



# By-Laws of the Profession of Independent Advisers Limited

Version 1.0 18 August 2019

*Profession of Independent Advisers Limited | PHILLIP ACT  
2606*

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## 1. PRELIMINARY

### Commencement

1. These By-Laws shall commence on 1 July 2019 unless a later effective date is expressed in a particular clause.

### Authority

2. These By-Laws are made by the Board of the Profession of Independent Financial Planners Limited ACN 141 934 732 under clause 60 of the Constitution and are binding on the Company and its members.

### Definitions

3. Where commencing with a capital letter:
  - a) **Act** means the *Corporations Act 2001* (Cth);
  - b) **ASIC** means the Australia Securities and Investments Commission.
  - c) **Authorised Representative** of a financial services licensee has the meaning given in section 761A of the Act, affected by sub-clause 4.2 (c) and (d) of these By-Laws.
  - d) **Board** means the Company Board.
  - e) **Company** means the Profession of Independent Financial Planners Limited ACN 141 934 732
  - f) **Constitution** means the Company Constitution.
  - g) **Corporations Act** means the Corporations Act 2001 (Cth) as amended.
  - h) **Financial Adviser Register** means the Register of Relevant Providers maintained by ASIC under section 922A of the Act
  - i) **Member** means an individual admitted to membership of the Company by the Board under clause 9 of the Constitution.
  - j) **Schedule** means a schedule forming part of these By-Laws.
  - k) **relevant financial products** means financial products other than:
    - i. basic banking products; or
    - ii. general insurance products; or
    - iii. consumer credit insurance; or
    - iv. a combination of any of those products.

### Interpretation

4. Where a word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
5. Unless the context otherwise requires, a word which denotes:
  - a) the singular includes the plural and vice versa;
  - b) each gender includes the other genders;

- c) the reference to persons includes a natural person and any partnership, association, body, an authority or entity whether incorporated or not;
  - d) references to a person includes the legal personal representatives, employees, agents, contractors, successors, and permitted assigns of that person;
  - e) the words “writing” and “written” include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
  - f) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
  - g) a reference to any clause or schedule is to a clause or schedule of these By-Laws;
  - h) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
  - i) all headings contained in these By-Laws are for guidance and do not form part of the substance of the By-Laws.
6. A clause that deals with an expression with a special meaning in a particular Part or Division of the Act, has the same meaning as that Part or Division of the Act, unless a contrary intention appears.
7. If, in the opinion of the Board, any doubt arises as to the construction or interpretation of any of these By-Laws, the decision of the Board reduced to writing and recorded in the minute book shall be conclusive and binding on all Members. Due notice of such record shall be given by the Board to Members by publication in on the Company’s website or otherwise as the Board may determine.

#### Application of the Corporations Act

8. Except so far as the contrary intention appears in these By-Laws, an expression has, in a provision of these By-Laws, the same meaning as in that provision in the Corporations Act.

#### Use of forms

9. The Board may from time to time authorise the use of forms for the administration of these By-Laws, with alterations or additions as the Board may from time to time determine; all notes and directions on such forms shall be deemed part of the forms and must be observed accordingly.

## **2. MEMBERSHIP**

#### Applications for membership

1. Generally, an applicant has the legal right to practice as a financial adviser or financial planner in Australia if the applicant:
- a) is:
    - i. a financial services licensee; or
    - ii. an Authorised Representative of a financial services licensee; or
    - iii. an employee or director of a financial services licensee; or
    - iv. an employee or director of a related body corporate of a financial services licensee;

and,

- b) the applicant is authorised to provide personal advice to retail clients, as the licensee or on behalf of the licensee, in relation to relevant financial products; or
  - c) the applicant is only authorised to provide advice to wholesale clients as the licensee or on behalf of the licensee, in relation to relevant financial products.
2. Where subclause 2.1 (b) applies to the applicant, the Board will accept evidence of the applicant's registration on the Financial Adviser Register maintained by the ASIC as prima facie evidence of the applicant's legal right to practice as a financial adviser or financial planner in Australia.
  3. Where subclause 2.1(c) applies to the applicant, the Board requires the applicant to meet education and training requirements as if the applicant were authorised to provide personal advice to retail clients as the licensee or on behalf of the licensee, in relation to relevant financial products.

#### Genuinely Independent

4. An applicant is not genuinely independent unless the applicant carries on a financial services business or provides a financial service (whether or not on behalf of another person) in a way that entitles the applicant to use the term independent in relation to that business or service in compliance with Division 10 of Part 7.6 of the Corporations Act 2001 (Cth); and,
5. The applicant does not receive asset-based fees (as that term is defined in s964F of the Act)
6. Thus the applicant does not receive any of the following:
  - a) commissions (apart from commissions that are rebated in full to the applicant's clients);
  - b) forms of remuneration calculated on the basis of the volume of business placed by the applicant with an issuer of a financial product;
  - c) other gifts or benefits from an issuer of a financial product which may reasonably be expected to influence the applicant;
  - d) a fee for providing financial product advice to a person (whether as a retail client or otherwise) that is dependent upon the amount of funds used or to be used to acquire financial products by or on behalf of the person, whether or not the fee is paid by the person or by a third party such as a product issuer;

and,

7. None of the following persons receives any of the things covered by paragraph 2.6:
  - a) the applicant's employer (if any);
  - b) if the applicant provides the financial service on behalf of another person (as mentioned in subparagraph 2.1 —that other person;
  - c) any other person identified (whether by reference to a class of person or otherwise) in regulations made for the purposes of section 923A(2)(b)(iii) of the Act namely:
    - i. the providing entity;
    - ii. a related body corporate of the providing entity;
    - iii. a director or employee of the providing entity or a related body corporate;
    - iv. an associate of any of the above;
    - v. any other person in relation to whom the Corporations Regulations 2001 as amended require the information to be provided; and

8. in carrying on a financial services business, or providing financial services, the applicant operates free from direct or indirect restrictions relating to the financial products in respect of which they provide financial services; and
9. in carrying on that business, or providing those services, the applicant operates without any conflicts of interest that might:
  - a) arise from their associations or relationships with issuers of financial products; and
  - b) reasonably be expected to influence the applicant in carrying on the business or providing the services.

Examples of behaviour that would not be genuinely independent:

10. The following behaviour would not be genuinely independent:

- a) receiving commissions for the client purchasing a financial product;
- b) receiving payment or inducements to recommend financial products to clients;
- c) charging fees solely based on the percentage of assets or financial products the client has under management;
- d) any fee structure that means the applicant or the persons in 2.7 c) do not get paid unless the client purchases financial products; and
- e) having any direct, or indirect, interest in the financial product, or financial service, or professional or other service being recommended to the client, or in connection with the professional service provided by the Member or any associate of the member to his or her clients.

Other eligibility requirements

11. The Board prescribes the following terms and conditions for the purposes of clause 9 of the Constitution:
12. Education and training requirements:
  - a) The applicant meets or, if an existing adviser is undertaking an education pathway to meet, no later than 1 January 2024, the first Education and Training Standard in section 921B of Division 8A in Part 7.7A of the Corporations Act relating to educational qualifications.
  - b) The applicant meets the fourth Education and Training Standard in section 921B of Division 8A in Part 7.7A of the Corporations Act relating to continuing professional development.
  - c) Provided, that if the applicant is an applicant for Associate Membership, and the applicant is a Provisional Financial Planner or a Provisional Financial Adviser, the applicant is undertaking work and training to meet the third standard in s 921B of Division 8A in Part 7.7A of the Corporations Act.
13. Fitness for membership:
  - a) The applicant establishes to the satisfaction of the Board that the applicant is a fit and proper person.
  - b) The applicant gives an undertaking to the Board included the declaration prescribed by the Board in Schedule 1 to these By-Laws to remain a fit and proper person.
  - c) For the purposes of determining an applicant's fitness and propriety for membership the Board may in addition to the matters set out in clause 9.1 (a) and (b) and 9.2 (a) of the Constitution, without limiting its discretion, have regard to the following:
    - i. whether the applicant is of good fame, integrity and character;

- ii. whether the applicant is of good standing with their financial services licensee;
- iii. whether the applicant has before any court of law in any jurisdiction pleaded guilty to, or been found guilty of, any criminal offence which has not been set aside on appeal, or a criminal charge is pending against them; or
- iv. whether the applicant has ever been subject to disciplinary action by a statutory, regulatory, professional or other body (including entering into enforceable undertakings); or
- v. whether the applicant is or has ever been a bankrupt, has made an assignment for the benefit of their creditors or has entered into a legal agreement with their creditors, or is subject to a legal procedure for the management or discharge of their debts; or
- vi. whether the applicant is or has been subject to a notice not to manage a corporation, or has been refused any registration or license relevant to the provision of Professional Services;
- vii. whether as an applicant has ever unlawfully used any trade mark, owned or licensed by the Company;
- viii. whether as an applicant for membership of the Company, or as a Member in making an annual declaration, or giving undertakings to the Board, he or she has ever misled or deceived the Company, or knowingly or recklessly made a false declaration, or breached an undertaking given to the Board.

#### Associates

14. For the purposes of clause 9.2 (b) of the Constitution, an applicant for membership in the Associate class may demonstrate he or she is able to become genuinely independent if the applicant undertakes in writing to the Board:
- a) to complete within any timeframe specified by the Company, the following units of mandatory training approved by the Board concerning requirements for membership in the associate category:
    - i. Identifying the Requirements for Genuine Independence;
    - ii. Undertaking a Gap Analysis of your financial services business's compliance with the Requirements for Genuine Independence; and
    - iii. Developing a plan to comply with the Requirements for Genuine Independence.
  - b) to comply, from a date agreed with the Company and specified in the undertaking, with the requirements for Genuine Independence in sub clauses 2.4 – 2.9 of these By-Laws in carrying on a financial services business, or providing financial services to any person ('New Client') with whom the applicant (or the applicant's firm, as the case may be) commences a client engagement; and
  - c) in respect of the each person ('Legacy Client') with whom the applicant (or the applicant's firm, as the case may be) has a client engagement, or in relation to whom the applicant (or the applicant's firm) does not comply with the requirements for Genuine Independence in sub clauses 2.4 – 2.9 of these By-Laws,



- i. to identify all the gaps in their practice of financial advice or financial planning that prevent them meeting the other criteria referred to in clauses 2.4 – 2-9; and
  - ii. the applicant has identified the actions they will take and the timeframes within which they will take those actions to address the gaps and meet the other criteria referred to in clauses 2.4 – 2.9 [together a 'gap analysis']; and
- d) the applicant undertakes in writing to the Board to:
  - i. comply with b); and
  - ii. complete the actions in c), together with any conditions, variations or additions that may be required by the Board in its absolute discretion, within the time period specified in the following sub-clause.
- 15. The Board prescribes the period of 18 months commencing on the date of application as the time frame for an applicant for Associate membership to become genuinely independent within the meaning of clause 9.2 (b) of the Constitution.
- 16. Once provisionally admitted to Associate membership in accordance with this By-Law, an Associate member who fails to comply with his or her undertaking given under sub-clause 2.5.1 d) ceases to be a Member in accordance with clause 16.1 (g) of the Constitution.
- 17. An Associate Member who fails to meet the criteria within the prescribed time period ceases to be a Member in accordance with clause 16.1 (g) of the Constitution.

#### Form of Application and Member Declaration

- 18. An application for membership may be in such electronic form approved by the association from time to time provided that such application includes a member declaration for Independent Financial Adviser and Associate membership consistent with the declaration set out in Schedule 1 and prescribed by the Board for the purposes of clause 10 of the Constitution.

#### Fees

- 19. The Board prescribes the membership fees according to the category of membership as set out in Schedule 2 for the purposes of clause 10 of the Constitution.

#### Pledge

- 20. Upon admission to membership by the Board, new Members shall be invited to publicly make the pledge set out in Schedule 3.

#### Resignation

- 21. Subject to the Constitution, a Member's resignation from membership of the Company is not effective and shall not be accepted whilst the Member is subject to investigation under Sections 11 or 12 of these By-Laws.

### **3. AFFILIATES**

The Board has not made any By-Laws to permit affiliate status with the Company.

### **4. INSURANCE REQUIREMENTS**

Members to Hold Professional Indemnity insurance

1. Every member must hold the benefit of a policy of professional indemnity insurance that complies with the insurance standards approved by the Board from time to time and set out in Schedule 4 Insurance Standards to these By-Laws.
2. A member required to hold the benefit of a policy of professional indemnity insurance in accordance with the preceding sub-clause must provide to the Company:
  - a) an original certificate of currency of such policy of insurances or such other evidentiary document approved by the Board, within 10 Business Days of issue, renewal or replacement of such policy;
  - b) notification of any cancellation, lapse or failure to renew such policy of insurance within 10 Business Days of that event; and
  - c) an irrevocable authority in such form as the Company may from time to time require, directing the relevant insurer (and if required the Member's Australian Financial Services licensee) to provide any officer of the Company information upon request relating to the identity of the insured, currency, sums insured and terms of such policy of insurance.

#### Annual Professional Indemnity Insurance Declaration

3. A member required to hold the benefit of a policy of professional indemnity insurance in accordance with clause 1 in this By-Law must upon request by an officer of the Company, provide an annual declaration to the Company, in the form required by the Board from time to time and notified to the member.
4. Such declaration shall require information as to the currency of professional indemnity insurance cover and claims history for the year preceding such request and shall be provided by the member within 10 Business days of such request.

#### Run-off cover

5. After a member ceases to provide professional services, or ceases to practice or retires, or the member's practice entity merges with another entity, the member must maintain the benefit of policy of professional indemnity insurance for a period of not less than 7 years where the member's liability for the provision of financial services previously provided will not otherwise be covered by a future policy.

#### Notification of claims

6. A member who receives a claim must promptly notify the Company of the claim, the amount of the claim and sufficient claim details to enable the Company to understand the nature of the claim within 10 Business days of notice of the claim to the member.

#### Quarterly incident reporting

7. The company will notify each member on a quarterly basis requiring the member to complete and lodge a quarterly incident report via the member on-line portal, advising all complaints and other incidents that could give rise to a complaint or a claim against the member or the member's firm.

## **5. CODE OF ETHICS**

#### Values

1. The Board adopts the following Values:
  - a) Trustworthiness
  - b) Respectful;
  - c) Responsible;
  - d) Leadership;

- e) Community minded.
- 2. In addition, the Board adopts the values adopted by the Financial Adviser Standards and Ethics Authority in the Financial Planners and Advisers Code of Ethics 2019 made under paragraph 921U(2)(b) of the Corporations Act 2001, namely:
  - a) Trustworthiness;
  - b) Competence;
  - c) Honesty;
  - d) Fairness;
  - e) Diligence.
- 3. Members must comply with and observe the Values.

## **6. ETHICAL STANDARDS**

### The Standards

- 1. The Board adopts the 12 Standards made by the by the Financial Adviser Standards and Ethics Authority in the Financial Planners and Advisers Code of Ethics 2019 made under paragraph 921U(2)(b) of the Corporations Act 2001.
- 2. Independent Adviser Members must comply with and observe the 12 FASEA Standards.
- 3. By 15 November 2019, Independent Adviser Members must subscribe to an ASIC approved compliance scheme that monitors and enforces the member's compliance with the Financial Planners and Advisers Code of Ethics 2019.
- 4. The following code compliance schemes are approved by the Board for members:
  - a) Nil approved.

## **7. PLEDGE**

### Invitation to make pledge

- 1. Applicants for membership approved by the Board may be invited to perform the Pledge set out in Schedule 3 incorporating the Values.

## **8. PROFESSIONAL STANDARDS**

### Members to comply with practice standards

- 1. Members in practice must comply with Practice Standards made by the Board and including such alterations and additions as may be made by the Board from time to time and notified to Members. Current Practice Standards made by the Board are set out in Schedule 5.

## **9. CONTINUING PROFESSIONAL DEVELOPMENT**

### Members to undertake continuing professional development

- 1. Every Member must undertake Continuing Professional Development in accordance with the Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018 made by the Financial Advisers Standards & Ethics Authority.

### Requirement to keep CPD records

- 2. Each Member undertaking Continuing Professional Development must:

- a) make and maintain complete and accurate records of their Continuing Professional Development in accordance with the Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018 made by the Financial Advisers Standards & Ethics Authority;
- b) Complete an annual declaration to the Company concerning:
  - i. The Member's completed Continuing Professional Development for the year; and
  - ii. The Member's planned Continuing Professional Development for the next year.
  - iii. Produce such records to an officer of the Company for inspection upon request.

## **10. QUALITY ASSURANCE AND AUDIT**

Members subject to quality assurance and audit

1. The Company may at any time undertake reviews or audits of the Member's files and records, on complaint, or of its own motion, as it reasonably considers necessary to assist it to discharge its objects and to ensure that a Member is complying with the requirements of the Constitution, these By-Laws, Eligibility Requirements for Membership, the Values, the Standards, the Practice Standards and Continuing Professional Development obligations.
2. A member must produce to an officer of the Company for inspection upon request documents, information and material as the Company deems reasonably necessary to carry out its functions in sub-clause 10.1
3. A member must provide access to premises to an officer of the Company upon request to inspect any documents, obtain information or material under sub-clause 10.1
4. A member must assist the Company in the conduct of a review or audit of the Member's files or records. Such assistance requires that the Member shall, upon request of an officer of the Company, authorise relevant third parties to make such files, records, documents, information and material available to the Company or its officers or agents for review or audit.
5. Subject to the Constitution and By-Laws and any applicable law, the Company must keep confidential all information obtained in respect of a quality assurance review or audit, except for the purposes of any complaint or disciplinary proceeding.
6. Any costs, charges or expenses incurred by the Company in respect of a quality assurance review or audit are recoverable by the Company against the Member.

## **11. COMPLAINTS AND DISCIPLINE**

Members subject to complaints and disciplinary procedures

1. The Company's procedures, for dealing with complaints about members and former members are set out in Schedule 6.
2. Members must comply with the Complaints and Disciplinary Procedures.

## **12. USE OF TRADE MARKS AND LOGOS**

Members to comply with use of logos policy

12.1 The Company's requirements for the use of its trademarks and logos by members and others are set out in Schedule 8 Use of Trademarks and Logos Policy.

12.2 Members must comply with the Use of Trademarks and Logos Policy.

## **13. REMUNERATION FOR PROFESSIONAL SERVICES**

Members shall avoid conflicted remuneration for their services

13.1 Members shall not receive any of the following:

- a) commissions (apart from commissions that are rebated in full to the applicant's clients);
- b) forms of remuneration calculated on the basis of the volume of business placed by the applicant with an issuer of a financial product;
- c) other gifts or benefits from an issuer of a financial product which may reasonably be expected to influence the member, their advice or services;
- d) a fee for providing financial product advice to a person (whether as a retail client or otherwise) that is dependent upon the amount of funds used or to be used to acquire financial products by or on behalf of the person, whether or not the fee is paid by the person or by a third party such as a product issuer;

13.2 None of the following persons associated with the member may receive any of the things covered by paragraph 13.1:

- a) the member's employer (if any);
- b) if the member provides the financial service on behalf of another person (as mentioned in subparagraph 13.1 —that other person;
- c) any other person identified (whether by reference to a class of person or otherwise) in regulations made for the purposes of section 923A(2)(b)(iii) of the Act namely:
  - i. the providing entity;
  - ii. a related body corporate of the providing entity;
  - iii. a director or employee of the providing entity or a related body corporate;
  - iv. an associate of any of the above;

13.3 The member's ongoing fee arrangements and those of persons associated with the member (as identified in clause 13.2):

- a) must be renewed annually by the client;
- b) must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and

- c) may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client's express written authority to the entity that conducts that account given at, or immediately after, the latest renewal of the ongoing fee arrangement.

13.4 The member must document and keep records of each fee engagement with each client:

- a) in a client engagement letter (or similar);
- b) by keeping records of the client's authority for each engagement;
- c) by keeping records of the services performed under the engagement;
- d) by keeping records of the client's authority to renew the engagement.

13.5 The member's client engagement letter shall include disclosure of:

- a) the parties to the engagement;
- b) the expectations and responsibilities of each party in the engagement including, services to be provided to the client;
- c) the person or persons providing those services;
- d) the principal of the firm responsible for the provision of those services;
- e) the fees for those services expressed as:
  - i. an amount in Australian dollars; or
  - ii. where the amount is not known at the commencement of the engagement, an estimate of the amount in Australian dollars and the hourly rate, or rates, by which the fees for those services will be calculated and, in where ongoing services will be provided, an estimate of the number of hours per annum;
- f) when the engagement commences and terminates;
- g) the means by which parties will communicate during the course of the engagement;
- h) the means by which the client may raise an issues if they are dissatisfied with any aspect of the services provided;
- i) how the client may terminate the engagement;
- j) how the member, or the member's firm may terminate the engagement;
- k) the responsibilities of each of the parties once the engagement is terminated;
- l) any other terms of the engagement that affect the client's rights in the engagement.

## **SCHEDULE 1 – MEMBER DECLARATION**

## **SCHEDULE 2 – MEMBER FEE SCHEDULE**



## **SCHEDULE 3 – THE PLEDGE**

## **SCHEDULE 4 – INSURANCE STANDARDS**

## **SCHEDULE 5 – PRACTICE STANDARDS**

## **SCHEDULE 6 – COMPLAINTS AND DISCIPLINARY PROCEDURES**

## **SCHEDULE 7 – COMMITTEE TERMS OF REFERENCE**

## **SCHEDULE 8 – USE OF TRADE MARKS AND LOGOS**