

56. Minutes and records

- 56.1 The Association must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;
 - (b) a copy of a notice of each general meeting;
 - (c) a copy of a statement distributed to Members under clause 27.1(b); and
 - (d) any other records as determined by the Directors from time to time.
- 56.2 The Association must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of Directors.
- 56.3 To allow Members to inspect the Association's records:
- (a) the Association must give a Member access to the records set out in clause 56.1, and
 - (b) the Directors may authorise a Member to inspect other records of the Association, including records referred to in clause 56.2 and clause 57.1.
- 56.4 The Directors must ensure that minutes of a general meeting or a Directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 56.5 The Directors must ensure that minutes of the passing of a circular resolution (of members or Directors) are signed by a Director within a reasonable time after the resolution is passed.
- 57. Financial and related records**
- 57.1 The Association must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 57.2 The Association must also keep written records that correctly record its operations.
- 57.3 The Association must retain its records for at least 7 years.
- 57.4 The Directors must take reasonable steps to ensure that the Association's records are kept safe.

Regulations

58. Regulations

- 58.1 The Directors may pass a resolution to make regulations to give effect to this constitution.
- 58.2 Where there is a reference in this constitution to a power or discretion of the Directors to be exercised "by way of regulations", such power or discretion of the Directors must only be exercised by way of regulations.

- 58.3 Where there is a reference in this constitution to a power or discretion of the Directors without requiring such power or discretion to be exercised “by way of regulations”, the Directors may (but need not) exercise such power or discretion by way of regulations.
- 58.4 Regulations may be assigned any designation as the Directors see fit, whether as “regulations”, “by-laws”, “code”, “charter”, “policy” or otherwise.
- 58.5 Regulations may be suspended, amended, rescinded or abolished by the Directors from time to time.
- 58.6 Members and Directors must comply with regulations as if they were part of this constitution.
- 58.7 To the extent there is any inconsistency between this constitution and any regulations made under this constitution, this constitution shall prevail.
- 58.8 Any regulations may be disallowed by a special resolution at a general meeting.

Chapters, communities and other Member groups

59. Chapters, communities and other Member groups

- 59.1 The Directors may, from time to time, authorise Members to establish or form local chapters, communities and any other group, committee or council as the Directors consider appropriate subject to, and in accordance with, such terms, conditions and rules as the Directors may determine by way of regulations.
- 59.2 The Directors may determine, in relation to any local chapters, communities and any other group, committee or council under clause 59.1, the following:
- (a) their establishment criteria;
 - (b) their powers, functions and duties; and
 - (c) the rules and regulations regarding their administration and proceedings at their meetings.

Notice

60. What is notice

- 60.1 Anything written to or from the Association under any clause in this constitution is written notice and is subject to clauses 61 (Notice to the Association) to 63 (When notice is taken to be given), unless specified otherwise.
- 60.2 Clauses 61 (Notice to the Association) to 63 (When notice is taken to be given) do not apply to a notice of proxy under clause 34.6.

61. Notice to the Association

Written notice or any communication under this constitution may be given to the Association, the Directors or the secretary by:

- (a) delivering it to the Association’s registered office;
- (b) posting it to the Association’s registered office or to another address chosen by the Association for notice to be provided; or
- (c) sending it to an email address or other electronic address notified by the Association to the Members as the Association’s email address or other electronic address.

62. Notice to Members

62.1 Written notice or any communication under this constitution may be given to a Member:

- (a) in person;
- (b) by posting it to, or leaving it at the address of the Member in the register of Members or an alternative address (if any) nominated by the Member for service of notices;
- (c) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any); or
- (d) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).

62.2 If the Association does not have an address for the Member, the Association is not required to give notice in person.

63. When notice is taken to be given

A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the fourth day after it is posted with the correct payment of postage costs;
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 62.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

64. Company's financial year

The Association's financial year is from 1 July to 30 June, unless the Directors pass a resolution to change the financial year.

Indemnity, insurance and access

65. Indemnity

65.1 The Association indemnifies each officer of the Association out of the assets of the Association, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Association.

65.2 In this clause and clause 66 (Insurance), "officer" has the same meaning as under the Corporations Act and includes a Director or secretary, even after they have ceased to hold that office.

65.3 In this clause, "to the relevant extent" means:

- (a) to the extent that the Association is not precluded by law (including the Corporations Act) from doing so; and

- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Association.

66. Insurance

To the extent permitted by law (including the Corporations Act), and if the Directors consider it appropriate, the Association may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Association against any liability incurred by the person as an officer of the Association.

67. Directors' access to documents

67.1 A Director has a right of access to the financial records of the Association at all reasonable times.

67.2 If the Directors agree, the Association must give a Director or former Director access to:

- (a) certain documents, including documents provided for or available to the Directors, and
- (b) any other documents referred to in those documents.

Winding up

68. Surplus Assets not to be distributed to Members

If the Association is wound up, any Surplus Assets must not be distributed to a Member or a former Member.

69. Distribution of Surplus Assets

69.1 Subject to the Corporations Act and any other applicable law, and any court order, any Surplus Assets that remain after the Association is wound up must be distributed to one or more organisations:

- (a) with objects similar to, or inclusive of, the objects in clause 6 (Objects), and
- (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Association.

69.2 The decision as to the organisations to be given the Surplus Assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, the Association may apply to the court having competent jurisdiction in the State or Territory in which the registered office of the Association is located to make this decision.

Confidentiality and public statements

70. Confidentiality

Subject to this constitution, any regulations and to the law, every person who by reason of their office in the Association or connection with the Association is exposed to, learns of or has access to information or knowledge concerning Members or the Association must keep confidential all such information and knowledge and is not entitled to communicate or divulge

those affairs or any part of them in such a way that the name of the Member concerned is identified unless with the prior consent in writing of that Member.

71. Public statements

The only persons authorised to act as spokesperson of and for the Association and to express the view of and for the Association in or to the general public are those persons nominated by the Directors from time to time.

Definitions and interpretation

72. Definitions

In this constitution:

AFA means Association of Financial Advisers Ltd ACN 008 619 921.

Affiliate Member means a Member who is not an Ordinary Member.

Appointed Director means a Director appointed under clause 37.2.

Association means the [insert full details of the new association].

Automatic Termination Event includes:

- (a) the Member is sentenced to a term of imprisonment;
- (b) the Member is an authorised representative of an Australian financial services licensee, as those terms are defined in the Corporations Act, and the Member has been dismissed or has had the Member's authorisation as an authorised representative revoked by the Member's authorising Australian financial services licensee because of breach of the law;
- (c) the Member is the subject of a banning order under the Corporations Act;
- (d) the Member has ceased to satisfy the relevant eligibility criteria for the Member's class of membership and the membership has not been transferred to another class of membership where the Member satisfies the relevant eligibility criteria for that class in accordance with the time requirements, procedure and other rules under this constitution and any regulations;
- (e) the Member provides false information to the Association, or otherwise fails to disclose any material information that is required to be provided by the Member to the Association in connection with any application or form that is required to be provided by the Member to the Association from time to time pursuant to this constitution, the Professional Code or any regulations; and
- (f) the Member was subject to disciplinary procedures under clause 16 (Disciplining Members) and:
 - (i) the Member fails to pay a monetary penalty imposed by the relevant body established under clause 16(e) within 42 days from the date of the body's determination; or
 - (ii) the relevant body established under clause 16(e) has determined that that Member's membership should be terminated.

Chairperson is defined in clause 39.1.

Corporations Act means the *Corporations Act 2001* (Cth).

Deputy Chairperson is defined in clause 39.2.

Director means a director of the Association, including alternate directors where the context requires.

Director's Fees is defined in clause 44.1.

Direct Vote is defined in clause 33.1.

Elected Director means a Director elected under clause 37.1.

Malpractice means behaviour that is in contravention of the Professional Code or that is likely to cause harm to clients, the community or the Profession.

Member means a member of the Association and includes Ordinary Members and Affiliate Members.

Ordinary Member means a Member who:

- (a) belongs to a class or category of membership designated as such by any regulations; or
- (b) is otherwise designated as such by the Directors.

Practising means, in respect of a person, that such person is recorded as "current" on the Financial Adviser Register at the relevant time.

Profession means the financial planning and advice profession.

Professional Code means the Professional Code promulgated and updated by the Directors from time to time (and any successor or replacement regulations), which includes any guidance issued in relation to the whole or any part of the Professional Code or successor regulations.

Surplus Assets means any assets of the Association that remain after paying all debts and other liabilities of the Association, including the costs of winding up.

73. Interpretation

73.1 The replaceable rules set out in the Corporations Act do not apply to the Association.

73.2 A word or expression that is defined in the Corporations Act, or used in the Corporations Act and covering the same subject, will have the same meaning in this constitution, unless such word or expression is defined in clause 72 (Definitions), in which case the definition given in clause 72 (Definitions) prevails to the extent of any inconsistency.

73.3 In this constitution:

- (a) a reference to a clause is a reference to a clause of this constitution, unless the context requires otherwise;
- (b) a reference to any regulations is a reference to regulations made under this constitution;
- (c) the words "including", "for example", or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and

- (d) reference to any legislation or subordinate legislation (such as regulations) includes every amendment, re-enactment, or replacement of that legislation and subordinate legislation (as applicable).

Transitional provisions

74. Transitional board structure

- 74.1 Despite anything to the contrary in this constitution, this clause 74 (Transitional board structure) applies during the Transitional Period and to the extent of any inconsistency with other provisions of this constitution this clause shall prevail.
- 74.2 The Association will have no more than 12 Directors.
- 74.3 The AFA will appoint 4 Directors (**AFA-Appointed Directors**) whose term of office will be equal to the Transitional Period.
- 74.4 Any casual vacancy in the office of an AFA-Appointed Director occurring before the end of the third annual general meeting after the commencement of the Transitional Period will be filled by a Member nominated by the other AFA-Appointed Directors, who will then serve out the remainder of the term of the AFA-Appointed Director being replaced.
- 74.5 The provisions of this constitution and the regulations in each case applicable to Elected Directors and Appointed Directors apply to the Other Transitional Directors

75. Definitions

The following definitions apply to the Transitional Provisions:

AFA-Appointed Directors is defined in clause 74.3.

Other Transitional Directors means the Directors in office before the Transitional Period commences.

Transitional Period means the period of time commencing on the date on which this constitution takes effect (commencement date) and ending on the date that is 36 months after the commencement date.

Transitional Provisions means clauses 74 (Transitional board structure) through 77 (Effect of Transitional Provisions).

76. Application of regulations

The regulations in force immediately before the Transitional Period will continue to apply, necessary changes having been made, to the maximum extent possible until they have been amended as reasonably necessary to bring them in line with this constitution.

77. Effect of Transitional Provisions

The Transitional Provisions will expire and be deemed to be removed from this constitution upon expiry of the Transitional Period.