

**CONSTITUTION OF
FINANCIAL ADVICE NEW ZEALAND INCORPORATED**

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1 NAME

- 1.1 The name of the association is Financial Advice New Zealand Incorporated (**Association**)

2 APPLICATION

- 2.1 The provisions of this Constitution and any Bylaws apply to and are binding on all Members.

3 OBJECTS

- 3.1 Acknowledging the importance and value of financial advice to all New Zealanders the objects of the Association are to provide a professional association for practising Financial Advisers and Financial Planners that concentrates on three key mandates:

Standards

- 3.1.1 To provide an advice-centric professional association that leads and mandates an ethical profession and membership
- 3.1.2 To establish and promote a quality service mark for Members to enable the public to identify advice given by a qualified adviser and Member of the Association.
- 3.1.3 To encourage, promote and recognise high standards of advice, service, professional practice and conduct by Members.
- 3.1.4 To support and promote education and certification of Financial Advisers including CFP certification as the symbol of excellence for financial planning in New Zealand.
- 3.1.5 To require that the Association and all Members commit and adhere to the values and principles upheld by the Association, namely:
- (a) Client First
 - (b) Integrity
 - (c) Objectivity
 - (d) Fairness
 - (e) Professionalism
 - (f) Competence
 - (g) Confidentiality
 - (h) Diligence.

- 3.1.6 To prescribe Bylaws for Members, including without limitation, a Code of Ethics and Practice Standards.
- 3.1.7 To prescribe Bylaws for Associates so as to promote Members' relationships with the broader financial services community.
- 3.1.8 To encourage, promote, and recognise competency, education, qualifications, and continuing professional development for Members.
- 3.1.9 To provide access to and/or facilitate comprehensive training programmes and education pathways for Members.
- 3.1.10 To encourage Members to continue their education, attain and maintain relevant professional marks and designations, tertiary and other professional qualifications.
- 3.1.11 To support Members by providing best practice tools to aid them in their performance and achievement of improved advisory standards.

Advocacy

- 3.1.12 To provide professional leadership that represents the Members' interests particularly in relation to the promotion of the value of advice, and advice standards and public advocacy.
- 3.1.13 To work with regulators to achieve collaborative regulation that builds public confidence in advisers and builds a stronger profession in New Zealand.
- 3.1.14 To work with financial service providers, and their industry bodies, to promote consumer focused products and services.
- 3.1.15 To promote and reinforce the values, principles and standards upheld by the Association and all Members.

Promotion

- 3.1.16 To build public awareness and trust in the value of financial advice.
- 3.1.17 To build awareness of financial advice as a career choice.
- 3.1.18 To build the reputation of our Members as the leading source of best practice financial advice in New Zealand.
- 3.1.19 To make available to consumers a register of Members, outlining their contact details, areas of competency, qualifications and professional marks or designations.
- 3.1.20 To provide and promote opportunities for Members to meet in order to exchange information and ideas and pursue common goals and to encourage fellowship and networking among Members along with other stakeholders.

4 POWERS

- 4.1 The Association shall have all the powers of a natural person in pursuing its objectives including but not limited to a power:
- 4.1.1 To invest, manage, purchase, lease, hire or otherwise acquire real or personal property and any rights or privileges which the Association may determine necessary and convenient.
 - 4.1.2 To borrow or raise money and secure payments of the same, or to secure payment of any money owing by the Association or the satisfaction of performance of any obligations or liabilities incurred by the Association.
 - 4.1.3 To undertake and execute any Trusts which may seem to the Association conducive to any of its objectives.
 - 4.1.4 To give or renew any guarantee of third parties.
 - 4.1.5 To do all such things as are incidental or conducive to the attainment of the above objectives.
- 4.2 The funds of the Association shall be managed by the Chief Executive under appropriate delegation from the Board.

5 INTERPRETATION

- 5.1 Unless the context otherwise requires:

Act means the Incorporated Societies Act 1908, any amendments, or any replacement Act, and any regulations made under it.

AGM means the annual general meeting of the Association held in accordance with clause 17.

Appointments Committee is the committee established by the Working Group.

Associate means a person (individual or entity), other than a Member, who is recognised under clause 7

Board means the Board of the Association elected or appointed under this Constitution.

Board Chair means the Chairperson appointed by the Board under clause 13.1.

Bylaw means a regulation made by the Board. These may include (without limitation) Membership Bylaws, Certification Bylaws, the Code of Ethics, Practice Standards, the Code of Procedure, and Disciplinary Bylaws.

Certification Committee means the Committee responsible for administering and overseeing requirements for certification to any professional mark or designation awarded by the Association including any professional mark recognised by the Financial Planning Standards Board.

CFP Professional means an individual who has met the initial and ongoing certification requirements established by the Financial Planning Standards Board.

Chief Executive is defined in clause 20.

Director means a member of the Board.

Establishment Board means the Board appointed in accordance with clause 12.1.

Establishment Period means the period of up to one year from the date of this Constitution to the first Annual General Meeting of the Association at which the Board is then appointed in accordance with clause 12.2.

Financial Adviser means an adviser as currently defined under the Financial Advisers Act 2008, and any replacement legislation and includes, without limitation, Financial Planner, Insurance Adviser, Lending Adviser, Investment Adviser and other advisers in the financial services community.

Financial Planner, Insurance Adviser, Investment Adviser and Lending Adviser refer to a person practising in the areas of financial planning advice, insurance advice, investment advice and lending/mortgage advice respectively.

Financial Year means a year commencing on 1 July and ending on the following 30 June.

IFA means the Institute of Financial Advisers Incorporated.

Independent Director is defined in clause 12.2.3.

Member means a natural person (who is not an Associate) admitted to membership of the Association.

Membership means membership of the Association.

Member Advisory Committee means a committee established in accordance with clause 15.

NZFAA means the New Zealand Financial Advisers Association.

Observer means a CFP Practitioner appointed in accordance with clause 12.2.1(c).

Office means the management and administrative headquarters of the Association as determined by the Board.

Officer includes Board members and members of any Committee established by the Board.

PAA means the Professional Advisers Association Incorporated.

Practitioner Director is a Director elected or appointed under clause 12.2.1.

Practitioner Member is a Member with Practitioner Membership under clause 6.1.1

Returning Officer is a person appointed by the Board who is in charge of any elections, supervising the counting of the votes and announcing the result.

Working Group means the joint working group established in accordance with the Heads of Agreement between IFA and PAA dated 17 April 2016.

6 MEMBERSHIP

6.1 The Association shall consist of three classes of membership:

6.1.1 Practitioner Membership.

6.1.2 Life Membership.

6.1.3 Fellow Membership.

6.2 To be eligible for and to maintain any class of Membership applicants must satisfy the requirements prescribed by the Membership and Certification Bylaws.

6.3 A Member may resign from Membership in accordance with this Constitution and applicable Bylaws. On such a resignation being received Membership shall cease.

6.4 The Association may cancel or suspend a Member's membership, and may reinstate a Member's membership, in circumstances and in a manner prescribed in the Membership or Disciplinary Bylaws.

7 ASSOCIATES

7.1 To promote the relationship of Members with the broader financial services community, the Association may at its sole discretion recognise any individual or entity as an Associate, following application from that person, in the following classes:

7.1.1 Associate (for individuals, excluding students).

7.1.2 Corporate Associate (for entities).

7.1.3 Student Associate.

7.2 To be eligible for and to maintain any class of Associate status, applicants must:

7.2.1 not be eligible for Membership and not refer to themselves as a Member,

7.2.2 not be an individual personally in the business of giving financial advice,

7.2.3 satisfy and comply with (on an ongoing basis) the relevant requirements prescribed in the Bylaws,

7.2.4 apply for Associate status in accordance with the Bylaws.

7.3 The Association may in its complete discretion, cancel, suspend or reinstate any Associate by giving that Associate written notice.

8 SUBSCRIPTIONS

8.1 Members and Associates will be required to pay an annual subscription as determined by the Board. The Board may set different subscription levels for different classes of Member or Associate.

8.2 Subscriptions are due at the start of the Financial Year.

8.3 Subject to clause 8.7, where a Member's (or Associate's) subscriptions are not paid in full at the end of the third month of the Financial Year, that Member (or Associate) shall be deemed 'non-financial' and their Membership (or Associate status) shall cease, unless their subscriptions are being paid by regular instalments in a manner approved by the Board.

8.3.1 Members may be exempted from paying fees if the Board considers, at its absolute discretion that the Member participates in philanthropic activity that the Board wishes to support. Such exemption should be considered and granted in rare circumstances.

8.4 Subject to clause 8.7, if a Member's (or Associate's) subscriptions are being paid by regular instalments and they miss three or more of the agreed payments, that Member (or Associate) shall be deemed 'non-financial' and their Membership (or Associate status) shall cease.

8.5 A non-financial Member (or Associate) shall be entitled to be reinstated to their previous Membership (or Associate status) class on payment of the full subscriptions (plus any penalty set by the Board) before the end of that Financial Year.

8.6 A non-financial Member (or Associate) may not advertise their Membership or vote at any meeting of the Association. Associates have no right to vote at any meeting of the Association.

8.7 A Member's Membership shall not cease under clauses 8.3 or 8.4 if a complaint has been received about that Member, until:

8.7.1 the complaint has been resolved, or any hearing in relation to the complaint has been concluded and a decision made by the Professional Conduct Committee, as the case may be; and

8.7.2 any resulting action, disciplinary measure, fine or other penalty has been imposed; and

8.7.3 any appeal period relating to the matters set out in clauses 8.7.1 or 8.7.2 has expired without an appeal being lodged, or any appeal lodged within the relevant appeal period has been determined; and

8.7.4 the Board have determined that it is in the best interests of the Association to permit a cessation of Membership.

8.8 A Member who has outstanding subscriptions and who is subject to a complaint and the terms of clause 8.7, will have no rights as a Member during the period in which the Member's Membership is continued under clause 8.7, including, for clarity and without limitation, any right to vote on Membership matters.

8.9 The cessation of a Member's (or an Associate's) Membership under clauses 8.3 or 8.4 does not affect that Member's (or Associate's) liability for any outstanding subscriptions, fees or other charges lawfully due and payable to the Association at the date on which the Membership (or Associate status) ceases. For the avoidance of doubt, this includes any outstanding subscriptions, fees or other charges incurred in the period during which a Member's Membership is continued under clause 8.7.

9 BOARD

9.1 The governance functions of the Association are vested in the Board.

9.2 The Board shall convene, oversee and support any committees or working groups established from time to time.

9.3 The Board will meet at least four times in every Financial Year.

9.4 The quorum for a meeting of the Board is more than half of the Directors

9.5 The Chief Executive will forward to each Director the agenda for each Board meeting together with other relevant information not less than seven days before the meeting.

9.6 The Board shall act as a final body or appeals body (as the case may be) for decisions of the Professional Conduct Committee.

10 CODE OF ETHICS AND PRACTICE STANDARDS

10.1 The Board shall formulate and publish its Code of Ethics, Practice Standards and Rules of Conduct to Members and the public.

10.2 The Board may update the Code of Ethics, Practice Standards and Rules of Conduct from time to time. Members will be deemed to have knowledge of such changes to the Code of Ethics, Practice Standards and Rules of Conduct when they have been notified in writing with the changes published on the Association's website.

11 BYLAWS

- 11.1 The Board may make, repeal or amend any Bylaws, not contrary to law or inconsistent with the provisions of this Constitution, as it deems necessary to achieve the objectives of the Association.
- 11.2 All Bylaws are to be notified to Members in such manner as the Board from time to time determines. All Members will be deemed to have knowledge of such Bylaws when they have been notified in writing with the changes published on the Association's website.
- 11.3 Breaches by Members, of the Constitution, Code of Ethics and Practice Standards, Rules of Conduct or other Bylaws together with any complaints will be handled by the Professional Conduct Committee and the Board.

12 BOARD MEMBERSHIP AND ELECTIONS

- 12.1 During the Establishment Period the Board shall be appointed by the Appointments Committee and shall comprise the current IFA and PAA chairs, 1 further Practitioner Member together with 2 Independent Directors. In the event of any vacancy on the Establishment Board during the Establishment Period, the Working Group will re-convene the Appointments Committee to appoint a person to the vacancy.
- 12.2 Other than during the Establishment Period, the Board shall consist of up to 4 Practitioner Directors, and 4 Independent Directors, elected or appointed in accordance with the following provisions:

Practitioner Directors

- 12.2.1 Election process and eligibility:
- (a) Practitioner Directors shall be elected by the Members at each Annual General Meeting with nominations lodged by the Members with the Office no later than 30 days prior to the election date.
 - (b) Practitioner Director nominees must be a Practitioner Member and have been a Practitioner Member of the Association (or of PAA, IFA or NZFAA) for two consecutive years immediately prior to nomination. One Practitioner Director shall be elected from each sector (investment, risk, lending and financial planning (who must be a CFP Professional) to ensure that the Board has a range of expertise in financial advice
 - (c) Practitioner Directors are normally appointed for a three-year term and shall be eligible for re-election. Practitioner Directors shall not be on the Board for longer than three consecutive terms. The Board has the discretion to vary the appointment term of any Practitioner Director to between one and four years.

- (d) Any vacancy that may occur on the Board during a term shall be filled by appointment made by the Board with the appointee holding office until the next Annual General Meeting.

12.2.2 Retirement in rotation:

Notwithstanding clause 12.2.1 Practitioner Directors will retire at the next Annual General Meeting as follows:

- (a) First, any Practitioner Director whose term has expired.
- (b) Second, any Practitioner Director who wishes to retire.
- (c) Third, to ensure there are sufficient other Practitioner Directors so that at least one Practitioner Director Position is subject to election in the Financial Year. The Practitioner Directors to retire under this clause shall be selected as follows:
 - (i) First, the Practitioner Director who has served the longest consecutive time; and
 - (ii) Second, by drawing lots, the result of which shall be conclusively determined by the Board Chair.

Independent Directors

12.2.3 Appointment process

- (a) Independent Directors shall be recommended by the Board in a manner determined in its discretion. In recommending the Independent Directors, the Board will seek to ensure the skillset of such directors is compatible with the achievement of the objectives of the Association. The recommended candidates shall be confirmed by resolution of the Members at the next Annual General Meeting of the Association.
- (b) Independent Directors are normally appointed for a three-year term. Independent Directors shall not be on the Board for longer than three consecutive terms. The Board has the discretion to vary the appointment term of any Independent Director to between one and four years.
- (c) The Board may fill any casual vacancy which arises among the Independent Directors, and the period served in filling such casual vacancy shall not prevent such person being later appointed to the Board for a full term and subsequently being reappointed to the Board.
- (d) Independent Directors shall not be a Member or a practising Financial Adviser.

- (e) One Independent Director is to have a consumer focus, as determined by the Board.
- (f) Notwithstanding clauses 12.2.3(a) to 12.2.3(d), at least two Independent Directors shall retire at the next AGM as follows:
 - (i) First, any Independent Director whose term has expired,
 - (ii) Second, any Independent Director who wishes to retire,
 - (iii) Third, the Independent Director who has served the longest consecutive time,
 - (iv) Fourth, by drawing lots, the result of which shall be conclusively determined by the Board Chair.

An Independent Director who retires under clause 12.2.3(f) shall be eligible for reappointment under clause 12.2.3(a) and (b)

- 12.3 No Director or employee of the Association is liable for any consequence of any act or omission in the execution or purported execution of his or her role as such, except to the extent the consequence or loss is attributable to that Director or employee's dishonesty or wilful breach of duty.
- 12.4 Each Director and employee of the Association is indemnified, and may be insured, out of the assets of the Association against:
- a) any non-criminal liability for any act or omission in his or her capacity as a Director or employee and costs incurred by him or her in defending or setting any claim or proceeding relating to such liability; and
 - b) costs incurred by him or her in any criminal proceedings brought against him or her in relation to any act or omission in his or her capacity as a Director or employee, and in which he or she is acquitted.
- 12.5 The Directors will be paid:
- a) remuneration for acting as Directors. The aggregate amount of Directors' remuneration will be approved by the Members at each Annual Meeting, after receiving advice from an independent person appointed by the Board as a person they consider qualified to advise on matters of director remuneration. The amount payable to each Director will be approved by the Board. During the Establishment Period, Directors remuneration will be determined by the Establishment Board Appointments Committee, and
 - b) reasonable travelling and other expenses incurred in acting as Directors.
- 12.6 Before the Annual Meeting in each year, the Board must review whether the composition of the Board prescribed in clause 12.2 continues to meet the needs of the Association and if they consider it does not, must recommend changes for consideration, and if thought fit, approval, by the Association at the Annual Meeting.

13 BOARD CHAIR

- 13.1 At the first Board meeting following each Annual General Meeting the Directors shall elect a Chair from all Independent Board Directors to hold office until the next Annual General Meeting.
- 13.2 In the event that the Board Chair retires before the next Annual General Meeting, the Board will appoint an interim Board Chair to hold office until the next Annual General Meeting.
- 13.3 The Board will elect a Chair to fill any casual vacancy that may arise during a term.
- 13.4 The Board Chair shall have a casting vote.

14 POWERS OF THE BOARD

- 14.1 The Board is the primary Member representative body of the Association.
- 14.2 Without limiting the generality of clause 14.1, the Board has the power to do all or any of the following:
- 14.2.1 make Bylaws for the proper governance of the Association and to attain its aims and objects;
 - 14.2.2 care for the interests and rights of Members holding any mark or designation granted or recognised by the Association;
 - 14.2.3 remove an Officer from office in accordance with clause 19;
 - 14.2.4 create and disestablish ad hoc committees and working groups and to co-opt persons to assist of the Association in a manner and for such a period as determined by the Board from time to time, at its complete discretion;
 - 14.2.5 all those things which may be necessary or desirable in carrying out the objects and policies of the Association.
- 14.3 The Board may delegate such of its powers as may be necessary to ensure the proper and efficient conduct of the Association's affairs.
- 14.4 The Board will maintain relationships with all bodies consistent with any license and affiliation agreements needed to enable it to offer certification in New Zealand. In respect of the CFP license this relationship will be with the Financial Planning Standards Board.

15 MEMBER ADVISORY COMMITTEES

- 15.1 The Board will establish such Member Advisory Committees as are considered necessary to advise the Board on the various disciplines represented in the Membership. These would cover areas such as lending, insurance, investment and financial planning.

15.2 A Member Advisory Committee holds no inherent powers and has only those powers specifically delegated to it.

15.3 The Chair of the Member Advisory Committee and the members of any Member Advisory Committee shall be appointed by and be responsible to the Board, and be appointed for a two year term.

16 ALTERATIONS OF THE CONSTITUTION

16.1 This Constitution may be altered, added to or rescinded by either:

16.1.1 a two-thirds majority vote of those present at an Annual General Meeting or Special General Meeting; or

16.1.2 a postal and/or electronic ballot duly passed by a majority of not less than two thirds of the Membership. Such a ballot shall only be conducted at the written request of not less than 20 Members or at the discretion of the Board.

17 ANNUAL GENERAL MEETING OF MEMBERS

17.1 A General Meeting of Members shall be held in each Financial Year, within five months of the close of the previous Financial Year.

17.2 Notice of the Annual General Meeting shall be forwarded to each Member at least 28 days prior to the meeting.

17.3 The Notice shall include the place, day, time and method of the meeting and the nature of the business to be conducted, including presentation of the accounts of the Association.

17.4 The accidental omission to give such notice or the non-receipt of any such notice by a Member shall not invalidate any resolution passed at that meeting.

17.5 The quorum of a General Meeting will be 15 voting Members. No business will be transacted at any General Meeting (except for the election of a chairperson as may be required) unless the quorum is present at the commencement of business.

17.6 Members shall be entitled to attend, vote or provide a proxy in a manner that is at the discretion of the Returning Officer.

17.7 The process for the Annual General Meeting will be prescribed in the Code of Procedure.

17.8 The Returning Officer shall determine the method and process for attendance and voting at meetings.

18 SPECIAL GENERAL MEETINGS

- 18.1 The Board may call for a special General Meeting of Members to be held and shall give notice in accordance with clause 17.2 of such a meeting.
- 18.2 A special General Meeting must be called upon the Association receiving a written request signed by at least 50 Members or 2.5% of the membership (whichever is the greater) as calculated at the last AGM.
- 18.3 The quorum for a special General Meeting will be in accordance with clause 17.5.
- 18.4 The process for holding a special General Meeting is prescribed in the Code of Procedure.

19 REMOVAL FROM OFFICE

- 19.1 The Board by majority may remove its Chair from such office or a member of any committee for any of the reasons specified in clause 19.3.
- 19.2 Any Officer who ceases to be a Member shall cease to hold that Office. This does not apply to the positions of Chief Executive or Independent Director.
- 19.3 The position of any Officer shall be vacated if the Officer:
- 19.3.1 becomes bankrupt or makes any arrangement or composition with his or her creditors generally to avoid bankruptcy; or
 - 19.3.2 becomes of unsound mind, or becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
 - 19.3.3 dies or resigns his or her office by notice in writing to the Chief Executive; or
 - 19.3.4 is removed from office under this Constitution; or
 - 19.3.5 becomes unable or unwilling to fulfil his or her duties as such officer (including, at the discretion of the Board, where the Officer has been absent for a lengthy period), or
 - 19.3.6 is convicted of any criminal or civil offence that could be punishable by a prison term of 6 months or more.
 - 19.3.7 Notwithstanding clauses 19.3.1 or 19.3.6 the Board as appropriate may deem otherwise.

20 CHIEF EXECUTIVE

- 20.1 The Board will appoint a Chief Executive who will head the management functions of the Association on such terms and conditions as the Board considers appropriate.

- 20.2 The Chief Executive is responsible for providing a Secretary to the Board and will otherwise work under the direction of the Chair of the Board or such other Director as may be appointed by the Chair from time to time.
- 20.3 The Board has the power to dismiss the Chief Executive in accordance with the Chief Executive's employment agreement.
- 20.4 The Chief Executive may appoint other staff for the Association under his/her delegation by the Board.

21 COMMON SEAL AND SIGNING DOCUMENTS

- 21.1 Documents shall be signed on behalf of the Association only following a resolution of the Board to that effect.
- 21.2 The Association shall have a Common Seal which is to be kept in the custody of the Chief Executive.
- 21.3 Documents shall be signed on behalf of the Association as follows:
- 21.3.1 Documents that are required to be signed as a deed shall be signed by the affixing of the Common Seal and witnessed by two Directors or by the Chief Executive and one Director.
- 21.3.2 All other documents may be signed by two Directors or by the Chief Executive and one Director.
- 21.4 A register will be maintained by the Chief Executive recording all significant details of documents signed on behalf of the Association. Additions to the register shall be recorded at each meeting of the Board.

22 ASSURANCE ON THE FINANCIAL STATEMENTS

- 22.1 Subject to clause 23.2, at each AGM Members will appoint an accountant (**Reviewer**) to review the annual financial statements of the Association on terms approved by the meeting.
- 22.2 The Board or Members may appoint an auditor (**Auditor**) in any Financial Year, on terms approved at the AGM, where additional assurance is deemed appropriate.
- 22.3 The Reviewer, or Auditor, appointed must be a suitably qualified person, preferably a member of the Chartered Accountants Australia and New Zealand and must not be a member of the Board, or an employee of the Association. If either the Reviewer or Auditor appointed is unable to act for some reason, the Board will appoint another Reviewer or Auditor, as appropriate, as a replacement.

23 WINDING UP

- 23.1 The Association will not wind up except in accordance with the Act.
- 23.2 The Association may be put into liquidation at a General Meeting of the Members by passing a resolution appointing a liquidator and the resolution is confirmed at a subsequent general meeting called for that purpose and held not earlier than 30 days after the date on which the resolution to be confirmed was passed.
- 23.3 If upon winding up there remains any property after the satisfaction of all liabilities, the same shall not be paid to or distributed amongst the Members, but shall be given or transferred to some other institution or society having objects similar to the objects of the Association, chosen by a simple majority of a Board meeting or, in default thereof, by the High Court of New Zealand.

24 PRIVACY ACT

- 24.1 All Members in joining the Association are deemed to have consented to the Association using the names, business addresses and business details of the Member for Membership lists and for other purposes reasonably appropriate for the Association and its purposes.