

# By-Laws of the Profession of Independent Advisers Limited

Version 1.1 3 March 2020

*Profession of Independent Advisers Limited | PHILLIP ACT 2606*

<b>Document History</b>	
Version	1.1
Version date	3 March 2020
President approval date	3 March 2020
PSC approval date	n/a
Board approval date	3 March 2020
Commencement date	3 March 2020
Supersedes version	Version 1.0

**TABLE OF CONTENTS**

<b>1. PRELIMINARY .....</b>	<b>3</b>
<b>2. MEMBERSHIP .....</b>	<b>4</b>
<b>3. AFFILIATES .....</b>	<b>8</b>
<b>4. INSURANCE REQUIREMENTS .....</b>	<b>9</b>
<b>5. CODE OF ETHICS .....</b>	<b>9</b>
<b>6. ETHICAL STANDARDS .....</b>	<b>10</b>
<b>7. PLEDGE.....</b>	<b>10</b>
<b>8. PROFESSIONAL STANDARDS .....</b>	<b>10</b>
<b>9. CONTINUING PROFESSIONAL DEVELOPMENT .....</b>	<b>10</b>
<b>10. QUALITY ASSURANCE AND AUDIT.....</b>	<b>11</b>
<b>11. COMPLAINTS AND DISCIPLINE.....</b>	<b>11</b>
<b>12. USE OF TRADE MARKS AND LOGOS .....</b>	<b>12</b>
<b>13. REMUNERATION FOR PROFESSIONAL SERVICES .....</b>	<b>12</b>
<b>SCHEDULE 1 – MEMBER DECLARATION.....</b>	<b>15</b>
<b>SCHEDULE 2 – MEMBER FEE SCHEDULE .....</b>	<b>16</b>
<b>SCHEDULE 3 – THE PLEDGE.....</b>	<b>17</b>
<b>SCHEDULE 4 – INSURANCE STANDARDS.....</b>	<b>18</b>
<b>SCHEDULE 5 – PRACTICE STANDARDS.....</b>	<b>23</b>
<b>SCHEDULE 6 – COMPLAINTS AND DISCIPLINARY PROCEDURES .....</b>	<b>25</b>
<b>SCHEDULE 7 – COMMITTEE TERMS OF REFERENCE .....</b>	<b>32</b>
<b>SCHEDULE 8 – USE OF TRADE MARKS AND LOGOS.....</b>	<b>32</b>

## 1. PRELIMINARY

### Commencement

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

### Authority

1.2 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

1.3 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

1.4 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.

1.5 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.

1.6 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.

1.7 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

1.8 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

1.9 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

2.1 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.

2.2 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.

2.3 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

2.4 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,

2.5 The applicant does not receive asset-based fees (as that term is defined in s964F of the Act)

2.6 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,

2.7 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

2.8 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

2.9 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:

2.10 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

2.11 The Board prescribes the following terms and conditions for the purposes of clause 9 of the Constitution:

2.12 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.

2.13 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

- 2.14 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.
- 2.15 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.
- 2.16 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.
- 2.17 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

- 2.18 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

- 2.19 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

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

#### Resignation

- 2.21 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

- 4.1 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.
- 4.2 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

- 4.3 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.
- 4.4 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

- 4.5 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

- 4.6 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

- 4.7 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

- 5.1 The Board adopts the following Values:

- a) Trustworthiness
- b) Respectful;
- c) Responsible;
- d) Leadership;
- e) Community minded.

5.2 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.

5.3 Members must comply with and observe the Values.

## 6. ETHICAL STANDARDS

The Standards

6.1 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.

6.2 Independent Adviser Members must comply with and observe the 12 FASEA Standards.

## 7. PLEDGE

Invitation to make pledge

7.1 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

8.1 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

9.1 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

9.2 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

- 10.1 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.
- 10.2 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
- 10.3 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
- 10.4 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.
- 10.5 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.
- 10.6 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

- 11.1 The Company's procedures, for dealing with complaints about members and former members are set out in Schedule 6.
- 11.2 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

Commonwealth of Australia  
STATUTORY DECLARATION  
*Statutory Declarations Act 1959*

1 Insert the name, address and occupation of person making the declaration

I,<sup>1</sup>

make the following declaration under the *Statutory Declarations Act 1959*:

2 Set out matter declared to in numbered paragraphs

2

- a) I agree to the terms of my application for membership of the Profession of Independent Financial Advisers Ltd.
- b) I agree to abide by the terms of the Profession's Constitution and its By-Laws, as amended from time to time.
- c) I hold the legal right to practice as a financial adviser or financial planner in Australia.
- d) I satisfy the Profession's definition of genuine independence.
- e) I agree to uphold and promote the objects of the Profession.
- f) I confirm I am a fit and proper person of good fame, integrity and character.
- g) At this time I have either met FASEA's education standards already or am on the pathway to meet those standards no later than 1 January 2026.
- h) I agree to observe, abide by and comply with the Profession's ethical values, ethical standards and professional practice standards.
- i) I undertake to notify the Profession of any event that I become aware of that is either a claim or could give rise to a claim within 10 business days.
- j) I will notify the Profession of any cancellation, lapse or failure to renew a policy of professional indemnity insurance in which I hold a benefit within 10 business days.
- k) I irrevocably consent to and authorise the Profession and its authorised officer to obtain information from the relevant insurer relating to the identity of the insured, currency, sums insured and terms of such policy of insurance.
- l) I agree willingly to submit to the Profession's quality assurance and audit requirements, including those relating to investigation and disciplinary action.
- m) I have read, understand and continuously comply with the Profession's policies relating to the use of trademarks and logos.
- n) I have not made any statement in this declaration – whether inadvertent or deliberate – that is incorrect, misleading or untrue whether by omission or neglect.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 Signature of person making the declaration

3

4 [Optional: email address and/or telephone number of person making the declaration]

4

5 Place  
6 Day  
7 Month and year

Declared at <sup>a</sup> \_\_\_\_\_ on <sup>b</sup> \_\_\_\_\_ of <sup>c</sup> \_\_\_\_\_

Before me,

8 Signature of person before whom the declaration is made (see over)

8

9 Full name, qualification and address of person before whom the declaration is made (in printed letters)

9

10 [Optional: email address and/or telephone

10

number of person before whom the declaration is made

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

## SCHEDULE 2 – MEMBER FEE SCHEDULE

<b>Schedule of Member Fees payable for financial year ended 30 June 2021</b>	
<b>Category of membership</b>	<b>Amount</b>
Independent Financial Adviser	\$2750+GST*
Associate	\$4000+GST

\* pro-rated fees are as follows:

<b>Month of Application</b>	<b>Amount</b>
July, August, September	\$2750+GST
October, November, December	\$2200+GST
January, February, March	\$1650+GST
April, May, June	\$1100+GST

## SCHEDULE 3 – THE PLEDGE

### The Pledge of The Profession of Independent Financial Advisers

Our Profession exists to make Australians better off – to help them become financially more secure and better protected. Together my colleagues and I set the standard for the financial advisory community, in the interests of the public.

#### Trustworthy

- My clients' trust in me is well-deserved and my word will be my bond.

#### Respectful

- I will be respectful of others in order to be worthy of respect myself.

#### Responsible

- I will take full responsibility for my own conduct as a role model for what I expect of others.

#### Impartial

- I will provide advice to my client with honesty, having assessed their options on their true merits, with neither fear nor favour.

#### Leadership

- I will live out these values courageously, even at the risk of criticism, opposition, or loss.

#### Community-minded

- I will engage with and contribute to our Professional Community, as well as to those seeking to join it, to enrich my Profession.

#### Signed

As a Custodian for these principles I make the commitment today to personally enact these values that my Profession and I hold highest.

\_\_\_\_\_ Date: \_\_\_\_\_

## SCHEDULE 4 – INSURANCE STANDARDS

### 1. INTRODUCTION

- 1.1. PIFA's Professional Indemnity Insurance Standard is made by the Board as a Schedule to the By-Laws and is binding on members. It is designed to meet the requirements of the Professional Standards Legislation while maintaining integrity with the three statutory requirements (elaborated in ASIC Regulatory Guides RG 126 and RG 210 and TPB(EP) 05/2014). To the extent there is any inconsistency or conflict between the this standard and the statutory requirements, the statutory requirements administered by ASIC and the TPB will prevail.
- 1.2. This Professional Indemnity Insurance Standard requires compulsory professional indemnity insurance for participants in the PIFA Professional Standards Scheme (2019) and any successor scheme under Schedule 4 of the Civil Law (Wrongs) Act 2002 (ACT).
- 1.3. The requirements in this standard are consistent with the minimum standards of professional indemnity insurance set by the Professional Standards Council (PSC) for participants in professional standards schemes limiting liability and are a requirement of participation in these schemes. The minimum compulsory insurance may not be adequate for some applicants, members and their firms. Where services are offered outside the occupational activities of accountants, each applicant, member and firm should take professional advice from insurance brokers or other advisers so that each can consider what is an adequate type and level of cover. Consideration should also be given to the impact of the statutory limitation period where there has been a high risk or high fee engagement, when determining the adequacy of professional indemnity insurance cover.
- 1.4. PIFA shall not be under any liability to any member or any other person arising out of any steps it takes or omits to take to ensure that members have complied with this standard, and in particular shall not be under any such liability in relation to verifying the existence of the insurance required by the standard or by law.

### 2. DEFINITIONS

- 2.1. Unless expressly defined in this standard, capitalised terms used in this standard have the same meaning as is given in By-Law 1.
- 2.2. In these standards:
  - 2.2.1. Member includes an applicant for membership.
  - 2.2.2. Firm means the business entity through which the Member or Members carries on a financial services business or provides financial services.
  - 2.2.3 **Engagement fee** means the total fee or fees charged by the Member, or the Member's Firm, to the client for Professional Services in the course of the engagement.
  - 2.2.4 **Professional Services** means

- (a) providing financial services<sup>1</sup> or giving credit services<sup>2</sup> or provide tax (financial) services<sup>3</sup> to retail or wholesale (that is, non-retail) clients<sup>4</sup>; or,
- (b) providing financial services<sup>5</sup> to a person in respect of a superannuation product, or providing a superannuation product<sup>6</sup> to a person,

### 3. INSURANCE REQUIREMENTS

3.1. Each Member must have, or must ensure that each Practice has, a valid and binding contract of professional indemnity insurance which complies with the minimum requirements set out in sub-clause 3.2. The insurance may have cover greater than those requirements.

3.2. The requirements for professional indemnity insurance are as follows:

#### 3.2.1. Parties – Insured

The insured must include:

- (c) each Principal;
- (d) each Related Entity;
- (e) any person who is, or becomes, or ceases to be during the period of insurance a Principal or employee of the Firm or Related Entity;
- (f) any person who has ever been a Principal or employee of the Firm or Related Entity;
- (g) in the event of the death or incapacity of any person in the above paragraphs, the legal personal representatives of that person.

#### 3.2.2. Parties - Insurer

The insurer must be:

- 3.2.2.1. authorised to carry on the insurance business under the Insurance Act 1973 (Cth); or
- 3.2.2.2. an unauthorised foreign insurer (UFI) where:
  - (h) the insurance policy is to be arranged through an insurance broker or agent licensed in Australia.
  - (i) the UFI is to be domiciled in a member country of the International Association of Insurance Supervisors (IAIS) or other international organisation similarly reputed by the Australian Prudential Regulation Authority (APRA) or similar relevant Australian Authority.
  - (j) The UFI must have a minimum rating of "A" from AM Best, Moody's, Fitch Worldwide or Standard and Poor's or equivalent rating agencies.
  - (k) The proper law of the contract is Australian law.
  - (l) The legal system of the domicile country is subject to the treaty arrangements with Australia.

---

<sup>1</sup> Providing financial services the same meaning in this context as *Corporations Act 2001 (Cth) s766A*.

<sup>2</sup> Giving credit services has the same meaning in this context as *National Consumer Credit and Protection Act 2009 (Cth) s 7*

<sup>3</sup> Provide tax (financial) services has the same meaning in this context as *Tax Agent Services Act 2009 (Cth) s90-15*

<sup>4</sup> Has the same meaning in this context as *Corporations Act 2001 (Cth) s761G*.

<sup>5</sup> Has the same meaning in this context as *Corporations Act 2001 (Cth) s766A*.

<sup>6</sup> Has the same meaning in this context as *Corporations Act 2001 (Cth) s761G(6)*.

- (m) The UFI has capacity for providing claims data of the type and standard generally available from the APRA in respect of domestic insurers.
- (n) The insured also has an agreement with the insurer or broker, requiring the insurer or broker to provide claims data of the type and standard collected by APRA in respect of domestic insurers. The agreement must enable the data to be passed to the PSC; or
- (o) a captive or mutual which is duly authorized to carry on business in a foreign country.

### 3.2.3. Insured's Profession and Business

The insurance must insure against the occupational liability of financial advisers and financial planners and cover all services offered by an insured referred to in 3.2.1

### 3.2.4. Period of Insurance

The insurance must be either:

- (p) for a period not less than one year; or
- (q) for a period expiring on the next common expiry date for insurance placed under a scheme which requires all insurances under it to expire on a common expiry date.

### 3.2.5. Limit of Indemnity

\$2,000,000.<sup>7</sup>

### 3.2.6. Cover

- (a) The insurance must cover either any civil legal liability or any act, error or omission of an insured who is providing financial advice or financial planning services, but the insurance may be subject to exceptions that are reasonably common for insurance of that type.
- (b) The insurance must not be cancellable by the insurer for innocent non-disclosure or misrepresentation, or by the insured at all.
- (c) The insurance must cover the insured against claims arising out of a dishonest act or omission of an insured (notwithstanding any misrepresentation or non-disclosure of such acts or omissions when effecting the insurance) but the insurer need not promise to indemnify any person committing, making or condoning any such dishonest act or omission or misrepresentation or non-disclosure in relation to it.
- (d) The insurance must include cover for misleading and deceptive conduct under the TPA, Corporations Act, ASIC Act & State-based fair trading legislation.
- (e) If the insurance has a retroactive date, it must be no earlier than 7 years before the beginning of the period of insurance.
- (f) The policy must include at least one automatic re-instatement.
- (g) The deductible or excess shall be set at a reasonable level having regard to the relevant cap under the PIFA Professional Standards Scheme. As a general rule the deductible or excess should not exceed \$20,000 per principal of the Member's Firm.
- (h) The retro-active date shall not be unreasonably limited.

---

<sup>7</sup> Subject to clause 3.2.6(i).

- (i) Defence costs must be in addition to the minimum limit of indemnity required under clause 3.25 of this standard or else the level of cover must be sufficiently increased to take into account defence costs. Where a policy's limit of indemnity is expressed to be inclusive of defence costs, then the limit of indemnity for the purposes of clause 3.2.5 shall be \$2,500,000.
- (j) Extensions must cover all reasonable occupational activities & services that might give rise to occupational liability, with minimal exclusions.

### 3.2.7. Statement of compliance

- (a) The Member may be requested to obtain a written statement of an insurance broker registered under the Financial Services Reform Act 2001 (Cth) or the insurer under the insurance, certifying that on the basis of written information supplied to the broker in a proposal or otherwise by or on behalf of the Member insurance of the Firm complies with the requirements of this Regulation.
- (b) The Member must ensure that any Firm relying on such professional indemnity insurance maintain the financial capacity and ability to meet the excess obligations under the contract of professional indemnity insurance, both at the time of renewal and throughout the course of the renewal period.
- (c) The Member must provide to the Board, or its appointed delegate:
  - a. such information and documents about or in evidence of the Firm's professional indemnity insurance as it requests;
  - b. notification of any circumstance notified to the Member's, or Firm's insurer;
  - c. such information and documents about claims made against the Member or Firm as it requests.
- (d) Information, documents and notifications required by this standard will be provided by the Member, and received by the Board and CA ANZ, on a confidential basis, and will be provided to the Professional Standards Council on a de-identified basis.
- (e) The Member must inform PIFA in writing within seven (7) days of becoming aware that his/her or the Firm's professional indemnity insurance, including the insurance referred to in this Regulation, has expired, been cancelled, avoided or otherwise become ineffective, such as potential exhaustion through notification of claims, unless within that period:
  - a. it has been renewed, or
  - b. s/he, or the Firm has concluded a valid and binding contract of professional indemnity insurance complying with this standard.
- (f) If, for a period of 30 days, the individual Member does not have insurance as required by this standard such Member's membership shall automatically be suspended until s/he arranges new insurance complying with this standard. Where an application has been made to the Board in accordance with sub-clause 3.2.8 this period may be extended up to 90 days.

### 3.2.8. Board discretion to admit non-complying member

The Board shall have discretion to admit a Member as a participant to the scheme even if the Member or the Member's Firm's insurance does not comply with the requirements of sub-clause 3.2. Without limiting the generality of this discretion, the Board may:

- (a) Admit a Member as a participant to the scheme who has, or whose firm has, the required insurance in the form of a cover note or interim contract of insurance;  
or
- (b) Set conditions on the applicant, Member or Firm and any Related Entity during the relevant period of insurance.

#### 3.2.9. Run-off cover

After:

- (a) The Member ceases to be a participant in the scheme applicable to PIFA Members;
- (b) The Member ceases to practice;
- (c) The Member retires;
- (d) The Member's firm merges with another Firm,

the Member must hold the benefit of a valid and binding contract of professional indemnity insurance maintained through a period of not less than 7 years, where the Member's liability for services previously provided will not otherwise be covered by future policies.

## **SCHEDULE 5 – PRACTICE STANDARDS**

### **Commencement**

These Practice Standards shall commence on 1 January 2020 unless a later effective date is expressed in a particular clause.

### **Authority**

These Practice Standards form Schedule 5 of the By-Laws and 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.

### **Application**

These Practice Standards shall apply to all Members in the provision of professional services to clients. They set standards for the iterative process of independent financial advising consistently with the expectation that independent financial advisers will mostly owe fiduciary duties to their clients.

### **Development**

These Practice Standards have been developed by PIFA to comply with Australian financial services laws, fiduciary principles and international best practice in providing professional financial advisory services.

### **Interpretation**

These Practice Standards are to be interpreted in the context of the Values and the Ethical Standards. Each of the six Practice Standards should be considered in the context of the requirements of the other 5 standards. They represent the aspiration for best fiduciary practice by independent financial advisers.

### **Compliance**

A Member is expected to apply consistent systems and processes designed to ensure and accurately record that they deliver professional services in compliance with these Practice Standards.

### **Guidance**

PIFA offers guidance and assistance to its Members on applying these Practice Standards. The Professional Standards Committee is responsible for developing guidance and assistance materials for Members. The committee has responsibility for regularly reviewing these Practice Standards against developments in practice to ensure they continue to represent international best practice and community expectations for the fiduciary practice of financial advising.

### **Accountability**

A Member's provision of professional services to clients which falls short of these Practice Standards is subject to enforcement through PIFA's professional accountability systems. A Member is subject to quality assurance and audit and complaints and disciplinary investigations and proceedings which may sanction a Member for breach. Sanctions may

include suspension or termination from membership, significant fines, requirements to undergo further training, and public reprimand.

### **The six Practice Standards**

The six Practice Standards are:

1. Engage clients fairly and with care for their needs.
2. Understand and accurately diagnose your client.
3. Develop appropriate strategies.
4. Only recommend suitable products and services.
5. Ensure your client understands your recommendations before diligently implementing.
6. Conduct reviews in good faith.

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

### **1 PRELIMINARY**

#### **1.1 Commencement**

1.1.1 These Complaints and Disciplinary Procedures shall commence on [INSERT DATE] unless a later effective date is expressed in a particular clause.

#### **1.2 Authority**

1.2.1 These Complaints and Disciplinary Procedures form Schedule 6 of the By-Laws and are made by the Board of the Profession of Independent Financial Advisers Limited ACN 141 934 732 under clause 60 of the Constitution and are binding on the Company and its members.

#### **1.3 Definitions**

1.3.1 Where commencing with a capital letter:

- a) Act means the Corporations Act 2001 (Cth);
- b) ASIC means the Australia Securities and Investments Commission.
- c) Board means the Company Board.
- d) Business Day means a day a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the Australian Capital Territory,
- e) By-Laws means the By-Laws made or amended from time to time by the Board pursuant to clause 60 of the Constitution and includes these Complaints and Disciplinary Procedures.
- f) Chair of the Professional Standards Committee means the Director appointed by the Board from time to time to chair the Professional Standards Committee pursuant to the committee's Terms of Reference as approved and amended from time to time by the Board.
- g) Commercial Dispute means a dispute involving a Member or between Members, or between a Member and any entity through which the Member provides or is authorised to provide financial services, or between such entities, where the substantial basis of the dispute relates to the respective business interests of the disputing Members or entities and may include monetary claims in the nature of entitlement to remuneration, or sharing of income, fees or revenue.
- h) Company means the Profession of Independent Financial Advisers Limited ACN 141 934 732
- i) Complainant means a person who makes a Complaint.
- j) Complaint means an expression of dissatisfaction or grievance made to the Company by a Complainant in relation to conduct of a Member that complies with sub-clause 2.1.1 or 2.1.2 of these Complaints and Disciplinary Procedures but does not include any Commercial Dispute.
- k) Constitution means the Company Constitution.
- l) Corporations Act means the Corporations Act 2001 (Cth) as amended.

- m) Disciplinary Committee means a sub-committee of the Professional Conduct Committee established pursuant to clause 9 to carry out various functions under these Complaints and Disciplinary Procedures.
- n) Financial Adviser Register means the Register of Relevant Providers maintained by ASIC under section 922A of the Act
- o) Objects means the Objects of the Company set out in clause 5 of the Constitution
- p) Prescribed Complaint has the meaning given in sub-clause 1.5 of these Complaints and Disciplinary Procedures.
- q) Professional Standards Committee means an advisory committee established by the Board pursuant to clause 40 of the Constitution to advise the Board in relation to matters related to the pursuit of the Objects generally and specifically in relation to Object 5.1(c) 'to improve the ethical and professional standards of financial advisers and suppress dishonourable conduct, for the benefit of consumers of their services'.
- r) Maximum Costs means, for the purposes of this Complaints and Disciplinary Procedure and clause 63.3 of the Constitution in respect of the Disciplinary Committee, the sum of \$50,000, or such other amount determined by the Board from time to time, and in relation to Board's final determination under clause 7 of this Complaints and Disciplinary Procedure, and the Constitution, the sum not exceeding all costs and expenses (including an allowance for the cost of application of internal resources of the Company) actually incurred by the Company in respect of the matter.
- s) Maximum Fine means, for the purposes of this Complaints and Disciplinary Procedure and clause 63.3 of the Constitution, the sum of \$100,000, or such other amount determined by the Board from time to time.
- t) Member means an individual admitted to membership of the Company by the Board under clause 9 of the Constitution.
- u) Secretary means the Secretary of the Company as defined in clause 3.1 of the Constitution.

#### 1.4 Interpretation

1.4.1 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.

1.4.2 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 this Constitution;
- 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 this Constitution are for guidance and do not form part of the substance of the Constitution.

1.4.3 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.

1.4.4 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.

## 1.5 Prescribed Complaints

1.5.1 The following complaints are prescribed:

- a) The conduct complained of is not capable of constituting a breach of clause 63.1(a) or (b) of the Company Constitution on the available evidence;
- b) The conduct complained of occurred more than 3 years prior to the date of the complaint;
- c) The complaint concerns a person who was not a Member on the date the complaint was received;
- d) The complaint is trivial, frivolous, vexatious or in bad faith;
- e) The complaint is, may or could be, an abuse of process;
- f) The complaint is of an insufficient nature to warrant investigation;
- g) The complaint comes within the jurisdiction of another forum and in all the circumstances it is reasonable for the substance of the complaint to be resolved in the other forum;
- h) The conduct complained of is a Commercial Dispute.

## 1.6 Application of the Corporations Act

1.6.1 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.

## 1.7 Use of forms

1.7.1 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 COMPLAINTS

### 2.1 Making complaints

2.1.1 A complaint about a Member's conduct may be made or initiated by any person by forwarding written particulars of the conduct complained of to the Company.

2.1.2 A complaint concerning a Member's conduct (other than a Prescribed Complaint) may be initiated or continued by the Company upon the authorisation of the Disciplinary Committee, exercising the Board's delegation and acting upon information from any source concerning the Member's conduct.

## 2.2 How lodged and recorded

2.2.1 The Secretary shall acknowledge each complaint to the Complainant in writing within 10 Business Days of receipt by the Company.

## 3 REGISTRATION OF COMPLAINTS

### 3.1 Company to establish and maintain a Complaints Register

3.1.1 The Company shall establish and maintain a Complaints Register.

3.1.2 The Secretary shall record details of each Complaint received by the Company or initiated by the Disciplinary Committee in the Complaints Register.

### 3.2 Notice of Complaint to Member

3.2.1 The Secretary shall notify the Member in writing of each Complaint within 10 Business Days of receipt of the Complaint by the Company, unless the complaint is determined by the Disciplinary Committee to be a Prescribed Complaint.

3.2.2 The Secretary shall notify the Member in writing of each complaint initiated by the Disciplinary Committee within 10 Business Days of its initiation by the committee.

### 3.3 Notice of Complaint to Disciplinary Committee

3.3.1 The Secretary shall notify the Disciplinary Committee of each complaint received by the Company concerning a Member within 10 Business Days of receipt of the Complaint by the Company.

## 4 WITHDRAWAL OF COMPLAINTS

### 4.1 Complainant may withdraw

4.1.1 The complainant may withdraw as the complainant for a Complaint at any time by notice in writing to the Secretary.

4.1.2 Where the complainant withdraws as the complainant for a Complaint:

a) The Disciplinary Committee may, as the delegate of the Board, authorise the Company to continue the Complaint against the Member.

b) Another person may by notice in writing to the Secretary, become the complainant.

4.1.3 The Disciplinary Committee may authorise the Company to withdraw as the complainant to a Complaint.

## 5 INVESTIGATION

### 5.1 Disciplinary Committee to direct investigations

- 5.1.1 The Disciplinary Committee shall investigate all complaints unless it determines, in its absolute discretion, that the complaint is a Prescribed Complaint. In which case, it shall dismiss the complaint and notify the complainant and the member of its dismissal.
- 5.1.2 The Disciplinary Committee may carry out preliminary enquiries to determine whether a complaint is a Prescribed Complaint.
- 5.1.3 For the purposes of any preliminary enquiry or investigation, the Disciplinary Committee may:
- a) make, or engage or employ any person to make, such inquiries or advise it as the Disciplinary Committee considers necessary to carry out its investigations;
  - b) require any Member to whom the investigation relates to provide the Disciplinary Committee on not less than 10 Business Days' notice any documents, things or information that are in the possession or under the control of that Member that may relate to the subject matter of the investigation;
  - c) require the Member or any entity through which the Member provides or is authorised to provide financial services, to submit, at the Member's cost, to one or more quality reviews or audits on such matters and on such terms as determined by the Disciplinary Committee, such terms to include that the results of such quality reviews are made available to the Disciplinary Committee;
  - d) make and retain copies of any documents that are provided to the Disciplinary Committee, including those containing personal information for the purposes of the Privacy Act 1988 (Cth);
  - e) require the Member at the Member's own cost to attend before the Disciplinary Committee, on at least 10 Business Days' notice to answer any questions and/or discuss the complaint or any matter arising from it; and request the complainant to appear before the Disciplinary Committee (at the complainant's cost) to discuss the complaint or any matter arising from it;
- 5.1.4 For the purposes of determining its recommendations in respect of a complaint before it, the Disciplinary Committee shall:
- a) Provide the complainant with an opportunity to be heard on the complaint; and
  - b) Afford the member an opportunity to be heard on the complaint against him or her, provided;
  - c) Nothing in this sub-clause shall be interpreted to require the Disciplinary Committee to:
    - i. Receive evidence in a formal hearing;
    - ii. Permit either the complainant or the Member to be legally represented at a formal hearing; or
    - iii. Determine the matter before it according to the rules of evidence,
- and the Disciplinary Committee shall conduct itself and inquire and take evidence in the matter as it sees fit and without being bound by the rules of evidence; and
- d) The Members' failure to take any action required of him or her by the Professional Standards Committee shall not prevent the Committee proceeding to make its recommendations to the Board, nor the Board proceeding to make its determination.

5.1.5 The Disciplinary Committee must make its recommendations on the basis of the material before it to its reasonable satisfaction. It shall determine its recommendations on the basis of simple majority. In the absence of a majority the view of the Disciplinary Committee Chair shall prevail.

## 6 RECOMMENDATION

### 6.1 Disciplinary Committee to make recommendations to Board

6.1.1 Upon completion of its investigation the Disciplinary Committee shall make a recommendation to the Board in respect of each aspect of the complaint or complaints before it concerning the Member and setting out its reasons:

6.1.2 That the complaint be dismissed;

6.1.3 That the complaint be upheld in its entirety, or in part.

### 6.2 Recommendation as to sanctions

6.2.1 Where the Disciplinary Committee recommends to the Board that the complaint is upheld under sub-clause 6.1.3, it shall recommend sanctions for the Board to impose on the Member in accordance with clause 34.1 (c) of the Company Constitution in respect of each aspect of the complaint that is upheld, should the Board uphold the complaint.

6.2.2 Where the Disciplinary Committee makes a recommendation to the Board under sub-clause 6.1.3 that any aspect of a complaint be upheld against the Member including on grounds that the Member has committed a breach referred to in clause 63.1(b)(ii) a, b or 63.1(b)(iii) of the Constitution which is serious, the Disciplinary Committee may suspend the Member, pending the Board's determination of the Complaint.

## 7 DETERMINATION

### 7.1 Determination of complaint by Board

7.1.1 Upon receipt of the Disciplinary Committee's recommendations, the Secretary shall issue a notice to the Member to show cause why the Board should not determine the complaint in accordance with the Disciplinary Committee's recommendations and impose any sanctions recommended by the committee, and providing a final opportunity for the Member to be heard, in a manner and timing of the Board's choosing.

7.1.2 The Board must make its determination on the basis of the material before it to its reasonable satisfaction, however it shall not be bound by the rules of evidence.

7.1.3 The Board's determination is final and there is no right of appeal from the Board.

### 7.2 Notification to Member and Complainant

7.2.1 The Board's findings and any sanctions it imposes shall be notified to the Member and the complainant within 10 Business Days of the date of the Board's determination, together with information on the timing of any proposed publication under clause 8 below.

7.2.2 The outcomes of each complaint and disciplinary proceeding are to be recorded by the Secretary in the complaints register.

## 8 PUBLICATION

## 8.1 Board' findings and sanctions to be published

8.1.1 The Board's determination and findings and any sanctions it imposes shall be published by the Company within 20 Business Days of the date of the Board's determination in a manner consistent with the Objects of the Company, unless the Board determines another publication time frame should apply or that in all the circumstances it would not be appropriate to publish in the particular case.

## 8.2 Referral to authorities

8.2.1 If, at any stage of any preliminary enquiries, investigation or Disciplinary Committee proceedings, the committee chair, considers that there is a likelihood that a breach of the financial services or other applicable law may have been committed, then they may direct the Secretary to refer the matter to ASIC, the police or other appropriate regulatory or enforcement authority.

8.2.2 If, at any stage of any preliminary enquiries, investigation or Disciplinary Committee proceedings, the committee chair, considers it is in the public interest to do so, then they may refer a matter to:

- a) The Member's current Australian Financial Services Licensee;
- b) The Member's former Australian Financial Services Licensee (where the conduct the subject of the Complaint, Investigation, or Disciplinary Proceedings occurred during the period of the Member's authorisation with that Licensee);
- c) An entity through which the Member provides or is authorised to provide financial services; and/or
- d) The Monitoring Body for the code compliance scheme covering the Member pursuant to sections 921G and 921J of the Corporations Act.

## 9 DISCIPLINARY COMMITTEE

9.1 The Professional Conduct Committee shall from time to time appoint from its members one or more sub-committees of up to three persons, to receive and investigate complaints about Members and make recommendations directly to the Board and perform other functions described in these Complaints and Disciplinary Procedures. Unless otherwise determined by the Professional Conduct Committee the Disciplinary Committee shall include the Chair of the Professional Conduct Committee as chair.

9.2 The Chair of the Professional Conduct Committee may constitute a Disciplinary Committee sitting alone.

## 10 LIABILITY

10.1 No matter or thing done or omitted by the Company or a person acting in accordance with a resolution of the association subjects a member of the Board, the Disciplinary Committee or any person appointed by them to carry out functions under these Complaints and Disciplinary Procedures to any liability if the matter or thing was done or omitted in good faith for the purpose of implementing these Complaints and Disciplinary Procedures.

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

### General Committees

#### 1.1 Formation of General Committees

The following general committees are formed by the Board pursuant to clause 39 of the Constitution:

- a) Nil

#### 1.2 Formation of Advisory Committees

The following advisory committees are formed by the Board pursuant to clause 40 of the Constitution:

- a) Advisory Council
- b) Professional Standards Committee

### Committee Terms of Reference

#### 2.1 Advisory Council Terms of Reference

##### 2.1.1 Committee Purpose

- a) The Advisory Council is a committee formed by the Board of Profession of Independent Advisers Limited (PIFA) pursuant to clause 40 of the Constitution.
- b) Its purpose is to advise the Board on long term strategies, activities and policies that will ensure PIFA:
- c) Operates effectively as a professional organisation, acting to build trust and confidence in an independent financial advice profession and in the independence and professionalism of its members;
- d) Is perceived and respected as the association of choice for the occupation of independent financial advising by members of the occupation, government, regulatory and consumer communities;
- e) Has the appropriate governance arrangements in place to deliver on its longer-term strategic objectives;
- f) Develops appropriate long-term strategies to establish and maintain the PIFA Professional Standards Scheme.

#### 2.2 Professional Standards Committee Terms of Reference

##### 2.2.1 Committee purpose

- a) The Professional Standards Committee is a committee formed by the Board of Profession of Independent Advisers Limited (PIFA) pursuant to clause 40 of the Constitution.
- b) Its purpose is to advise the Board on all matters relevant to the strategies, activities and policies relevant to the Professional Standards and Membership Eligibility portfolios.

##### 2.2.2 Committee functions

- a) to advise the Board on strategies, activities and policies that will ensure PIFA has the appropriate professional regulation in place to improve the ethical and professional standards of financial advisers and suppress dishonourable conduct, for the benefit of consumers of their services in keeping with the Objects of the Company;
- b) to advise the Board on PIFA's complaints and disciplinary systems and to establish from its membership one or more disciplinary sub-committees to undertake the complaints and disciplinary functions on behalf of PIFA under the Complaints and Disciplinary Procedures, including conducting investigations and making recommendations to the Board;
- c) to advise the Board on the PIFA Professional Standards Scheme and monitor that PIFA operates the scheme in accordance with the Compliance Plan and Risk Management Strategy;
- d) to advise the Board on and identify key risks and appropriate risk management strategies in the association risks, the scheme risks, and the risks for Members in practice;
- e) to advise the Board on Continuing Professional Develop strategies to assist members to improve the identification and management of risks for Members in practice and improve the professional practice of Members;
- f) to initiate reviews and provide ongoing strategic oversight for development of the ethical and professional standards and other PIFA professional requirements for Members;
- g) to advise the Board on appropriate eligibility criteria for membership; and
- h) to sit as the Membership Committee of the Board and in that delegated capacity, approve applications for membership in accordance with the Eligibility Criteria for membership in the relevant class of membership in the Constitution and the By-Laws.

### 2.2.3 Duties and responsibilities

- a) Ensuring PIFA has the right powers, resources, systems and controls to assure consumer confidence and trust in PIFA members;
- b) Ensuring PIFA contributes to improving the professional standards of its Members;
- c) Ensuring PIFA contributes to improving consumer protection for consumers;
- d) Ensuring PIFA has effective professional and ethical standards and promotes them to Members;
- e) Ensuring PIFA provides help and guidance to Members on meeting those standards;
- f) Ensuring PIFA develops effective arrangements for monitoring compliance with those standards;

- g) Ensuring PIFA has effective arrangements for investigating complaints and taking disciplinary measures against its members;
- h) Ensuring PIFA maintains awareness of practice behaviours and emerging risks of malpractice and civil liability risks in practice;
- i) Ensuring PIFA establishes and receives regular reports in relation to the PIFA Professional Standards Scheme and complies with its legal obligations as a scheme operator.

#### 2.2.4 Committee construction

- a) The committee shall have a maximum of 5 appointees.
- b) Committee members are appointed by the Board.
- c) At least one appointee shall be a Board member;
- d) Appointees shall include Members and/or experts that are best able to inform the committee and Board about the issues of responsibility for the committee;
- e) Appointment to this committee is a personal appointment and is not transferable or able to be delegated to another representative of an employing organization;

#### 2.2.5 Committee chair

- a) The Board shall appoint a Board Member to act as chair of the committee with responsibility for:
- b) arranging committee meetings, the agenda, the minutes, committee participation and coordinating the work program of the committee.

#### 2.2.6 Committee members

- a) The committee will deal with matters of organisational, member, client and government sensitivity. Members are required to keep such matters confidential and material that may be distributed to committee members must not be shared or distributed to persons or organisations outside the committee.
- b) Committee members are required to sign a non-disclosure agreement.
- c) Committee members are required to disclose any material or significant conflicts of interest related to any material to be discussed, at the start of each meeting and the Chair shall determine how any disclosed conflict is to be addressed.
- d) Committee members are expected to fulfil their duties in a professional and timely manner and with due regard to the professional requirements of PIFA.
- e) Committee members are expected to attend meetings either in person or by electronic means and actively contribute to the work program of the committee.

#### 2.2.7 Disciplinary sub-Committee

- a) The Professional Conduct Committee shall from time to time appoint from its members one or more sub-committees of up to three persons, to receive and investigate complaints about Members and make recommendations directly to the Board and perform other functions described in these Complaints and Disciplinary Procedures. Unless otherwise determined by the Professional Conduct Committee the Disciplinary Committee shall include the Chair of the Professional Conduct Committee as chair.
- b) The Chair of the Professional Conduct Committee may constitute a Disciplinary Committee sitting alone.

#### 2.2.7 Meetings

- a) The committee chair shall determine the frequency timing and duration of committee meetings.
- b) A notice of each meeting confirming the date, time, venue and agenda shall be forwarded to each member of the Committee eight working days prior to the date of the meeting.
- c) The notice for Committee members will include relevant supporting papers for the agenda items to be discussed if necessary.
- d) The Committee Chair shall determine the agenda for each meeting in consultation with the President.
- e) The quorum for a meeting of the committee a voting majority of the membership of the committee
- f) A Board member must be present to form a quorum.
- g) Minutes of committee are to be approved by the Chair for inclusion in the Board reporting cycle.

## SCHEDULE 8 – USE OF TRADE MARKS AND LOGOS



### Profession of Independent Financial Advisers – Use of licensed marks and logos

Members of the Profession of Independent Financial Advisers Limited (PIFA) are distinguished among the financial planning industry by their significant commitment to the public interest, a hallmark of the recognised professions. This commitment is recognised in a number of marks and logos owned by PIFA:



Each membership category has its own logo to promote membership possessed by the individual, and likewise the Profession itself has its own logos that it uses to promote the company and membership generally.

Members are licensed to use their applicable marks and/or logos on the terms set out below in the promotion of their services such as ...

- Email signature block, letterhead, business cards, flyers, banners and other stationery
- Website, social media, blogs, and other advertising
- Disclosure documents such as Statements of Advice, Financial Services Guide, and Client Service Agreements or Terms of Engagement
- Merchandise such as stickers, pens and other promotional products
- Display of the member badges and practising certificate

Members found to be in breach of these terms may be subject to sanctions under the Constitution and By-Laws of the company.

#### For use by the Company only

The first object of the company is to promote, encourage, sponsor and assist the development of independent financial advisers and independent financial advice to consumers. The Profession promotes its objects through, amongst other things, the use of logos that only it is authorised to use:



In addition, in 2010 the company developed a concept called the gold standard of independence which became a symbol of trust for the consumer. It embodied what independence of remuneration and independence of duty really means: no commissions nor asset fees and no association with product providers. These three elements were captured graphically in a logo bearing three gold stars and supported by the trademarking of the phrase:



**PIFA GOLD STANDARD OF INDEPENDENCE™**

This standard is still relevant today as it remains higher than the onerous – but rarely-met – requirements of independence defined by the law.

Independent Financial Adviser members previously used the logo and trademark to promote their difference in the market place. However both categories of membership now have their own unique logo that preserves the legacy that was created by the Gold Standard many years ago.

The Gold Standard logo remains in use only by the company only to continue educating and promoting the higher standard of independence.

### **For use by Practising Members only**

Also known as 'Practising Members' and 'Full Members', Independent Financial Adviser members are exemplars among the financial advisory community, most notably because of their willingness to be held accountable to higher standards than the minimums required by law. The requirements for membership constitute a very significant commitment to the public interest and members ought to be recognised accordingly.

To communicate this, practising members may use the following logo to advertise their membership of the Profession and promote their services:



An example of use in an email signature blocks is provided below:



**Jane Citizen**

Citizen Independent Advisory

Postal: PO Box 1234 Sydney NSW 2000

Office: Level 5, 7 Main St, Sydney

Phone: 02 6162 2660

Web: [www.citizens.com.au](http://www.citizens.com.au)

Jane Citizen is a Practising Member of the Profession of Independent Financial Advisers [www.pifa.org.au](http://www.pifa.org.au)

Members must ensure that any softcopy use of the logo possesses a live hyperlink to the following website: [www.pifa.org.au/membership-categories-explained](http://www.pifa.org.au/membership-categories-explained)

Independent Financial Adviser members may also use the phrase “**PIFA GOLD STANDARD OF INDEPENDENCE™**”. This is because they do, in fact, practise the gold standard as part of their membership conditions. The gold standard logo, however, is no longer in use by members as it has been replaced by the Practising Member logo. The trademark must always be used with a small caps font, in any font, and must include the trademark symbol ™.

### **For use by Associate Members only**

The Associate category of membership ('Associate') exists for those advisers who wish to be associated with the Profession and are fit for Associate membership (including declarations as to propriety, integrity, character, good fame and good standing). All Associates have also entered into a binding commitment with the Profession as part of their membership, notably ...

- they have agreed to uphold and promote the objects of the Profession,
- they possess the desire, ability and intention to practise as a genuinely independent financial adviser within the limited timeframe of their Associate membership, and
- their progress towards satisfying the requirements of the Independent Financial Adviser category of membership is being supervised by the Profession.

As such Associates may use the Associate Member logo as evidence of their association with and active commitment to the Profession.



An example of use in an email signature blocks is provided below:



Associate members must take care to ensure that their promotional statements and service descriptions in relation to the Profession are not misleading, and that the reputation of the Profession is not put at risk in any way.

For example, under the law, financial planners can only describe themselves as 'independent' if they satisfy the requirements of section 923A of the Corporations Act. However the PIFA GOLD STANDARD OF INDEPENDENCE™ is a higher standard than that required by the Act and is a mark reserved for the Independent Financial Adviser category of membership. This means that Associates may not describe their services as meeting the Gold Standard of Independence nor use the phrase PIFA GOLD STANDARD OF INDEPENDENCE™ without first satisfying the requirements under the Profession's By-Laws and Constitution.

Associates are to be recognised and lauded for their ...

- commitment to promote the value of independent financial advice to consumers
- support of the development of independent financial advisers
- capability and intention to practise the PIFA GOLD STANDARD OF INDEPENDENCE™

... all in the public interest. All of these statements are true and are not considered to be at risk of being misleading. Associates of the Profession are encouraged to promote themselves in this way.

## Terms and conditions

1. This licence is granted to the Member only for the purpose of displaying and communicating that the individual is a Member of the PIFA. The license is not transferrable in any way.
2. Membership of the PIFA is for individuals only. That means only individuals can use the PIFA applicable marks and logos to promote their membership. It is not permissible for a Member to sublicense or permit any other party to use the registered trademark or logo.
3. Because membership is only available to individuals, a firm or AFSL cannot promote or advertise membership in its own right, nor may a firm or AFSL promote that any of its financial planners are members. A member's AFSL or firm cannot promote membership unless every single adviser of the firm or AFSL is a member of the Profession. This means, for example, that the Practising Member John Smith could not promote his membership on his AFSL's website or stationery, in such a way as to imply that his AFSL was a member of the PIFA.
4. The Member shall only use the logo artwork supplied by the PIFA and is not entitled to create or redraft or modify artwork in any way.
5. When being granted a limited licence to use the registered trademark and/or logo, Members must not:
  - i. Reproduce the logo in any form other than originally provided or in such a way that supporting text is illegible or alters the supporting text;
  - ii. The PIFA membership, registered trademark and logo are only to be used to promote the Member's financial advisory services. They cannot be used in such a way as to endorse a product, document or advice, or any other activity (business, personal or otherwise). Examples that are prohibited include using membership, the registered trademark or logo as a means of demonstrating compliance, endorsing an opinion or published document.
  - iii. Use, or permit to be used, any substantially identical or deceptively similar logos or components of the logo, other than pursuant to the terms of this licence and the specifications, directions, or instructions given by the PIFA to the Member from time to time.
6. The PIFA grants a limited licence to Members to use the marks and/or logos provided the membership is financial and not in any way under investigation, suspension or subject to sanction. The individual must, on direction by the Profession, remove all references to the Profession and all marks and logos.
7. The PIFA may, at its sole discretion, suspend or terminate this licence if the individual:
  - i. Breaches these ;
  - ii. Does not comply with the PIFA membership terms & conditions;
  - iii. Does not pay the required membership or accreditation scheme fees;
  - iv. Is wound up, or placed into external administration, or ceases practising in the financial planning industry or
  - v. The membership is otherwise terminated.

8. It is at the sole discretion of the PIFA to terminate the licence if it has been deemed that the Member has used the marks and/or logos in a deceitful, misleading or potentially confusing way.
9. Upon identification that either the registered trademark and/or logo is not used in accordance with these , the Practising Member has 5 business days to rectify this. After such time, the limited licence to use is terminated immediately.
10. Upon termination of the licence the individual must immediately cease using the marks and/or logos in any way or form.
11. The Profession may update, replace, or add to the mark and logo arsenal from time to time in which case it shall update this Logo Policy.