

FAAA Deed of Access and Indemnity

Effective date: 13 August 2024

Submitted to: Governance and Remuneration Committee



Approval date	13 August 2024
Approved by	Governance and Remuneration Committee (and FAAA Board 3 September 2024)
Owner	Governance and Remuneration Committee
Version	2.0
Previous approval date	4 August 2022

DEED OF ACCESS AND INDEMNITY

THIS DEED is made on the **date**

BETWEEN **FINANCIAL ADVICE ASSOCIATION OF AUSTRALIA LIMITED**
ABN 62 054 174 453 of Level 11, Suite 11.02, 55 Clarence Street, Sydney NSW 2000
(“FAAA”)

AND **NAME** of **Address**

(“Director”)

RECITALS

- (a) The Director was appointed as a director of the FAAA on **date** for the term of 3 years.
- (b) Clause 65 of the FAAA’s Constitution (the “**Constitution**”) contains an indemnity in favour of directors of the FAAA.
- (c) Having regard to the Constitution, the Board of Directors of the FAAA has determined that it is reasonable for the FAAA, and the FAAA has agreed, to enter into this Deed to clarify the terms and conditions on which the FAAA will indemnify the Director and keep the Director indemnified from and against a liability which the Director incurs as a result of acting as a director of the FAAA.
- (d) The FAAA has also agreed to confirm the terms and conditions on which the Director has access to the Board Papers of the FAAA.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1. Definitions

In this Deed, unless it is inconsistent with the context:

- | | |
|---------------------------|---|
| Appointment Period | means the period commencing on and including the date of appointment of the Director and ending on and including the date on which the Director ceased to be a director of the FAAA. |
| Board Papers | means papers, legal advice, memorandum (internal or external), committee papers and all other forms of documents, whether in written or machine readable form, provided by the FAAA to the Director or to which the Director has been given access by or on behalf of the FAAA in connection with their role as a director during the Appointment Period together with any papers and documents which are referred to therein; |
| Claim | means: <ul style="list-style-type: none">(a) a written or verbal allegation of any Wrongful Act communicated to the Director.(b) a civil proceeding commenced by the service of a complaint, summons, statement of claim or similar pleading against the Director alleging any Wrongful Act; or(c) a criminal proceeding commenced by a summons or charge against the Director alleging Wrongful Act. |

Confidential Information

means all Information disclosed by and on behalf of the FAAA to the Director at any time and includes without limitation:

- (a) information which at the time of disclosure by or on behalf of the FAAA is identified as being confidential.
- (b) information which, of implied necessity, is confidential.
- (c) information which the Director knows or ought reasonably to be expected to know, is confidential; and
- (d) all Board Papers; but
- (e) does not include non-confidential Information.

Corporations Act

means the Corporations Act 2001 (Commonwealth) or as applied by the appropriate corresponding legislation of any Australian state or territory as a law thereof.

Deed

means this Deed of Access and Indemnity.

Information

includes information, inventions and ideas and which may be:

- (a) oral, written, recorded or stored by electronic, magnetic, electromagnetic, or in other form, process, media or otherwise in a machine-readable form; or
- (b) translated from the original form, recompiled, made into a compilation, partially copied, modified, updated or otherwise altered.

Limitation Period

means the period commencing on the first day after the end of the Appointment Period and ending on and including the seventh anniversary of that date.

Non-Confidential Information

means Information which:

- (a) at the time of disclosure by or to the FAAA is in the public domain otherwise than as a result of a breach of the terms of this Deed, or any other obligations of confidentiality owed by the Director
- (b) prior to disclosure by the FAAA was lawfully known to the Director and in respect of which the Director is not bound by any other obligations of confidentiality; or
- (c) is found by final and binding court judgement to either not constitute Confidential Information or not otherwise be subject to any confidentiality obligations under this Deed.

Policy

means insurance cover for the benefit of the Director against directors' and officers' liability.

Relevant Period

means the aggregate of the Appointment Period and the Limitation Period; and

Wrongful Act

means:

- (a) any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other committed or attempted by the Director in the course of their duties to the FAAA; and
- (b) any act, error, or omission committed, attempted or allegedly committed or attempted, by the Director in course of rendering (or failure to render) services and/or advice to the FAAA.

1.2 Interpretation

- (a) In this Deed, unless it is consistent with the context:
- (b) reference to a word includes the singular and the plural of the word and vice versa.
- (c) a reference to a gender includes any gender.
- (d) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning.
- (e) a term which refers to a natural person includes a company, a partnership, an association, a corporation, a body corporate, a joint venture or a governmental agency. Headings are included for convenience only and do not affect interpretation.
- (f) a reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced.
- (g) a reference to a thing includes a part of that thing and includes but is not limited to a right;
- (h) the terms "included", "including" and similar expressions when introducing a list of items do not exclude a reference to other items of the same class or genus;
- (i) a reference to a part, clause or party is a reference to an item of that type in this Deed and includes a reference to the provisions or terms of that part or clause;
- (j) a reference to a party to this document includes the party's successors and permitted assigns and includes any person to whom this Deed is novated;
- (k) a reference to a statute or statutory provision includes but is not limited to:
- (l) a statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision.
- (m) a statute or statutory provision which has been amended, extended, consolidated or replaced by the statute or statutory provision; and
- (n) subordinate legislation made under the statute or statutory provision including but not limited to an order, regulation, or instrument.
- (o) a reference to a document is a reference to a document of any kind including but not limited to an agreement in writing, a certificate, a notice, or an instrument.
- (p) a covenant, representation, warranty or an agreement between more than one person binds them jointly and severally.
- (q) a provision of this Deed is not to be construed against a party solely on the ground that the party is responsible for the preparation of this Deed or a particular provision.
- (r) a reference to an asset includes all property or title of any nature including but not limited to a business, a right, a revenue and a benefit, whether beneficial, legal or otherwise.
- (s) a reference to liquidation includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme composition or arrangement of creditors, insolvency, bankruptcy or any similar procedure or if applicable changes in the constitution of a partnership or the death of a person; and
- (t) a reference to a body which is not a party to this Deed which ceases to exist or whose power or function is transferred to another body, is a reference to the body which replaces or substantially succeeds to the power or function of the first body.

1.3 Documentation Priority

Where any provision of this Deed is inconsistent with a provision of the Constitution, this Deed will prevail to the extent of the inconsistency, to the full extent permitted by law.

2. INDEMNITY

Subject to the provisions of clause 2.3, the FAAA shall, during the Relevant Period:

- (a) indemnify the Director against a liability incurred by the Director as a result of acting as a director of the FAAA to another person (other than the FAAA or a related body corporate) unless the liability arises out of conduct involving a lack of good faith; and
- (b) pay all of the Director's reasonable costs and expenses incurred by the Director:
 - I. in defending any Claim in which judgment is given in favour of the Director or in which the Director is acquitted; or
 - II. in connection with an application in relation to such proceedings in which the court grants relief to the Director under the Corporations Act.

2.2 The Director shall:

- (a) use their best endeavors to recover and be paid any and all monies that the Director is or may become entitled to under the provisions of a Policy; and
- (b) ensure that any and all moneys received or recovered by the Director or to which the Director becomes entitled pursuant to the provisions of the Policy, up to an amount equal to the aggregate of all moneys paid by the FAAA to, on behalf of or for the benefit of, the Director pursuant to the provisions of clauses 2.1 or 2.2, are paid to the FAAA on or immediately after the occurrence of such receipt or recovery.

2.3 The FAAA is not required to indemnify the Director or pay the Director's costs and expenses pursuant to the provisions of this clause 2 if:

- a) to do so would constitute a breach of the provisions of Sections 199A and 199B of the Corporations Act;
- b) to do so would constitute a breach of any other statutory provision or the common law;
- c) the Director fails to provide all reasonable assistance in respect of any Claim, including permitting the FAAA to have conduct of the Claim where the FAAA wishes to do so; or
- d) any Claim made on the Policy is not accepted by the underwriter, however FAAA will do all things necessary and use its best endeavors to ensure that all legitimate claims are accepted by the underwriter, including issuing legal proceedings against the underwriter if required.

3. FAAA covenants

3.1 Insurance

Subject to the provisions of clause 3.2, the FAAA covenants to and in favor of the Director that it will, for the duration of the Relevant Period:

- (a) use its reasonable endeavors to arrange and maintain a Policy on terms not materially less favorable than provisions of insurance policies of the same nature provided by the FAAA for its current directors as at the time such Policy is taken out and as varied from time to time as is reasonable to take account of changes in the insurance market after that time;
- (b) where a Policy is arranged under clause 3.1(a), pay all reasonable or market premiums in order to maintain the currency of such Policy; and
- (c) on request by the Director, provide to the Director a copy of the Policy then in force and evidence of the payment by the FAAA of the premium in respect of that Policy.

3.2 The FAAA is not required to pay an insurance premium pursuant to the provisions of clause 3.1 if to do so would constitute a breach of:

- (a) the provisions of Sections 199A and 199B of the Corporations Act; or
- (b) any other statutory provision or the common law.

3.3 Board Papers

The FAAA covenants to and in favour of the Director that it will, for the duration of the Relevant Period:

- (a) maintain the Board Papers in proper storage conditions, in good order and condition and in chronological order; and
- (b) subject to clauses 3.4, 3.5 and 3.6, permit the Director and the Director's legal advisers on request the right of access to, the right to inspect and the right to take copies of the Board Papers.

3.4 Subject to the provisions of clause 3.8, a Director will have access to the Board Papers:

- (a) during the Relevant Period in relation to any Claim alleging any liability on the part of the Director as a result of acting as a director of the FAAA.
- (b) during the Relevant Period for the purposes of a legal proceeding:

i. to which the Director is a party; or

ii. that the Director proposes in good faith to bring; or

iii. that the Director has reason to believe will be brought against them.

3.5 A request for access to Board Papers under clause 3.3 by the Director during the Limitation Period must:

be in writing.

- (a) give at least five business days' notice.
- (b) identify the Board Papers required by the Director; and
- (c) specify the purpose for which the Board Papers are required.

3.6 The FAAA may deny access to Board Papers in circumstances where there is reason to believe that access is sought for a purpose other than as permitted by clause 3.4 or in circumstances where to afford access to a particular document would be materially prejudicial to the business, reputation and/or goodwill of the FAAA including, without limitation, destroying or prejudicing a claim of legal professional privilege in respect of that document.

3.7 The FAAA will notify the Director:

- (a) that a document to which the Director has or seeks access is the subject of legal professional privilege in favour of the FAAA; and
- (b) of the general nature of acts or omissions that could cause that privilege to be waived, extinguished or lost.

3.8 Nothing in this clause 3 prejudices or inhibits the right of the Director to inspect and take copies of books of the FAAA pursuant to section 198F of the Corporations Act.

4. Director Covenants

4.1 Except as permitted by clause 4.2, the Director undertakes that they will not disclose to any person or use any Confidential Information of the FAAA both during and after the Relevant Period.

4.2 The Director may disclose:

- (a) Confidential Information in the proper performance of their duties as a director of the FAAA;
- (b) Confidential Information in connection with any Claim alleging any liability on the part of the Director as a result of acting as a director of the FAAA;
- (c) Confidential Information with the written consent of the FAAA;
- (d) Confidential Information as otherwise required by law or ;
- (e) Non-Confidential Information; and

4.3 The Director covenants that they will at all times not waive or attempt to purport to waive or compromise any legal professional privilege attached to any Board Paper without the consent of the FAAA.

4.4 The Director acknowledges and agrees that ownership of the Board Papers remains with the FAAA, including any and all Board Papers supplied to the Director as well as any copies made, and further that the FAAA has the right to recall any Board Papers given to the Director.

4.5 The Director covenants to and in favour of the FAAA that they will:

- (a) keep any Board Papers and any copies made in their possession in a secure place and ensure that they remain the confidential property of the FAAA;
- (b) return to the Company Secretary of the FAAA any Board Papers together with any copies made (except where otherwise agreed in writing by the FAAA and the Director):
 - i. on ceasing to be a Director of the FAAA;*
 - ii. as soon as possible after such Board Papers are no longer required for the purpose for which they were obtained or copied; and*
 - iii. as requested from time to time by the FAAA.*

4.6 The Director's obligation under clause 4.5 is subject to the Director's right to retain any specific Board Paper necessary for the purpose of taking any action in relation to any Claim against the Director.

4.7 If any Claim is commenced against the Director during the Appointment Period or Limitation Period, the Director will promptly give written notice to the FAAA of such Claim.

4.8 If any Claim is commenced against the Director during the Appointment Period or Limitation Period, all of the rights and obligations created by clause 3 and clause 4 will continue to operate until final resolution of that Claim including any appeal.

5 Notices

5.1 A notice, approval, consent or other communication in connection with this Deed must be in writing and must be left at the address of the party or sent by prepaid ordinary post to the address of the party on page one of this Deed or to the last known address or to the last notified address or sent by email.

5.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

5.3 A letter or email is taken to be received:

- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
 - 1.1 in the case of an email, when the email is sent, unless the sender has been notified, by a system or person involved in the delivery of the email to the addressee, that the email has not been successfully delivered.

6. Severance and Waiver

6.1 If any part of or all of any clause contained in this Deed is void or invalid or would otherwise result in all or part of this Deed being void or invalid for any reason whatsoever, then such part shall be severed from this Deed and shall not effect the validity or operation of any other provision of this Deed.

6.2 A waiver by any party of any default in the performance of or compliance with, any provision, requirement or condition of this Deed will be not deemed to constitute or effect a waiver of the performance of or compliance with, any other provision, requirement or condition of this Deed nor to constitute or effect a waiver of or in any manner release any party from the strict and timely compliance with any such provision, requirement or condition in the future.

7. Remedies

7.1 The parties agree that, in the event of a breach of this Deed, a party is entitled to seek remedies including but not limited to temporary or permanent injunction or other appropriate judicial remedy, writ or order in addition to any damages to which they may be legally entitled.

7.2 The rights accrued under this Deed will not hinder either party from seeking other remedies the parties may be entitled to.

8. Assignment

Neither party may assign any of its rights under this Deed without the prior written consent of the other.

9. Governing Law and Jurisdiction

This Deed and the transactions contemplated by this Deed are governed by the law in force in New South Wales at any time and from time to time and the parties hereby irrevocably submit to the jurisdiction of the courts of that State and the courts of appeal therefrom.

10. Amendments

This Deed may be amended or modified by written notice from the FAAA to the Director.

11. Entire Agreement

This Deed does not and will not have the effect of waiving, amending, qualifying or derogating from any right, interest, obligation or liability of the FAAA or the Director to each other, or to any other person or entity, pursuant to any statute, regulation, common law or equitable principle.

Executed as a Deed

**Executed for and on behalf of
Financial Advice Association
of Australia Limited**
ABN 62 054 174 453
by:

.....
Director

Name: David Sharpe
Date:

.....
Secretary

Name: Wendy Smith
Date:

Signed, Sealed and Delivered by
NAME
in the presence of:

.....
NAME

.....
Witness

.....
Full Name of Witness

Date: