



# Financial Executives Institute of Australia Explanatory Memorandum

Adopting changes to the constitution.

## 1. Background

- 1.1. The operations of the Financial Executives Institute of Australia (FEIA) are governed by the Constitution which was last amended on 26 July 2016. With the introduction of a corporate membership offer as part of FEIA's engagement model, your board has determined to update the Constitution to clarify membership criteria and other issues. There has not been a wholesale review of the Constitution.
- 1.2. The Board recommends that changes to the Constitution, drafted in plain language should be adopted to reflect best practice for a member-based company limited by guarantee, while retaining provisions that are necessary to comply with FEIA's role and function.
- 1.3. The adoption of changes to the constitution must be approved by members by special resolution in accordance with section 136(2) of the Corporations Act . A special resolution requires the approval of at least 75% of members present and voting, in person or by proxy.
- 1.4. A copy of the amended constitution has been made available for review and comment on FEIA's website (<https://www.fei.org.au/financial-reports/>) and will be available for inspection at the general meeting.

## 2. Summary of Changes

- 2.1. This explanatory memorandum provides an overview of the changes to the constitution to assist members who are entitled to vote to do so with full knowledge of the reasons behind the proposed changes. No substantive changes other than those described below have been made. The change to the existing classes of members is to recognise the significance of corporates in the community.

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2.2. A key reason for the changes is to confirm that membership is open to companies and other such organisations (see 2.5 below). Whilst this was implied in the Constitution prior to these amendments, these amendments put the issue beyond doubt. Also, to allow fully virtual meetings in accordance with the Corporations Act, there are amendments to clause 7.1 and clause 7.2 of the Constitution.

2.3. The summary below deals with the key changes only. There are a number of typographical, definitional or conforming changes that have also been made that are not described below.

#### **2.4. Definitions (clause 1.1)**

2.4.1. In order to give a wide meaning for the purpose of a corporate member, the constitution refers to a “Body” as not only encompassing a company limited by shares but also

- companies limited by guarantee,
- companies created by Acts of Parliament or Royal Charter,
- incorporated associations,
- corporations sole,
- bodies corporate, and
- registered organisations (i.e. employer organisations);

Other structures such as trusts and joint ventures have not been included.

2.4.2. To rectify an omission in the existing constitution a modern definition of “External Administration” has been added. This has significance for clause 5.6 which deals with cessation of membership.

2.4.3. Likewise, to rectify an omission in the current constitution the definition of “Related Body Corporate” has been added. This has significance in clause 8.7 dealing with the interests of a director.

2.4.4. There are some additions to the interpretation clause (1.1(f)).

#### **2.5. Membership**

2.5.1. Clause 5.1 makes it plain that there will now be two classes of members, those that have the right to vote and those that do not have a right to vote. If the changes to the

Constitution are adopted, the only non-voting members at this time will be Corporate Members, described in the Constitution as Bodies.

- 2.5.2. There have been technical amendments to clause 5.2 dealing with the admission of members. Clause 5.2 (a) and (b) have removed reference to “persons”, referring to them now as “Applicants”. This is to cater for the fact that there may be corporate members. This appears in some of the following clauses.
- 2.5.3. There is a new clause 5.2 (c) which allows the board to create bylaws which will deal with details of, for example, qualifications, the number of members in each class and the creation of subcategories in each class. Because of the nature of these details the board will be entitled to determine the bylaws from time to time.
- 2.5.4. Clause 5.6, which deals with cessation of membership, now makes it plain that a corporate member is liable to cease being a member if it is or takes steps to become under external administration.

## **2.6. Virtual Meetings**

- 2.6.1. Pre Covid, member meetings could be held in person or partly in person and partly remotely. Initially this allowed people to “phone in” to a meeting. Virtual meetings were not permitted. With the onset of Covid the need for a more modern approach became apparent. ASIC firstly allowed it last year then interim legislation was passed to confirm virtual meetings, and this was formalised earlier this year. Companies may now conduct general meetings entirely remotely, but only if that is expressly allowed in its constitution. Additionally, it must use any technology that gives the Members a reasonable opportunity to participate, including to hear and be heard. Anyone using that technology is taken to be present in person at the meeting.
- 2.6.2. Rules were also established regarding the timing and place for such a meeting. To achieve this, and again to modernise the Constitution, new clauses 7.1 (e) to (h) have been inserted, as has new clause 7.2 (b), which deals with the notice of meeting.