

Explanatory Memorandum

Financial Advice
NEW ZEALAND

Proposed Constitution

Information about the Resolution
to adopt a replacement Constitution

Purpose

Financial Advice NZ is your professional body

Financial Advice NZ's purpose is to be the professional body for the financial advice sector, supporting New Zealanders to achieve choice in their financial matters, and financial security.

Background

Message from the Chair, Sue Brown

Thankyou for the consideration of this resolution to adopt a new Constitution for Financial Advice NZ.

This Explanatory Memorandum sets out some additional background to help you as you consider your opportunity to vote on this important change.

The Constitution is an important document which sets out who we are, and tells others who we are.

It defines who can be members and who, and what, Financial Advice NZ speaks for. As Members, the Constitution and Rules are your documents, they set out what we as a Board must do for you, and what standards you expect of your fellow members.

In the three years since Financial Advice NZ was launched, we have together matured into a strong professional body. This proposed Constitution reflects that professionalism and will help protect and maintain our shared reputation, help us uphold professional standards and reinforce our advocacy strength.

In 2020, after reflecting on the frustrations and constraints with the current Constitution, the Constitution Review became one of the Board's strategic priorities.

We determined that now was the right time in the lifecycle of Financial Advice NZ to not just patch repair the current Constitution, but to create a new Constitution that reflected the changing environment and changing requirements of our membership.

We valued the feedback we got from members during the roadshows, formal consultation and focus group meetings and we have adjusted the proposed Constitution according to that feedback.

We believe the proposed Constitution represents best practice governance, is modern, provides clear guidance and does not constrain us in this ever-changing world. I encourage you to exercise your right to vote.



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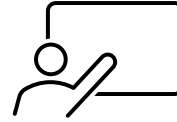
- Consultation
- Overview of Key Changes
- Key Dates
- Voting

Consultation

What was the process that got us to this point?



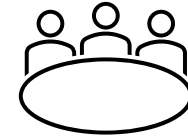
Two webinars



Five roadshows



Many emails



Focus group meetings

In June we contacted Members and provided a copy of the proposed draft Constitution and opened member consultation.

Over June and July we travelled the country and delivered five road shows to present the rationale for, and the key changes in the proposed draft Constitution.

In July we also ran a dedicated webinar on the topic with the CEO and Chair.

During all these sessions, Members were encouraged to ask questions of the CEO and Board representative and to provide their feedback and thoughts.

During that formal consultation period we also formed a focus group of members who helped develop the member feedback and form suggestions for the Board to consider.

The Board then considered all the feedback and made adjustments where relevant, and the focus group provided another round of consultation.

Finally, in late September we presented the amended proposed Constitution to members and presented another webinar to hear questions and feedback.

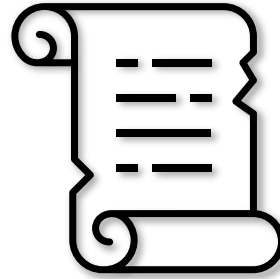
We have now finalised a proposed new Constitution and are asking members to vote to adopt it.

Key Changes

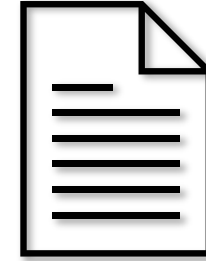
- Membership
- The Board
 - Member Director eligibility & appointment
 - Independent Director eligibility & appointment
- Decisions by Members

Constitution vs Rules

Constitution - fixed



Rules – can be changed



The Constitution cannot be changed without another AGM or Special General Meeting vote. The Rules, however, can be changed at any time by Board Resolution after consultation with affected members.

That's why the focus of the consultation has been on the Constitution ahead of the Rules.

Constitution - fixed

Core information about why Financial Advice NZ exists, how people become members, how people cease to be members, appointment of the Board, powers of the Board, requirements for AGM etc.

Can only be changed by a 2/3 majority vote at an AGM or Special General Meeting.

Rules – can be changed

Everything else is included in the Rules.
Membership Rules, Member Meeting Rules, Certification Rules, Governance Rules, Disciplinary Rules, Code of Ethics, Rules of Conduct, Practice Standards.

Can be changed by the Board as it deems necessary – with consultation for material changes.

Membership

Expanded Member Types

FAPs and Authorised Bodies can now join Financial Advice NZ as members – whether they are individuals or firms.

Reasons for this change

1. To allow individuals who have registered on the FSPR as a FAP to be members.
2. To recognise FAPs' integral role in the new regime.

Member Type	Description
Adviser Members *	Financial Advisers and Nominated Representatives.
FAP Members*	FAP Licensees or Authorised Bodies (whether an individual or a firm).
Associate Members	Any individual who is part of the broader financial services community, but who is not and is not eligible to be an Adviser Member or FAP Member.
Life Member *	Any individual who has been awarded Life Membership by the Board.
Retired Member	An individual who was an Adviser Member or FAP Member immediately prior to retiring.

* Voting Members.

FAPs have one vote, regardless of their size. FAPs that are firms nominate an individual to represent them.

Membership

FAPs & Authorised Bodies as Members

The proposed Constitution includes a fundamental change to who can be a member - FAPs and Authorised Bodies can now join Financial Advice NZ as Members. This is to ensure our organisation reflects the new financial advice regime by recognising that FAPs are now an integral part of the sector. One important thing to note is that FAPs have one vote, regardless of their size.

The details of membership criteria is in the Rules rather than the Constitution, however the criteria for new member type “FAP” is shown here for transparency.

Criteria

Provide evidence they are a FAP or Authorised Body

Have good **references from Adviser Members**.

Agree to **endorse and encourage Membership of Financial Advice NZ** by associated Authorised Bodies, Financial Advisers and Nominated Representatives;

Have a **satisfactory ethical record** and no unresolved complaints lodged with either Financial Advice NZ or other relevant external body for itself;

Agree to **comply with the Code of Ethics, Code of Conduct and Practice Standards** as they relate to FAPs; and

If not an individual, **nominate a Member Representative** to be its representative for purposes of its Membership. A Member Representative must be an individual who is a Member.

Board

Board Structure

The Board Structure has been tidied up and made relevant for a changing sector. Based on member feedback during consultation, the Constitution ensures that the number of Independent Directors cannot be greater than the number of Member Directors.

Current Constitution	Proposed Constitution
Up to 4 Practitioner Directors, one for each area of investment, risk, lending and financial planning.	Up to the same number of Member Directors as there are Advice Areas.
Up to 4 Independent Directors.	Up to the same number of independent Directors as Member Directors.
No Minimum number of Directors.	Minimum of 3 Member Directors and 2 Independent Directors.
Maximum of 8 Directors.	Maximum of 8 Directors without the approval of Members at a Member Meeting.

Board

Member Directors

The concept of direct representation has moved into a more dynamic obligation on the Board to ensure at least one Member Director has substantive experience in each Advice Area.

Instead of members directly electing a Member Director from each Advice Area, as the current Constitution states, the proposed Constitution says the Board evaluates what experience is missing on the Board, and it opens nominations for people with substantive experience in that particular Advice Area or Areas. It's a subtle but important change.

Current Constitution	Proposed Constitution
<p>Up to 4 Practitioner Directors.</p> <p>One Practitioner Director represents each of the following areas: investment, risk, lending and financial planning.</p>	<p>Up to the same number of Member Directors as there are Advice Areas.</p> <p>At least one Member Director must have substantive experience in each Advice Area.</p>
Elected by Members.	
A Member can be elected across two areas.	
One Member Director must be a CFP ^{CM} professional.	

Board

Independent Directors

The proposed Constitution ensures that the number of Independent Directors is now linked to the number of Member Directors. If there are three Member Directors, there can only be three Independent Directors.

The Independent Director eligibility has been tightened to help support the goal of independence. The current Constitution allows anyone other than a current Member or practicing financial adviser to be an Independent Director. The proposed approach ensures there is some distance, 12 months, before a former adviser or former member/associate can be deemed independent.

The second change is that the Board appoints Independent Directors instead of recommending them to the membership for approval at the AGM. This recognises that the current Board members are the people best placed to determine what skills are needed on the Board.

Current Constitution	Proposed Constitution
Up to 4 Independent Directors.	Up to the same number of Independent Directors as there are Member Directors.
Recommended by the Board for Member approval at AGM.	Appointed by the Board in April and advised to Members.
One independent Director must be nominated by the Board to have a consumer focus.	
Chair must be an Independent Director	

Board

Boardroom Changes

As part of the modernisation of the Constitution, a few aspects related to the Chairperson, terms and quorum have been updated.

The board quorum requires at least half of the Member Directors and at least half of the Independent Directors to be present. This ensures decisions aren't made at a Board meeting where one type of director is over or under-represented.

Current Constitution	Proposed Constitution
Chair has a casting vote.	Chair does not have a casting vote.
Chair is selected by the Board after each AGM.	Chair is elected for a term as determined by the Board.
Board Quorum – At least half of all directors.	Board Quorum – At least half the Member Directors and at least half the Independent Directors.
Terms – Maximum term for Directors is three three-year terms.	Terms – Maximum term for Directors is two three-year terms.
Votes – Directors have one vote, even if they are across two Advice Areas.	

Board

Proposed Member Director eligibility

An individual is eligible to be a Member Director if he or she:

- (a) is, and has, for at least the two years immediately preceding his or her appointment, been an Adviser Member, a FAP Member, a Life Member and/or a Member Representative of a FAP Member;
- (b) has substantive experience in the Advice Area or Areas called for by the Board;
- (c) satisfies other criteria set by the Board; and
- (d) is in good standing with Financial Advice NZ.

Proposed Independent Director eligibility

An individual is eligible to be an Independent Director if he or she:

- (a) is not, is not eligible to be, and has not for at least twelve months immediately preceding his or her appointment been, an Adviser Member or FAP Member;
- (b) is not, and has not for at least twelve months immediately preceding his or her appointment been, an Associate Member, a Member Representative, a Life Member or a Retired Member; and
- (c) satisfies other criteria set by the Board.

Member Meetings

Member Meeting Changes

Member Meetings are Annual General Meetings and Special General Meetings.

Current Constitution	Proposed Constitution
An AGM must be called within 5 months of the end of the Financial Year.	Member Meeting must be called within 6 months of the end of the Financial Year.
Special General Meetings require the same notice period as Annual General Meetings.	The Board can call a Special General Meeting at short notice if urgency requires it.
Quorum required is 15 voting members.	
The process for accepting resolutions was not in the Constitution.	<p>Only the Board and Voting Members can submit resolutions. The Board can reject a resolution if it is frivolous or vexatious or inappropriate for a Member Meeting.</p> <p>The Chair can adjust or create resolutions at a Member Meeting within limitations, including gaining approval of those at the meeting.</p>
Voting rights are determined by the Returning Officer.	Votes are valid from Adviser Members, FAP Members and Life Members. (Fellow Members are a classification not a member type, these people can vote if they are in one of the member types above)

Rules

Rules (previously called Bylaws)

Sitting underneath the proposed Constitution is this series of Rule documents.

- Member Rules (includes CPD requirements)
- Member Meeting Rules
- Governance Rules
- Certification Rules
- Disciplinary & Complaints Rules

These Rules (previously called Bylaws) have been rewritten to reflect the proposed Constitution and the guiding principles behind the review.

These Rules will come into effect if the new Constitution is adopted by Members.

Changes to these Rules can be made by Board Resolution after consultation with affected members if the change is material.

Member Rules

Member Rules (includes CPD requirements)

This is the key document defining membership.

Member Rules cover the following areas:

- Member Types
- Criteria for membership
- Member rights
- Member obligations
- Ending membership & suspension
- Member classifications
- Continuing Professional Development requirements

One new aspect is the requirement around CPD hours for Adviser Members.

Previously, only those with the CLU or CFP certification or the Trusted Adviser mark had a set number of CPD hours to achieve each year. Other members only had to do what was required of them by legislation.

As a professional body, we believe CPD is essential and so we've introduced a minimum requirement of 30 CPD hours over a two year period – i.e. an average of 15 hours each year.

Member Meeting Rules & Governance Rules

Member Meeting Rules

These rules set out the governance procedures for member meetings: the Annual General Meeting and Special General Meetings. They have been modernised and simplified to ensure all the rules are in one place.

Member Meeting Rules cover these areas:

- Items of business
- Conduct of member meetings
- Attendance & speaking rights
- Voting at member meetings
- Proxies

Governance Rules

These Rules set out the detail to support the Constitution. They include the nomination process for Member Director Vacancies, how casual vacancies can be filled, how directors can be removed and how the Board makes decisions at Board Meetings.

Governance Rules cover these areas:

- Director elections and appointments
- Director removals
- Board meetings
- Board committees

Certification Rules & Disciplinary Rules

Certification Rules

These Rules detail the management of the three marks of Financial Advice NZ; CFP mark, CLU mark and the Trusted Adviser mark. They determine who sets the criteria, who manages against those criteria and what the criteria is.

Certification Rules cover:

- Financial Advice NZ marks
- Roles and appointments
- Mark management responsibilities
- Breaches, suspensions and withdrawals
- Pinnacle mark criteria
- Trusted Adviser mark criteria
- Promotion of marks and trademarks

Disciplinary & Complaints Rules

These Rules are substantially unchanged and set out the process around receiving and managing complaints and disciplinary issues.

Disciplinary & Complaints Rules cover:

- Complaints
- Disciplinary bodies
- Disciplinary grounds, hearings & findings
- Reinstatement of membership
- Regulatory co-operation

Key Dates

14 October 2021	Proposed Constitution, Rules and Explanatory Memorandum available to members.
13 November 2021	Deadline for receiving proxy forms is 3pm.
15 November 2021	AGM – Practitioner Members (including Inactive), Life Members and Fellow Members can vote in person or by their pre-arranged proxy.
15 November 2021	Vote decision confirmed and announced to the membership.
Early January 2022	Financial Advice NZ will lodge the new Constitution (if approved) with the Incorporated Society Registrar.
	The new Constitution (if approved) comes into effect when the Registrar has registered the new Constitution.

Voting

What the vote means:

Members will be voting on a Resolution to rescind the existing Constitution and replace it with the proposed Constitution.

To be successful the Resolution requires a 2/3rd majority of those present at the AGM to vote in favour (Constitution clause 16.1.1).

A favourable result will mean:

1. the existing Constitution and all associated Bylaws created under it (including the Membership Bylaws, Certification Bylaws, Disciplinary Bylaws and Code of Procedure) will be rescinded;
2. the proposed Constitution and all associated Rules created under it will replace it; and
3. points 1 and 2 will be in effect as soon as the Incorporated Societies Registrar has registered the new Constitution, with Financial Advice NZ lodging the appropriate documents as soon after 1 January 2022 as practicable.

The Board encourages Members to vote.

How to vote:

Practitioner Members (including Inactive), Life Members, and Fellow Members can vote by:

- Voting at the AGM on November 15th ;
- or by completing and returning a proxy form by 3pm Saturday November 13th

A member who is entitled to attend and vote may appoint another member who is similarly entitled to attend and vote, or the Chair, to vote on their behalf.

Notice of appointment by proxy shall be on the approved Proxy Form, signed and lodged with katrinas@financialadvice.nz no later than 48 hours prior to the start of the meeting. A Member attending can only carry one proxy vote on behalf of another Member. The Chair can have unlimited proxy votes.



Proposed Constitution

Contacts and more information

If you need further information ahead of the AGM, please email constitution@financialadvice.nz

or feel free to contact the CEO Katrina Shanks
Katrinas@financialadvice.nz 0800 432 101