



**Russell Kennedy**  
Lawyers

**FINANCIAL COUNSELLING AUSTRALIA  
LIMITED**

**(formerly Financial Counselling Australia  
Incorporated)**

ACN 073 167 361  
ABN 67 073 167 361



## **CONSTITUTION**

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A public company limited by guarantee under the  
*Corporations Act 2001* (Cth)

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**FINANCIAL COUNSELLING AUSTRALIA LIMITED**  
(formerly Financial Counselling Australia Incorporated)

ACN 073 167 361  
ABN 67 073 167 361

**CONSTITUTION**

**1 PURPOSES OF THE COMPANY**

**1.1 Principal Purpose**

The Principal Purpose of the Company is to improve the provision of benevolent, charitable relief to Consumers in Vulnerable Circumstances by:

- 1.1.1 increasing access to Financial Counselling by promoting the development of Financial Counselling Services for Consumers in Vulnerable Circumstances that are adequately funded, delivered without Conflict of Interest and are Free of Charge;
- 1.1.2 providing a national voice for Financial Counsellors;
- 1.1.3 ensuring that funding for Financial Counselling Services is secured and maintained in order to assist Consumers in Vulnerable Circumstances;
- 1.1.4 working collaboratively with State/Territory Associations to maintain high professional standards in the delivery of Financial Counselling Services by providing training, support, information and resources for Financial Counsellors; and
- 1.1.5 developing, responding to and promoting proposals for fair credit, debt and marketplace practices, laws and policies using social justice principles for the benefit of Consumers in Vulnerable Circumstances.

**1.2 Supporting Purposes**

In support of the Principal Purpose, the Supporting Purposes of the Company are to:

- 1.2.1 raise the profile of Financial Counselling Services so that Consumers in Vulnerable Circumstances, policy makers and the broader community are aware of the existence of Financial Counselling and its benefits;
- 1.2.2 advocate for the fair treatment of Consumers in Vulnerable Circumstances;
- 1.2.3 advocate for the provision of Financial Counselling Services in areas where they are currently not available or are extremely limited;
- 1.2.4 support State/Territory Associations, particularly those without any government funding, in their roles;
- 1.2.5 coordinate the delivery of the National Debt Helpline, including the associated website;
- 1.2.6 support not-for-profit community organisations and workers providing Financial Literacy services to individuals and groups by providing training, developing resources and sharing information;

- 1.2.7 support rural financial counsellors by providing training, support and the sharing of information;
- 1.2.8 provide such other services or advice for the public benefit to assist in the relief of disadvantage and improve Financial Literacy; and
- 1.2.9 do all lawful things consistent with, necessary or desirable to support and further the Principal Purpose.

### **1.3 Company powers as a body corporate**

- 1.3.1 Solely to carry out the Purposes, the Company may, in any manner permitted by the Act:
  - (a) exercise any power;
  - (b) take any action; and
  - (c) engage in any conduct or procedure,

which under the Act a public company limited by guarantee may exercise, take or engage in if authorised by its constitution.
- 1.3.2 Without limiting clause 1.3.1, the Company may pursue the Purposes by:
  - (a) raising money to further the Purposes and secure sufficient funds to pursue the Purposes; and
  - (b) receiving any funds and applying those funds in a manner that best attains the Purposes.

## **2 NOT-FOR-PROFIT NATURE OF THE COMPANY**

### **2.1 Income applied for the Purposes**

- 2.1.1 The income and property of the Company:
  - (a) must be applied solely towards the Purposes; and
  - (b) must not be paid or given to a Member (other than an Eligible Organisation to pursue purposes similar to the Purposes), directly or indirectly, by way of dividend, bonus or otherwise.
- 2.1.2 Clause 2.1.1 does not prevent the Company from paying a Member or Officer a reasonable and proper amount with the Board's prior approval in good faith for goods or services supplied to the Company.

### **2.2 Charitable purposes**

If the Company is a registered charity under the ACNC Act then despite anything to the contrary in this Constitution, the Company is established:

- 2.2.1 solely to be a not-for-profit, charitable and benevolent institution; and
- 2.2.2 to pursue not-for-profit, charitable and benevolent Purposes in Australia only.

## 2.3 Winding up

Subject to clause 2.4, the Company's surplus assets, after satisfying all liabilities on wind up or dissolution:

2.3.1 must not be paid or given to Members or former Members (unless the Member is an Eligible Organisation to which clause 2.3.2 applies); and

2.3.2 must be paid to one or more Eligible Organisations which:

- (a) have purposes similar to the Purposes;
- (b) have charitable and benevolent purposes similar to the Purposes if the Company had been a registered charity under the ACNC Act;
- (c) are registered under the ACNC Act if the Company had been;
- (d) are income tax exempt under the ITAA if the Company had been; and
- (e) are selected at or before wind up or dissolution by:
  - (1) special resolution of the Members;
  - (2) failing clause 2.3.2(e)(1), by resolution of the Board;
  - (3) failing clause 2.3.2(e)(2), by application to the Victorian Supreme Court.

## 2.4 Surplus gifts

If the Company is not required to maintain a gift fund, on winding up of the Company or revocation of the Company's deductible gift recipient endorsement (whichever is the earlier), any surplus gifts, fundraising contributions or money received because of them as set out in section 30-125(6)(b) of the ITAA must be transferred to one or more funds, authorities or institutions determined according to clause 2.3.2 which is also endorsed as a deductible gift recipient on the same basis as the Company.

# 3 MEMBERSHIP

## 3.1 Limited liability of Members / guarantee

3.1.1 A Member's liability is limited to the guaranteed amount in clause 3.1.2.

3.1.2 If the Company is wound up, each Member and former Member in the previous year must contribute up to ten dollars (\$10) towards:

- (a) the Company's liabilities contracted before the Organisation ceased to be a Member; and
- (b) costs, charges and expenses to wind up and adjust the rights of the contributories among themselves.

### **State/Territory Association Members**

The Members of the Company comprise State/Territory Associations. On the date Financial Counselling Australia Inc becomes a company, the Members are:

- 3.1.3 Financial Counsellors A.C.T Inc;
- 3.1.4 Financial Counsellors Association of NSW Inc;
- 3.1.5 Money Workers Association of the Northern Territory Incorporated;
- 3.1.6 Financial Counsellors' Association of Queensland Inc;
- 3.1.7 The South Australian Financial Counsellors Association Inc;
- 3.1.8 Financial Counselling Tasmania Inc;
- 3.1.9 Financial and Consumer Rights Council Inc [Victoria]; and
- 3.1.10 Financial Counsellors Association of Western Australia Inc.

## 3.2 Major Policy Issues

The Members of the Company must not act in a manner which prejudices the Company's position on Major Policy Issues adopted by the Board on the advice of the Representative Council.

## 3.3 Rights not transferrable

An Organisation's membership rights and privileges:

- 3.3.1 apply only whilst the Organisation is a Member; and
- 3.3.2 may not be transferred or transmitted.

## 3.4 Membership period / subscription fees

The Board may determine all aspects of fees payable by Members, including subscription amounts and due dates.

## 3.5 Representatives

- 3.5.1 A Member must appoint a representative in accordance with Part 2G.2 Division 6 of the Act. The representative should be:
  - (a) an Accredited Financial Counsellor; and
  - (b) one person nominated by the Member to the Representative Council under clause 5.2.1.
- 3.5.2 The Company will ask Members to confirm their representative 21 days' before any general meeting which will consider special business.

## 3.6 Register of Members

The Company must maintain a register of Members in accordance with the Act and the ACNC Act.

## 3.7 Change of Member details

A Member must notify the Company if the Member's addresses for notices change within 28 days of the change.

## 4 BECOMING AND CEASING TO BE A MEMBER

### 4.1 Admission of Members

The Board may admit in its absolute discretion a State/Territory Association upon application to the Board.

### 4.2 Resignation of Members

A Member may resign as Member by written notice to the Company.

### 4.3 Ceasing to be a Member

An Organisation automatically ceases to be a Member if the Organisation:

- 4.3.1 has not paid the annual membership subscription for 3 months after the due date; or
- 4.3.2 becomes insolvent, enters into liquidation or has a controller appointed (or similar).

### 4.4 Disciplining Members

The Board may at any time terminate an Organisation's Membership or warn, fine, censure, suspend or expel a Member if the Member:

- 4.4.1 engages in Terminable Conduct, subject to:
  - (a) the decision being made by two-thirds majority of all Directors whether or not they are all present and voting;
  - (b) the Member being afforded at least 21 days' notice and a reasonable opportunity to respond to the Board's allegations; and
  - (c) the Member may appeal to the Members in general meeting; or
- 4.4.2 refuses or neglects to comply with the provisions of this Constitution.

## 5 REPRESENTATIVE COUNCIL

### 5.1 Purpose

There is established a Representative Council which is responsible for:

- 5.1.1 providing advice to the Board about the Company's strategy and Major Policy Issues for adoption by the Company;
- 5.1.2 bringing State/Territory Association views to Major Policy Issues; and
- 5.1.3 electing the Financial Counsellor Directors to the Board.

### 5.2 Structure of Representative Council

The Representative Council will comprise:

- 5.2.1 up to 2 representatives for each Member, unless the Member represents multiple States/Territories in which case it may also nominate one additional representative for each additional State/Territory the Member represents;

- (a) one representative per Member must be the President for the time being of the Member;
- (b) the other(s) must be an Accredited Financial Counsellor nominated in writing by the Member;
- (c) if a Member representing more than one State/Territory wishes to exercise its right to nominate a representative for an additional State/ Territory it represents (a State or Territory other than its place of origin), the Member must facilitate the selection of that representative by those of its members resident in that other State/ Territory; or
- (d) if a State/Territory is not represented by any Member — those representatives must be Accredited Financial Counsellors ordinarily residing in that State/Territory appointed by the Representative Council;

5.2.2 the Chair of the Board, who shall chair the Representative Council but has no right to vote;

5.2.3 one Director who is not the Chair nominated by the Board, who shall have the right to attend but not the right to vote; and

5.2.4 the Company's Chief Executive Officer, who shall have the right to attend but not the right to vote.

### 5.3 Accredited Financial Counsellor's term on the Representative Council

5.3.1 An Accredited Financial Counsellor will be a member of the Representative Council under clause 5.2.1(b) or 5.2.1(c) for two calendar years. The Accredited Financial Counsellor is eligible to be renominated under clause 5.2.1(b) or 5.2.1(d).

5.3.2 Despite clause 5.3.1, the term of inaugural members of the Representative Council under clause 5.2.1(b) will continue until 31 December 2018.

### 5.4 Alternates

If a Representative Council member under clause 5.2.1 is unable to attend a meeting of the Representative Council, he or she may appoint an alternate to attend in his or her place.

### 5.5 Ceasing to be on the Representative Council

5.5.1 A Representative Council member under clause 5.2.1(a) ceases to be on the Representative Council if he or she ceases to be the President for the time being of the Member.

5.5.2 A Representative Council member under clause 5.2.1(b) or 5.2.1(d) ceases to be on the Representative Council if he or she:

- (a) is elected to the Board; or
- (b) ceases to be an Accredited Financial Counsellor.

### 5.6 Casual vacancy of Accredited Financial Counsellor

If a casual vacancy occurs for an Accredited Financial Counsellor under clause 5.2.1(b) or 5.2.1(d), the relevant Member or the Representative Council respectively, may nominate another eligible individual to fill that casual vacancy. The individual nominated will serve only for the balance of the term of the Accredited Financial Counsellor determined under clause 5.3.

## **5.7 Number of meetings**

The Representative Council must meet at least 2 times per year when convened by the Board. One of the meetings must be no earlier than 2 months before the annual general meeting.

## **5.8 Notice of meeting**

5.8.1 The Board must give at least 30 days' notice of any Representative Council meeting.

5.8.2 The notice must specify the business to be transacted.

## **5.9 Quorum**

5.9.1 The quorum for a Representative Council meeting will be representatives on the Representative Council holding 75% of all Representative Council votes.

5.9.2 If a Representative Council meeting is adjourned due to lack of quorum, the Chair must set a further date for the adjourned meeting.

## **5.10 Meeting chair**

5.10.1 The Chair must chair a Representative Council meeting. If the Chair is absent, the Board's nominee under clause 5.2.3 may chair.

5.10.2 In the absence of the Chair or a Board nominee under clause 5.2.3, the Representative Council's voting members may appoint a meeting chair from among their number.

## **5.11 Voting**

5.11.1 Each State/Territory represented on the Representative Council shall have 2 votes. If the Member's 2 representatives attend, each representative has one vote. If only one Member representative attends, that representative has 2 votes.

5.11.2 The meeting chair does not have a deliberative or casting vote.

5.11.3 For Major Policy Issues, representatives on the Representative Council holding 75% of all Representative Council votes must be in favour. All other matters are decided by simple majority of votes.

## **5.12 Record of meeting**

The Chair will arrange to distribute a record of meeting for the Representative Council as soon as reasonably possible after the relevant meeting is held.

# **6 GENERAL MEETINGS**

## **6.1 Convening meetings — annual / special**

6.1.1 General meetings other than annual general meetings are called special general meetings.

6.1.2 The Board must convene and hold annual and special general meetings of the Members if required by the Act and the ACNC Act.

- 6.1.3 The Board or 3 Directors comprising at least 1 Financial Counsellor Director and 1 Appointed Director may convene special general meetings of the Members.

## **6.2 Ordinary and special business**

- 6.2.1 The ordinary business of an annual general meeting is to:
- (a) consider the Board's, financial and auditor's report;
  - (b) declare the Director election results from the Representative Council;
  - (c) appoint an auditor if that office has or will become vacant at the meeting; and
  - (d) consider any other matter required by the Act or the ACNC Act.
- 6.2.2 Special business means:
- (a) for an annual general meeting — business which is not ordinary business according to clause 6.2.1; and
  - (b) for a special general meeting — all business specified in the notice of meeting.
- 6.2.3 The notice of meeting must specify the general nature of any special business, unless the Act or the ACNC Act requires otherwise.

## **6.3 Notice of meeting**

- 6.3.1 At least 21 days' notice of any general meeting must be given specifying the place, date and time of the meeting, unless section 249H(2) of the Act or the ACNC Act requires or permits some other period of notice.
- 6.3.2 Notice of every general meeting must be given in writing in accordance with clause 10.6 to every Director, Member and the Company's auditor, and no-one else.
- 6.3.3 A general meeting and any resolution passed at the meeting is not invalid merely because of:
- (a) the accidental omission to give notice of the meeting; or
  - (b) the non-receipt of any such notice.

## **6.4 Postponement**

- 6.4.1 The Board may postpone, relocate or cancel a general meeting which it convened by giving at least 5 days' notice to the Members.
- 6.4.2 Clause 6.4.1 does not apply to a meeting requisitioned by Members or convened by the Members, by individual Directors under clause 6.1.3 or by court order.

## **6.5 Quorum**

- 6.5.1 A general meeting may not transact business unless a quorum is present when the meeting proceeds to business.
- 6.5.2 The quorum for general meetings is 5 Members present by representative or by proxy.
- 6.5.3 If a quorum is not present within half an hour of the time scheduled to start the general meeting:
- (a) the meeting, if requisitioned by Members, is dissolved; and
  - (b) in any other case, the meeting is adjourned to such other place, date and time as the Board determines and notifies to Members (if required to do so by clause 6.7).
- 6.5.4 If a quorum is not present within 30 minutes from the scheduled time to start the adjourned meeting, the meeting is dissolved.

## **6.6 Meeting chair**

- 6.6.1 The Chair may chair a general meeting.
- 6.6.2 If the Chair is not present and willing to act:
- (a) the Directors present may choose one of their number to chair the meeting;
  - (b) if no Director is present, or if all the Directors present decline to chair, the Members present must choose one of their number to chair.
- 6.6.3 In addition to powers conferred by law, the meeting chair may:
- (a) determine the meeting's conduct and procedures to ensure proper and orderly discussion or debate;
  - (b) make rulings without putting a question to the vote, or terminate discussion or debate and require that matter to be put to a vote;
  - (c) refuse to allow debate or discussion on any matter which is not ordinary or special business; and
  - (d) refuse any person admission to a general meeting (including for causing offence or disruption), or expel the person from the general meeting and not permit them to return.
- 6.6.4 All procedural decisions by the meeting chair are final.

## **6.7 Adjournment**

- 6.7.1 The meeting chair:
- (a) may, with the consent of any general meeting at which a quorum is present; and
  - (b) must, if so directed by the meeting,

adjourn the meeting to some other time or place.

6.7.2 The adjourned meeting may only transact unfinished business from the original meeting.

6.7.3 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as required for the original meeting. It is not otherwise necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **6.8 Voting**

Voting must be carried out in accordance with section 250J, 250K, 250L and 250M of the Corporations Act.

## **6.9 Proxies**

6.9.1 A Member may appoint a proxy to act on the Member's behalf at any general meeting at which that Member may attend and vote in accordance with section 250A and 250B.

6.9.2 Despite clause 6.9.1 the instrument appointing a proxy must be lodged with the Company at least 24 hours before the time for holding the meeting or adjourned meeting.

## **6.10 Use of technology**

General meetings may be held at more than one place, provided that the technology that is used enables each Member present at all places the meeting is held to clearly and simultaneously communicate with every other such Member.

## **6.11 Circular resolution**

The Board may if it thinks fit submit any question or resolution to the vote of all Members entitled to a vote at a general meeting by circular resolution, unless the Act or the ACNC Act requires a special or ordinary resolution to be passed at a general meeting.

# **7 BOARD**

## **7.1 Structure of Board / Number of Directors**

The Board will comprise 7 Directors as follows:

7.1.1 4 directors elected by the Representative Council in accordance with clause 7.2 ("**Financial Counsellor Directors**"); and

7.1.2 3 directors appointed by the Board in accordance with clause 7.3 ("**Appointed Directors**").

## **7.2 Election of Financial Counselling Directors**

7.2.1 Nominations of candidates for election as a Financial Counselling Director must be in a form determined by the Board, signed by the candidate, and contain a consent to act as a Director signed by the candidate, and must be received at least 28 days before the Representative Council meeting that precedes the annual general meeting.

- 7.2.2 The Representative Council will otherwise determine its procedure for electing the Financial Counsellor Directors.

### **7.3 Appointment of Directors**

- 7.3.1 The Nominations Committee must recommend candidates to be appointed as Appointed Directors on the basis of their skills, background and expertise deemed necessary or desirable by the Board (including, without limitation, to complement the Financial Counsellor Directors) for the effective operation of the Board.
- 7.3.2 The Board may appoint Appointed Directors after considering the recommendations from the Nominations Committee.

### **7.4 Eligibility to be a Director**

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

- 7.4.1 in the case of Financial Counsellor Directors — is an Accredited Financial Counsellor;
- 7.4.2 in the case of a Financial Counsellor Director who is the President of his or her State/Territory Association — will resign that Presidency while he or she is on the Board;
- 7.4.3 in the case of Appointed Directors — must not be an Accredited Financial Counsellor;
- 7.4.4 is over the age of 18 years;
- 7.4.5 consents in writing to become a Director;
- 7.4.6 is not prohibited or disqualified or otherwise prevented from being a director of a company under the Act or a responsible person of a registered charity under the ACNC Act; and
- 7.4.7 is not an employee of the Company or an employee of a Member.

### **7.5 Limits on period of office as a Director**

- 7.5.1 A Financial Counsellor Director who has served 9 years (including casual vacancies) or three full terms continuously will not become eligible to stand for election or to fill a casual until the election of Financial Counsellor Directors by the Representative Council in the year after his or her term of office expired.
- 7.5.2 An Appointed Director cannot hold office for more than 9 years continuously and will not be eligible for appointment until one year after his or her term of office expired.

### **7.6 Term of office of Directors**

- 7.6.1 A Financial Counsellor Director holds office:
- (a) from immediately after the annual general meeting at which his or her election was declared;

- (b) until the end of the third annual general meeting after the one at which his or her election was declared, but may then be re-elected subject to clause 7.5.1.

7.6.2 An Appointed Director holds office:

- (a) from the date he or she is appointed by the Board;
- (b) for a term of three years, subject to clause 7.6.3, but may then be re-appointed subject to clause 7.5.2.

7.6.3 The Board may appoint an Appointed Director for a shorter term than under clause 7.6.2 if the Board so determines at the time of appointment.

## **7.7 Staggering of Financial Counsellor Director Terms**

To stagger Financial Counsellor Director terms:

7.7.1 2 will be declared elected at the 2016 annual general meeting;

7.7.2 1 will be declared elected at the 2017 annual general meeting; and

7.7.3 1 will be declared elected at the 2018 annual general meeting.

## **7.8 Casual vacancies**

7.8.1 If a casual vacancy occurs for any Financial Counsellor Director office, the Board may appoint another individual eligible under clause 7.4 in his or her place until the end of the next annual general meeting. The Representative Council must then elect an individual to fill the Financial Counsellor Director in accordance with clause 7.2 who will serve the term set out in clause 7.6.1.

7.8.2 The Board may continue to act despite vacancies on the Board. However, if there are less than 4 Directors, the Board may only:

- (a) act in the case of emergencies;
- (b) appoint individuals to fill casual vacancies as Financial Counsellor Directors or appoint Appointed Directors; or
- (c) convene a general meeting.

## **7.9 Office bearers**

7.9.1 The Board must elect a Chair of the Board.

7.9.2 The Board may elect such other office bearers of the Board as the Board determines.

## **7.10 Resignation of Directors**

7.10.1 A Director may resign as Director by written notice to the Company.

7.10.2 The resignation takes effect when the Company receives the Director's notice or on a later date specified in the notice.

## **7.11 Ceasing to be a Director**

7.11.1 The Members may remove any Director in accordance with the Act.

7.11.2 A directorship automatically ceases if the Director:

- (a) dies or is physically incapable of fulfilling his or her duties as a Director;
- (b) ceases to be eligible to be a Director;
- (c) becomes disqualified from being a director pursuant to the Act or ACNC Act;
- (d) is absent for 2 consecutive Board meetings (excluding emergency Board meetings) without permission of the Chair from Board meetings held during that period;
- (e) becomes a bankrupt or makes any arrangement or composition with personal creditors generally; or
- (f) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.

## **7.12 Director remuneration and reimbursements**

The Directors are not entitled to any fees or remuneration for undertaking the ordinary duties of a Director. However, despite clause 2.1.1:

7.12.1 the Directors may be reimbursed for reasonable travel and other expenses incurred by them when engaged in the Company's business, attending meetings or otherwise in carrying out the duties of a Director where payment does not exceed any amount previously approved by the Board; and

7.12.2 the Directors may be paid for any service rendered to the Company in a professional or technical capacity outside the scope of the ordinary duties of a Director where:

- (a) the service and amount payable is on reasonable and proper terms; and
- (b) the provision of that service has the Board's prior approval.

# **8 BOARD POWERS**

## **8.1 Management vests in Board**

8.1.1 The Board is responsible for the governance, business and affairs of the Company. In addition to the specific powers conferred on the Board by this Constitution, the Board may exercise all the Company's powers which are not by the Act, the ACNC Act or this Constitution required to be exercised by the Members in general meeting.

8.1.2 The powers under clause 8.1.1 are subject to:

- (a) this Constitution;

- (b) the Act and the ACNC Act; and
- (c) such resolution, not being inconsistent with those provisions, as may be passed by the Members in general meeting.

8.1.3 If the Representative Council resolves to provide advice to the Board on a Major Policy Issue, the Board must consider that advice at its next Board meeting and then proceed to adopt a position for the Company on the Major Policy Issue.

8.1.4 A resolution under clause 8.1.2 does not invalidate any prior act of the Board which would have been valid before the resolution was passed or made.

## **8.2 Power to delegate**

8.2.1 The Board may delegate its powers and functions in writing to:

- (a) an officer or employee of the Company; or
- (b) a committee under clause 9.12 or 9.13.

8.2.2 The Board may amend or revoke the terms of its delegation at any time.

## **8.3 Power to appoint Chief Executive Officer**

8.3.1 The Board may appoint a Chief Executive Officer on such terms and conditions as the Board determines from time to time.

8.3.2 The Board may remove a Chief Executive Officer, subject to the terms of any agreement between the Company and the Chief Executive Officer.

8.3.3 The Chief Executive Officer is entitled to attend Board meetings and general meetings, and must do so if so directed by the Board from time to time.

8.3.4 The Chief Executive Officer will have the responsibilities determined by the Board.

## **8.4 Power to appoint Secretary**

8.4.1 The Board must appoint at least one Secretary on such terms and conditions as the Board determines from time to time.

8.4.2 A Secretary may attend Board meetings and general meetings, if so directed by the Board from time to time.

8.4.3 The Secretary will have the responsibilities set out in the Act and the ACNC Act.

# **9 BOARD MEETINGS**

Subject to this clause 9, the Board may meet to consider business, adjourn and otherwise regulate its meetings as it thinks fit.

## **9.1 Number of meetings**

The Board must meet at least 6 times per year.

## **9.2 Convening meetings**

The Secretary must arrange a Board meeting:

- 9.2.1 at the request of the Chair; or
- 9.2.2 on the requisition of 3 Directors comprising at least 1 Financial Counsellor Director and at least 1 Appointed Director.

## **9.3 Notice of meeting**

- 9.3.1 At least 5 days' notice of any Board meeting must be given unless the Board decides otherwise or in emergencies.
- 9.3.2 The notice must specify the business to be transacted. The Board may only transact business of a routine nature unless notice of any other business has been given either in the notice convening the meeting or in some other notice given at least 3 days' before the meeting, unless the Board decides otherwise or in emergencies.
- 9.3.3 The decision of the meeting chair as to whether business is routine is conclusive.

## **9.4 Quorum**

- 9.4.1 Subject to clause 7.13, the quorum for a Board meeting is 2 Financial Counsellor Directors and 2 Appointed Directors. A meeting at which a quorum is present may exercise all powers and discretions of the Board.
- 9.4.2 If a Board meeting is adjourned due to lack of quorum, the Chair must set a further date for the adjourned meeting.

## **9.5 Chair**

- 9.5.1 The Chair may chair a Board meeting.
- 9.5.2 In the absence of the Chair, the Directors may appoint a meeting chair from among their number.

## **9.6 Voting**

- 9.6.1 A resolution of the Board is passed if 2 Financial Counsellor Directors and 2 Appointed Directors vote in favour.
- 9.6.2 Each Director present and entitled to vote at a Board meeting has one vote. Proxy voting and alternate Directors are not permitted.

## **9.7 Use of technology**

The Board may hold a technology enabled meeting if:

- 9.7.1 all Directors (other than any Director on leave of absence) have access to the technology to be used for the meeting; and
- 9.7.2 those Directors participating by technological means can hear, or can hear and read the communications of all other participating Directors.

**9.8 Circulating resolutions**

- 9.8.1 A written resolution signed or approved by technological means (other than any Director on leave of absence) is taken to be a decision of the Board passed at a Board meeting convened and held.
- 9.8.2 The written resolution may consist of:
- (a) several documents in the same form, each signed by one or more Directors and, such a resolution takes effect when the last Director signs such a document; or
  - (b) permanent records indicating the identity of each Director, the text of the resolution and the Director's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect when the last Director indicates his or her approval.

**9.9 Conflicts and personal interests**

- 9.9.1 A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors written notice of the interest unless the ACNC Act or section 191(2) of the Act require otherwise.
- 9.9.2 A Director who has a material personal interest in a matter that is being considered by the Board must not be present while the matter is being considered, or vote on the matter, unless permitted to do so under the ACNC Act or section 195 of the Act.

**9.10 Minutes**

- 9.10.1 The Board must ensure that minutes of all proceedings of general, Board, committee meetings (and meetings of any other College entity) are recorded in a minute book (which may be kept electronically) within one month after the relevant meeting is held.
- 9.10.2 The minutes must be signed (including electronically) by the meeting chair at which the proceedings took place or by the meeting chair of the next succeeding meeting.
- 9.10.3 Minutes entered and signed are prima facie evidence of the proceedings to which they relate.

**9.11 Validity of acts / procedural defects**

- 9.11.1 An act or decision of the Board will not be invalid by reason only of a defect or irregularity in connection with the election or appointment of a Director.
- 9.11.2 For entered and signed minutes, unless the contrary is proved:
- (a) the meeting is deemed to have been convened and held;
  - (b) all proceedings that are recorded in the minutes as having taken place are deemed to have taken place; and
  - (c) all appointments that are recorded in the minutes as having been made are deemed to have been validly made.

**9.12 Board's power to establish committees**

The Board may establish committees as follows:

- 9.12.1 a committee will comprise 2 or more committee members, of which at least one must be a Director;
- 9.12.2 the committee members otherwise need not be a Director or Member;
- 9.12.3 the committee has the purpose set out in its charter approved by the Board, and may undertake the powers and functions delegated to it by the Board; and
- 9.12.4 in the absence of any provision in the committee charter, meetings and proceedings of any committee are governed by the provisions of clause 9.

**9.13 Standing committees**

The following standing committees are established under this Constitution:

- 9.13.1 finance, audit and risk management committee; and
- 9.13.2 nominations Committee under clause 7.3.

**10 ADMINISTRATION****10.1 Change of name**

- 10.1.1 The Members may change the Company's name by special resolution in accordance with the Act.
- 10.1.2 Despite clause 10.1.1, the Board may apply under the Act to omit "Limited" from its name.

**10.2 Amendment of Constitution**

- 10.2.1 The Members may amend this Constitution by special resolution in accordance with the Act and the ACNC Act.
- 10.2.2 If the Company is registered under the ACNC Act, a special resolution under clause 10.2.1 does not take effect if it would cause the Company to lose its entitlement to registration under the ACNC Act.

**10.3 Accounts**

The Board must cause:

- 10.3.1 proper accounting and other records to be kept in accordance with the requirements of the Act and the ACNC Act, and
- 10.3.2 financial statements to be made and laid before each annual general meeting as required by the Act and the ACNC Act.

**10.4 Audits**

A properly qualified auditor must be appointed and the auditor's duties regulated in accordance with the requirements of the Act and the ACNC Act.

## 10.5 Records and inspection

A Member (other than a Director) is not entitled to inspect any document of the Company, except as provided by law or authorised by the Board.

## 10.6 Service of notices

10.6.1 Notices must be in writing and may be given by the Company to any Member:

- (a) in person;
- (b) by sending it by post to the Member at the Member's registered address; or
- (c) by sending it to the address, facsimile number, e-mail address or other address supplied for receiving notices.

10.6.2 A notice sent by post is deemed to have been given 5 business days after it was posted. A notice sent by fax, or by other electronic means, is deemed to have been given on the next business day after it was sent.

## 10.7 Indemnity of officers

10.7.1 To the Relevant Extent, the Company indemnifies current and former Officers out of its assets against any Liability incurred by the Officer in or arising out of:

- (a) the conduct of the Company's affairs or business; or
- (b) the discharge of the Officer's duties,

unless the Liability arises out of conduct involving a lack of good faith.

10.7.2 To the Relevant Extent, the Company may execute any deed in favour of any current or former Officer to confirm the indemnities conferred by clause 10.7.1 in relation to that person to the extent the law does not preclude the Company from doing so.

10.7.3 Clause 10.7.1 applies whether or not any deed is executed under clause 10.7.2.

10.7.4 In this clause 10.7 and clause 10.8:

- (a) "**Liability**" includes cost, charge, loss, damage, expense or penalty; and
- (b) "**To the Relevant Extent**" means to the extent the Company is not precluded from doing so by law (including the Act).

## 10.8 Insurance

To the Relevant Extent:

10.8.1 the Company may pay or agree to pay premiums for directors and officers insurance to insure current or former Officers against any Liability incurred by the Officer in or arising out of:

- (a) the conduct of the Company's affairs or business; or

(b) the discharge of the Officer's duties; and

10.8.2 the Company may execute any deed in favour of any current or former Officer to take out insurance referred to in clause 10.8.1, on such terms as the Board considers appropriate.

## 10.9 Company seal

10.9.1 The Board will determine whether or not the Company is to have a common seal and, if so, will provide for the safe custody of such seal.

10.9.2 The common seal, if any, of the Company may only be affixed to any instrument with the authority of the Board.

10.9.3 The affixing of the common seal must be attested by the signatures of persons authorised by the Board for that purpose.

## 10.10 Definitions

In this Constitution:

**"Accredited Financial Counsellor"** means a Financial Counsellor who is an accredited member of a State/Territory Association that is a Member of the Company;

**"ACNC Act"** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) but only if the Company is a registered charity under that Act;

**"Act"** means the *Corporations Act 2001* (Cth);

**"Appointed Director"** means a Director appointed for the purposes of clause 7.1.2;

**"Board"** means the board of Directors of the Company with a quorum to transact business;

**"Chair"** means the Director and office bearer under clause 7.9.1;

**"Chief Executive Officer"** means the person appointed under clause 8.3;

**"Company"** means the company named on page 1 of this Constitution;

**"Conflict of Interest"** means a person's personal interests or duty to one person (eg another organisation, the Company or a client) conflicts with their responsibility to act in the best interests of another person, and includes any situation which does or is likely to restrict the integrity of a person (including a Financial Counsellor, Financial Counselling Agency, State/Territory Association or the Company) to give advice to Consumers in Vulnerable Circumstances or which does, or is likely to, result in the person being unable to fully support the Purposes;

**"Constitution"** means this constitution of the Company;

**"Consumers in Vulnerable Circumstances"** means individuals who are in financial difficulty due to circumstances such as unemployment, sickness, family breakdown, poverty or over-commitment, and in particular includes persons with low income;

**"Director"** means an individual for the time being who performs the role of director of the Company;

**"Eligible Organisation"** means an Organisation which:

(a) has purposes which include purposes similar to the Purposes;

- (b) applies its income and assets solely towards its purposes referred to in paragraph (a);
- (c) prohibits its income and assets from being distributed to its Members (unless they are Eligible Organisations) on a winding up;

**“Financial Counselling Agency”** means an agency which offers Financial Counselling to Consumers in Vulnerable Circumstances and complies with the requirements set out in ASIC Class Order 03/1063 and Regulation 20(5) of the National Consumer Credit Protection Regulations 2010 (Cth);

**“Financial Counselling Services”** means counselling and advocacy service provided predominantly for the purposes of assisting Consumers in Vulnerable Circumstances Free of Charge and free of Conflicts of Interest;

**“Financial Counsellor”** means an individual who provides Financial Counselling Services to Consumers in Vulnerable Circumstances;

**“Financial Counsellor Director”** means a Director elected for the purposes of clause 7.1.1;

**“Financial Literacy”** means a combination of financial knowledge, skills, attitudes and behaviours necessary to make sound financial decisions, based on personal circumstances, to improve financial wellbeing;

**“Free of Charge”** means:

- (a) Consumers in Vulnerable Circumstances do not pay any fees or charges to access Financial Counselling Services; and
- (b) the Financial Counselling Services are provided by a Financial Counselling Agency;

**“ITAA”** means the *Income Tax Assessment Act 1997* (Cth);

**“Major Policy Issue”** means a Financial Counselling policy issue that would materially affect the State/Territory Associations and/or would need to be implemented through the State/Territory Associations;

**“Member”** means an Organisation who is a member of the Company pursuant to clauses 3 and 4;

**“Officer”** has the meaning given in the Act;

**“Organisation”** means an incorporated association, company or other body corporate;

**“Principal Purpose”** means the principal purposes set out in in clause 1.1;

**“Purposes”** means the Principal Purpose and the Supporting Purposes;

**“Representative Council”** means the representative council established under clause 5;

**“Secretary”** means a secretary appointed under clause 8.4;

**“State/Territory”** means:

- (a) a State of the Commonwealth of Australia; or

- (b) a Territory of the Commonwealth of Australia with a population in excess of 200,000;

**“State/Territory Association”** means a financial counselling association for a particular state or territory:

- (c) whose members comprise the majority of Financial Counsellors in the relevant state or territory; and
- (d) whose Financial Counsellor members provide support to Consumers in Vulnerable Circumstances in the paramount interest of those Consumers;

**“Supporting Purposes”** means the supporting purposes set out in clause 1.2; and

**“Terminable Conduct”** means conduct of a Member which, in the reasonable opinion of the Board:

- (a) is, has been or will be prejudicial to the Company’s interests or the Company’s position in respect of Major Policy Issues;
- (b) is not a fit and proper Organisation; or
- (c) is unbecoming of Members.

#### **10.11 Interpretation rules**

Unless the contrary intention appears in this Constitution:

- 10.11.1 a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- 10.11.2 a Member is to be taken to be present at a general meeting if the Member’s representative is present in person, or if the Member is present by proxy or attorney.

#### **10.12 Application of Act**

- 10.12.1 This Constitution is to be interpreted subject to the Act. However, the rules that apply as replaceable rules to companies under the Act do not apply to the Company.
- 10.12.2 Unless the contrary intention appears, a word or expression in a clause that is defined in section 9 of the Act has the same meaning in this Constitution as in that section.

#### **10.13 Application of ACNC Act**

This Constitution is to be interpreted subject to the ACNC Act, but only if the Company is a registered charity under that Act.