

Financial and Consumer Rights Council Inc

CONSTITUTION

Registration number A0000536A

1. NAME

The name of the incorporated association is "Financial and Consumer Rights Council Inc." (in these Rules called the **Council**).

2. PURPOSES

The purposes of the Council are:

- 2.1 to advocate for vulnerable Victorian consumers who are experiencing financial difficulty; and
- 2.2 to support the financial counselling sector through its casework, advocacy and law reform, and to adopt and maintain best practice.

3. OBJECTIVES

The objectives of the Council are to ensure that:

- 3.1 financial counsellors in Victoria are supported to comply with best practice;
- 3.2 the financial counselling sector has secure, stable and sustainable funding;
- 3.3 financial counselling has a high profile;
- 3.4 vulnerable consumers have an effective voice; and
- 3.5 the Council is a strong, adaptive organisation that is valued by members, government and other stakeholders.

4. NON PROFIT CLAUSE

The assets and income of the Council shall be applied solely in furtherance of its Purposes and Objectives and no portion shall be distributed directly or indirectly to the Members of the Council except as bona fide compensation for services rendered or expenses incurred on behalf of the Council.

5. INTERPRETATION

5.1 In these rules, unless contrary intention appears:

Act means the *Associations Incorporation Act 1981* (Vic) as amended.

Associate Member means a Member granted associate membership under Rule 7.4.

Board means the co-ordinating committee of the Council.

Financial Counselling Agency Member means a Member granted financial counselling agency membership under Rule 7.5.

Financial Year means the year ending 30 June.

Full Member means a Member granted full membership under Rule 7.3.

General Meeting means a general meeting of Members convened in accordance with Rule 13.1.

Member means a member of the Council.

Non-Profit Organisation means an organisation that meets the Australian Taxation Office requirements for classification as a non-profit organisation.

Objectives means the objectives of the Council set out in Rule 3.

Purposes means the purposes of the Council set out in Rule 2.

Registrar means the registrar appointed pursuant to the Act.

Regulations means regulations under the Act.

Special Resolution means a resolution in accordance with Rule 13.4.

Sub-committee includes any sub-committee, standing committee or working party created by resolution of the general membership or the Board.

Voting Member means a Member entitled to vote at a General Meeting under Rule 7.7.

5.2 In these Rules, a reference to the Secretary of the Council is a reference:

- (a) where a person holds office under these Rules as Secretary of the Council, to that person; and
- (b) in any other case, to the Public Officer of the Council.

5.3 Words or expressions contained in these Rules shall be interpreted in accordance with the provisions of the *Interpretation of Legislation Act 1984* (Vic) and the Act.

6. SOURCES OF FUNDS

The funds of the Council shall be derived from Members' fees, grants and any other source provided that the acceptance of funds creates no conflict of interest with the Purposes and Objectives of the Council.

7. MEMBERSHIP

7.1 Membership of the Council may be granted by the Board to:

- (a) a natural person; or
- (b) an organisation.

7.2 Membership of the Council may be granted to a natural person or organisation that:

- (a) agrees to support the Purposes and Objectives of the Council;
- (b) meets the eligibility requirements for one of the three categories of membership:
 - (i) Full Membership;
 - (ii) Associate Membership; or;
 - (iii) Agency Membership.set out in Rules 7.3 to 7.5;
- (c) carries out their work with no conflict of interest and for no fee;
- (d) in the opinion of the Board (acting reasonably) satisfies the criteria for membership prescribed by the Board from time to time, a current version of which shall be made available; and
- (e) complies with any policies, rules or by-laws approved by the Board from time to time.

7.3 Full Membership

Full Membership may be granted to a natural person who:

- (a) meets the eligibility requirements in Rule 7.2;
- (b) is engaged in financial counselling and participates in the Council's supervision program or, having worked as a financial counsellor, meets the Council's professional development requirements;
- (c) holds an accredited Diploma of Community Services - Financial Counselling or a qualification recognised by another financial counselling state body, provided that Members who held Full Membership before 1 January 2012 shall have until 31 December 2014 to achieve such accreditation and shall be eligible for Full Membership during this period provided that the other criteria of Rule 7.3 have been satisfied;
- (d) meets the ongoing professional development and supervision requirements prescribed by the Board, including in the case of a financial counsellor in their first year of practice the supervision requirements prescribed for graduate financial counsellors.

7.4 Associate Membership

Associate Membership may be granted to a natural person that:

- (a) meets the eligibility requirements in Rule 7.2;

- (b) is studying for an accredited Diploma of Community Services - Financial Counselling or a qualification recognised by another financial counselling state body;
- (c) is working as, or undertaking work experience (on either a paid or unpaid basis) as, a financial counsellor;
- (d) is undertaking professional development in accordance with the professional development guidelines prescribed by the Board for Associate Members; and
- (e) meets the supervision requirements prescribed by the Board.

7.5 Agency Membership

Agency Membership may be granted to a Non-Profit Organisation that:

- (a) meets the eligibility requirements in Rule 7.2;
- (b) shares a mutual interest in the work undertaken by the Council;
- (c) employs or engages financial counsellors; and
- (d) agrees to support the professional development and supervision requirements prescribed by the Board.

7.6 Professional Development and Supervision

The Board will establish the Professional Development and Supervision Criteria and shall review the Professional Development and Supervision Criteria at its discretion.

7.7 Voting Rights of Members

- (a) A Full Member is entitled to one vote at a General Meeting.
- (b) Financial Counselling Agency and Associate Members have no voting rights at General Meetings.

7.8 Application for Membership

- (a) Applications for membership of the Council must be made in writing on an annual basis in the manner prescribed by the Board.
- (b) Membership applications shall be considered by the Board.
- (c) The Board at its discretion may accept or reject membership applications. In considering any membership application, the Board shall have regard to the criteria for membership prescribed by the Board. The Board must ensure that the latest version of the criteria for membership is made available and that applicants who are not granted membership are notified of the reasons for rejection of their application.
- (d) If the Board approves an application for membership, the Secretary must, as soon as practicable:
 - (i) notify the applicant in writing of the approval for membership; and
 - (ii) request payment of the sum payable under Rule 8 as the subscription fee.

- (e) The Secretary must, within 28 days after the receipt of the amount referred to in paragraph (d), enter the approved applicant's name in the register of Members.
- (f) An applicant for membership becomes a Member and is entitled to exercise the rights of membership when the applicant's name is entered in the register of Members.

7.9 Renewal of Membership

- (a) Membership of the Council must be renewed annually by re-applying for membership in accordance with Rule 7.8.
- (b) If an application for renewal of membership is rejected, the Member's name will be removed from the register of Members.

8. SUBSCRIPTIONS

- 8.1 Subscription fees shall be set by the Board and made payable in advance on such day as is determined by the Board.
- 8.2 The Board may determine proportionate subscription fees for Members admitted during the year.
- 8.3 The Board may, at its discretion, waive all or part of the subscription fees for any Member who, in its opinion, is unable to pay such fees.

9. RESIGNATION

A Member may resign from the Council by notice in writing. Members resigning are not entitled to a refund of fees.

10. SPECIAL CONDITIONS, SUSPENSION OR EXPULSION

- 10.1 The Board may suspend or expel or impose special conditions on the membership requirements of any Member:
 - (a) who commits any breach of the law, these Rules or any other policy, rule or by-law of the Council;
 - (b) who acts in a manner which is contrary to the interests of the Council; or
 - (c) who no longer complies with the membership requirements of the Council.
- 10.2 The Member shall be informed of the allegation by the Board or its nominees and invited to present a written or verbal explanation to the Board meeting at which the matter is to be considered.
- 10.3 The Member shall be given 28 days notice of any decision of the Board or its nominees to expel the Member. Unless the Member appeals the decision within 28 days, the expulsion shall take effect at the end of the notice period. If the Member chooses to appeal such decision Membership shall be suspended pending determination of any appeal.

- 10.4 A Member who is the subject of a disciplinary procedure must not initiate a grievance procedure under Rule 12 in relation to the matter which is the subject of the disciplinary procedure until the disciplinary procedure has been completed.

11. APPEALS

- 11.1 An applicant for membership of the Council who feels aggrieved by any decision of the Board under Rule 7.8(c), or a Member who is suspended or expelled by the Board under Rule 10.1, may appeal against the decision.
- 11.2 The applicant must give the Board written notice within 28 days from the date of notification of the decision by the Board:
- (a) to the effect that the applicant wishes to appeal a decision of the Board under Rule 7.8(c) or 10.1; and
 - (b) stating the grounds on which the appeal is being made.
- 11.3 If the Board receives notice under Rule 11.2, the Board must convene a General Meeting of the Council to determine the appeal, to be held within 28 days after the Board receives that notice.
- 11.4 On hearing of any such appeal the appellant shall be afforded a full opportunity of being heard.
- 11.5 Until the hearing and determination of any such appeal the decision of the Board shall have full force and effect.

12. DISPUTES AND MEDIATION

- 12.1 The grievance procedure set out in this rule applies to disputes under these Rules between:
- (a) a Member and another Member; or
 - (b) a Member and the Council.
- 12.2 The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- 12.3 If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 30 days, hold a meeting in the presence of a mediator.
- 12.4 The mediator must be:
- (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement:

- (i) in the case of a dispute between a Member and another Member, a person appointed by the Board; or
 - (ii) in the case of a dispute between a Member and the Council, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice).
- 12.5 The mediator cannot be a Member who is a party to the dispute.
- 12.6 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- 12.7 The mediator, in conducting the mediation, must:
 - (a) give the parties to the mediation process every opportunity to be heard; and
 - (b) allow due consideration by all parties of any written statement submitted by any party; and
 - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- 12.8 The mediator must not determine the dispute.
- 12.9 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

13. GENERAL MEETINGS

- 13.1 General Meetings of all Members may be called:
 - (a) by request of the Chairperson of the Council;
 - (b) by resolution of the Board; or
 - (c) by the written request of not less than five (5) Voting Members of the Council.

Such a General Meeting shall be held not less than fourteen (14) days or more than one month after the request or resolution is made. In the case of a request by Members pursuant to 13.1(c), the Members may convene the General Meeting if a meeting has not been held within the required time.
- 13.2 Additions, Alterations and Amendments
 - (a) Any addition, alteration or amendment to the name, Purposes, Objectives or these Rules, of the Council shall be business of which notice must be given for a General Meeting, and must be carried as a Special Resolution.
 - (b) No such addition, alteration or amendment shall have effect until it has been lodged with the Registrar by the Public Officer of the Council.
- 13.3 Special Resolutions
 - (a) Motions for Special Resolutions must be lodged twenty-one (21) days prior to a General Meeting, and shall be included in the notice of the meeting sent to Members.

- (b) A Special Resolution must be carried by not less than 75% of Voting Members present in person or by proxy.
- (c) It shall be the responsibility of the Secretary of the Council to receive and act on such resolutions.

13.4 Notice of Meeting

A minimum of seven (7) days, or if a special resolution has been proposed at least twenty one (21) days, notice in writing of every General Meeting shall be given to every Member by electronic transmission or prepaid post at the address appearing in the register of Members, stating the time and place of such a meeting.

13.5 Omission of Notice

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Member shall not invalidate any proceedings or resolutions at any meeting of the Council or any committee thereof.

13.6 Chairperson of Meetings

The Chairperson of the Council shall preside at all General Meetings. If absent or unwilling to chair a meeting, a Member may be appointed to chair that meeting or part thereof.

13.7 Adjournment

Members present at a meeting may agree to adjourn any meeting from time to time, but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting from which the adjournment took place.

13.8 Voting

Resolutions other than Special Resolutions shall be carried by a simple majority of Voting Members present in person or by proxy and the Chairperson shall have the option of exercising a casting vote.

13.9 Division

At any General Meeting a declaration by the Chairperson that a resolution has been carried or not shall be sufficient evidence of Members' voting intentions unless three (3) Members call for a poll. When a poll is taken the number of votes for and against the resolutions shall be recorded.

13.10 Proxies

Every Voting Member shall be entitled to vote at all meetings or may appoint any other Member or in the case of an organisation, a nominee by proxy.

The instrument appointing the proxy may be in the following form or in a similar common form:

Financial and Consumer Rights Council Inc.

I

of

being a Voting Member of the above Council, hereby appoint:

.....

of

or failing that

of

as my proxy to vote for me on my behalf at the meeting of the Council to be

held on

My proxy is hereby authorised to vote for / against the following motion:

.....

.....

.....

Signed Date

13.11 Quorum of General Meetings

At all General Meetings, where 20% of Voting Members are present in person or by proxy a quorum is constituted. If within sixty (60) minutes from the time appointed for the commencement of the meeting a quorum is not present the meeting, if convened by request of Members, shall be dissolved. If not so convened, the meeting shall stand adjourned to the same day in the next week at the same time and place or at such a time and place as is notified to Members not less than forty-eight (48) hours prior to the meeting and at such adjourned meeting those present will form a quorum for all purposes.

13.12 Minutes

Minutes of the proceedings of every General Meeting shall be kept in a minute book which shall be available for inspection by Members upon request, provided that sufficient time shall be given to the Secretary to produce the minute book at a time convenient to both parties.

13.13 Annual General Meeting

The Annual General Meeting of the Council shall be held each year on such date as the Board determines each calendar year.

13.14 Order of Business at Annual General Meeting

The following shall be the order of business at every Annual General Meeting unless the Board determines otherwise:

- (a) Confirmation of the minutes of the last Annual General Meeting and of any General Meeting held since the last Annual General Meeting;
- (b) Appointment of auditor;
- (c) Receipt and consideration of the report of the Board;

- (d) Election of the Board;
- (e) Receipt and consideration of the statement submitted by the Council in accordance with section 30(3) of the Act; and
- (f) Any other business of which the required notice has been given.

14. BOARD OF THE COUNCIL

14.1 Election of Board

Where no more than the required number of candidates is nominated those so nominated shall be declared elected. Remaining vacancies may be filled by nomination and election at the Annual General Meeting or by appointment by the Board.

Nomination of candidates shall be made in writing, signed by two Members and the candidate and handed to the Secretary not less than seven (7) days before the Annual General Meeting.

However, where the Annual General Meeting so decides, other nominations may be accepted at the time of the Annual General Meeting.

14.2 Election and Size

The Board shall have no less than eight (8) members, and no more than ten (10) members. Up to eight members shall be elected at the Annual General Meeting of the Council and up to two members shall be elected by the Board.

As far as possible, the membership of the Board should reflect the profile of the Council's Voting Members.

The Annual General Meeting shall elect the office bearers and ordinary members of the Board who shall include:

- (a) Chairperson;
- (b) Secretary;
- (c) Treasurer; and
- (d) No less than three (3) and no more than five (5) ordinary members of the Board.

Each Board member shall hold office until no longer than the second Annual General Meeting after the date of their election, but is eligible for re-election or for the election to another office.

At each Annual General Meeting not less than half of the current members of the Board must retire, but they may offer themselves for re-election or for the election to another office. If no Board member is required to retire by reason of the paragraph above, then the Board members to retire under this paragraph will be the ones who have been longest in office since their last election. The ballot for the election of officers and ordinary members of the Board shall be conducted at the Annual General Meeting in such usual and proper manner as the Board may direct. A candidate for election may nominate for more than one position at the same election.

14.3 Powers of the Board

- (a) The affairs of the Council shall be governed by the Board.
- (b) The Board:
 - (i) shall control and manage the business and affairs of the Council;
 - (ii) may, subject to these Rules, the Act and the Regulations, exercise all such powers and functions as may be exercised by the Council other than those powers and functions that are required by these Rules to be exercised by General Meetings of the Members of the Council; and
 - (iii) subject to these Rules, the Act and Regulations, has the power to perform all such acts and things as appear to the Board to be essential for the proper governance of the business and affairs of the Council.
- (c) Without prejudice to the powers conferred by Rules 14.3(a) and (b), the Board's powers shall include the power to:
 - (i) appoint the Public Officer of the Council;
 - (ii) appoint, direct and terminate the employment of staff of the Council (including, without limitation, the executive officer);
 - (iii) determine the duties of and direct the executive officer of the Council;
 - (iv) delegate (subject to such conditions as they think fit) any of their powers to ad hoc sub-committees consisting of such members of the Board and other Members of the Council co-opted for that purpose as the Board may determine, and make such regulations as to the proceedings of such sub-committees as may be thought desirable;
 - (v) enter into any lease or tenancy of premises at which activities of the Council may be conducted;
 - (vi) start and defend all legal proceedings by or on behalf of the Council;
 - (vii) provide the necessary insurance and comply with provisions for employee accident compensation;
 - (viii) borrow, raise or secure the payment of money and to sell and dispose of the assets of the Council; and
 - (ix) make, alter and repeal rules and by-laws not inconsistent with these Rules regulating:
 - (A) the use and management of Council premises;
 - (B) the admission of Members; and
 - (C) the conduct of the Council and its affairs generally.

14.4 Vacations of Office

The office of Chairperson, Secretary, Treasurer, or other officer or ordinary member of the Board shall be vacated if the person filling it:

- (a) had been appointed under clause 14.2 at an Annual General Meeting but ceases to be a Member or a nominee of a Member; or
- (b) resigns the office by notice in writing to the Secretary.

If any casual vacancy occurs in respect of the position of any office holder, the position may, at the Board's discretion, be filled by any ordinary member of the Board elected under clause 14.2 at an Annual General Meeting as determined by the Board, and any such person shall hold office until the second Annual General Meeting after the date of their appointment, but is eligible for re-election or for the election to another office or for re-appointment.

For avoidance of doubt, a member of the Board appointed under this clause need not be a Member or a nominee of a Member.

14.5 Vacancy on the Board

The Board may act notwithstanding any vacancy in its body.

14.6 Board appointments and Casual Vacancies

The Board may at any time appoint up to two people to the Board, and any person so appointed shall hold office until no longer than the second Annual General Meeting after the date of their appointment, but is eligible for re-election or for the election to another office or for re-appointment.

In addition, any casual vacancy occurring in respect of an ordinary member of the Board may, at the Board's discretion, be filled by appointment by the Board of any Member or a nominee of a Member or by election at a General Meeting, and any person so appointed or elected shall hold office until no longer than the second Annual General Meeting after the date of their appointment or election, but is eligible for re-election or for the election to another office or re-appointment.

A member of the Board appointed or elected under this clause cannot act as an office holder.

14.7 Removal of Board Members

The Council in General Meeting may, by Special Resolution, remove any Board member before the expiration of their term of office and appoint another person instead. The person so appointed shall for all purposes be treated as if they were appointed to fill a casual vacancy.

14.8 Meetings of the Board

- (a) The Board shall meet as often as is determined by these Rules or as agreed by members of the Board.
- (b) A quorum shall be 50% plus one.
- (c) At every meeting of the Board the Chairperson shall preside and in the absence of the Chairperson, the Board members present shall choose one of their members to be the chairperson of the meeting.

- (d) Questions arising at any meeting shall be decided by a majority of votes and in the case of an equality of votes the Chairperson shall have a casting vote.
- (e) The Chairperson or any two Board members may at any time summon a meeting of the Board.

15. SECRETARY

The Secretary shall ensure that:

- (a) full and correct minutes of all resolutions and proceedings of every General Meeting and of all Board meetings are kept in books provided for that purpose together with a record of the names of all persons present at all meetings;
- (b) except as otherwise provided in these Rules, the Secretary shall keep custody or control of all books, documents and securities of the Council;
- (c) a register of all Members setting forth their names and addresses is kept;
- (d) correspondence is attended to; and shall
- (e) perform such other duties as the Board may prescribe.

16. FINANCIAL RECORDS

16.1 Treasurer

The Treasurer shall ensure that:

- (a) all monies due to the Council are collected and received and all payments authorised by the Council are made;
- (b) correct accounts and books showing the financial affairs of the Council with full details of all receipts and payments are kept and such books and accounts made available at all meetings or as required by the Board; and
- (c) the financial statements referred to in the Act are prepared.

16.2 Signatories

- (a) All expenditure shall be authorised by the Board or its nominee.
- (b) All cheques, transfers or orders in writing concerning the funds of the Council shall be signed by two persons authorised by the Board.

16.3 Keeping of Documents

All securities and records, registers and other documents of value, except those in use, shall be held at the address of the Public Officer or at such other safe place as the Board shall decide.

16.4 Right of Inspection

Members shall, on giving reasonable notice, be able to inspect all books, accounts, registers and any other relevant documents of the Council.

17. PUBLIC OFFICER

17.1 Appointment

There shall be a Public Officer who shall be appointed by the Board and who:

- (a) is over 18 years but younger than 72 years of age; and
- (b) resides in Victoria.

17.2 Notice to Registrar

The Public Officer of the Council shall, within fourteen days after appointment, give notice in writing in the prescribed form to the Registrar of their full name and address in Victoria, together with the prescribed fee (if any).

17.3 Duties

The Public Officer shall have and perform all of the powers and duties conferred and imposed upon a Public Officer by the Act.

17.4 Vacation or Removal of the Public Officer

The Council may remove the Public Officer from office. The office of Public Officer becomes vacant if the Public Officer:

- (a) dies;
- (b) resigns the office in writing addressed to the Board;
- (c) is removed from office;
- (d) becomes bankrupt or applies to take or takes advantage of any law relating to bankruptcy or insolvent debtors, compounds with creditors or makes any assignment for their benefit;
- (e) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (f) ceases to be a resident in Victoria; or
- (g) attains the age of 72 years.

17.5 Vacancy

Where the office of Public Officer of the Council becomes vacant, the Board shall, within fourteen days after the vacancy arises, appoint a person to fill the vacancy. Such appointment may be of a temporary nature until a permanent appointment is made.

17.6 Defects in Appointment

The acts of the Public Officer are not invalid by reason only of any defect that may be discovered in their appointment.

18. COMMON SEAL

The common seal of the Council shall be kept in the custody of the Board of the Council and shall be affixed to a document at a meeting and by resolution of the Board and not otherwise. Any two members of the Board shall sign and countersign every document to which the seal is affixed and the Secretary shall keep a record of all documents so sealed.

19. WINDING UP AND DISPOSITION OF ASSETS

19.1 In the event of the winding up or the cancellation of the incorporation of the Council, any surplus assets of the Council remaining after the payment of the Council's debts and liabilities shall be transferred to or for one or more funds, authorities or institutions determined by the Board at or before the time of dissolution which:

- (i) has similar purposes to the Council and which is approved by the Commissioner of Taxation as a charitable fund or institution for the purposes of any Commonwealth taxation act; and
- (ii) has been endorsed by the Commissioner of Taxation as one to which income tax deductible gifts can be made.

19.2 Where the Council is endorsed as a deductible gift recipient and in the event that its endorsement is revoked, any surplus:

- (i) gifts of money or property for the principal purpose of the Council; and
- (ii) contributions described in item 7 or 8 of the table in section 30-15 of the Income Tax Assessment Act 1997 in relation to a fund raising event held for that purpose; and
- (iii) Money received by the entity because of such gifts or contributions,

must be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

20. ALTERATION OF RULES AND STATEMENT OF PURPOSES

These rules and the statement of purposes of the Council shall not be altered except in accordance with the Act or Regulations.

21. NOTICES

21.1 A notice may be served by or on behalf of the Council upon any Member or applicant for membership either personally or by sending it by post to the Member at the address shown in the Register of Members or at the address notified to the Secretary by the applicant for membership.

21.2 Where a document is properly addressed, pre-paid and posted to a person as a letter, the document shall, unless the contrary is proved, be deemed to have been given to the

person at the time at which the letter would have been delivered in the ordinary course of post.

22. AMALGAMATION

Where it furthers the Purposes and Objectives of the Council to amalgamate with any one or more other organisation having similar objects, the other organisation must have rules prohibiting the distribution of its assets and income to Members, and must be exempt from income tax.