



ACN 087 651 143

# CONSTITUTION

Including amendments approved at the 23 November 2011 AGM

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# Constitution

## Division 1. — Introductory Matters

### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

**ADI** refers to an authorised deposit - taking institution and means a body corporate that **APRA** has authorised to conduct banking business in Australia under *the Banking Act 1959 (Cth)*

**AGM** means the annual general meeting of the *credit union*

**appointed director** means a **director** for the time being of the *credit union* who the **board** appoints in accordance with Rule 13.4(1)

**APRA** means the Australian Prudential Regulation Authority

**board** means the board of **directors**

**Corporations Act** means the *Corporations Act 2001*

**credit union** means Community CPS Australia Limited ABN 15 087 651 143

**D class share** means a share as described in Rule 5.4

**deposit** means the placement of money in an account that the *credit union* conducts in the ordinary course of its banking business

**director** means a director for the time being of the *credit union*

**elected director** means a **director** for the time being of the *credit union* appointed by **members** under Rule 13.3

**financial accommodation** means:

- (a) an advance;
- (b) money paid for, on behalf of or at the request of a **person** (other than by drawing on the **person's deposit** account with the *credit union*);
- (c) a forbearance to require payment of money owing on any account; and
- (d) a transaction that, in substance, effects a loan or is regarded by the parties to the transaction as a loan,

that the *credit union* provides or enters in the ordinary course of its banking business

*fit and proper policy* means the policy adopted by the *board* in relation to the fitness and propriety of *directors*, senior managers and auditors as required by the *prudential standards*

*general meeting* means a general meeting of the *members*

*material personal interest* has the same meaning as in Part 2D.1 of the *Corporations Act*

*member* means a *person* whose name the *credit union* has entered for the time being in the Register of Members it keeps under the *Corporations Act*

*member share* means a member share as described in Appendix 2, Division 1

*minor* means a *person* who has not attained the age of 18 years

*Nomination Committee* means the committee appointed by the *board* in accordance with Appendix 4

*person* includes a body corporate as well as an individual

*prudential standard* means:

- (a) any prudential standard that *APRA* determines under the *Banking Act 1959 (Cth)*;
- (b) any prudential regulation made under the *Banking Act 1959 (Cth)*; and
- (c) any *APRA* transitional *prudential standard* applying to the *credit union* under the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999 (Cth)*.

*secretary* means a secretary for the time being of the *credit union*

*subscription price* means the amount payable by a *person* on subscription for a *member share*

## 1.2 Interpretation

- (1) In this Constitution, unless the context requires otherwise:
  - (a) the singular includes the plural and vice versa;
  - (b) where an expression is defined in this Constitution, any other grammatical form of the expression has a corresponding meaning;
  - (c) words and expressions defined in the *Corporations Act* have the same meaning in this Constitution;
  - (d) headings are for purposes of convenience only and do not affect the interpretation of this Constitution;

- (e) a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation;
  - (f) a reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument;
  - (g) a reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body:
    - (i) that replaces it; or
    - (ii) to which substantially all the powers and functions relevant to this Constitution are transferred; and
  - (h) a reference to 'in writing' is a reference to any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile and email transmission and documents in electronic form.
- (2) The notes to this Constitution are for purposes of convenience only and do not affect the interpretation of this Constitution. The notes do not form part of this Constitution and may be removed or modified without the *credit union* complying with the *Corporations Act* requirements that apply to removal or modification of constitutional provisions.

### 1.3 Time

Unless expressly provided otherwise, when this Constitution, or any notice given under this Constitution, states a time or a period of time, the time stated is, or the period of time is calculated by reference to, Standard Time or Summer Time, as the case may be, at the *credit union's* registered office.

### 1.4 Replaceable Rules do not Apply

The replaceable rules in the *Corporations Act* do not apply.

### 1.5 Notices

- (1) This Rule applies to all notices and documents that the *Corporations Act* or this Constitution requires a party to this Constitution to give to another party to this Constitution.
- (2) In this Rule, *business day* means a day that is not:
  - (a) a Saturday or Sunday; or
  - (b) a public holiday or bank holiday in the place where the notice is received.
- (3) A *person* giving a notice must do so in writing and must address it to the recipient at the following respective addresses:

- (a) if to the *credit union* — at its registered office or such other address as the *credit union* specifies to *members* from time-to-time; and
- (b) if to a *member* — at the *member's* address appearing in the Register of Members from time-to-time or at any alternative address nominated by the *member*, or at any fax number or electronic address nominated by the *member*.

**Note:** Subrule 3.3(3) deals with sending notices to joint members.

- (4) A *person* may give a notice or other document to another *person* in any of the ways set out in column 2 of the table. The other *person* is taken to be given the notice at the time set out in column 3:

Column 1	Column 2	Column 3
	<i>Delivery Method</i>	<i>Time Person Receives Notice</i>
1	Hand delivering the notice personally	The notice is taken to be given: <ul style="list-style-type: none"> <li>(i) if hand delivered before 4:00pm on a <i>business day</i> — on that <i>business day</i></li> <li>(ii) if hand delivered after 4:00pm on a <i>business day</i> — on the next <i>business day</i></li> <li>(iii) if hand delivered on a day other than a <i>business day</i> — on the next <i>business day</i></li> </ul>
2	Sending the notice by pre-paid post	The notice is taken to be given on the third <i>business day</i> after posting
3	Sending the notice by facsimile transmission	The notice is taken to be given: <ul style="list-style-type: none"> <li>(i) if sent before 5:00pm on a <i>business day</i> — on that <i>business day</i></li> <li>(ii) if sent after 5:00pm on a <i>business day</i> — on the next <i>business day</i></li> <li>(iii) if sent on a day other than a <i>business day</i> — on the next <i>business day</i></li> </ul> This rule does not apply where the <i>person</i> sending the facsimile has evidence that the transmission was unsuccessful
4	Sending the notice by electronic means	The notice is taken to be given: <ul style="list-style-type: none"> <li>(i) if sent before 5:00pm on a <i>business day</i> — on that <i>business day</i></li> <li>(ii) if sent after 5:00pm on a <i>business day</i> — on the next <i>business day</i></li> <li>(iii) if sent on a day other than a <i>business day</i> — on the next <i>business day</i></li> </ul>

- (5) If a *person* gives a *member* a notice in accordance with this Rule, any *person* to whom that *member* transfers or transmits a share is taken to receive the notice when the first *person* gave the *member* the notice.

## 1.6 Transitional provisions relating to transfer of business from United Credit Union

- (1) For the purposes of this Rule 1.6:
- (a) *United* means United Credit Union Limited ABN 92 087 651 910;
- (b) *transfer of business* means the transfer of business from *United* to the *credit union* pursuant to the *Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cth)*; and
- (c) *transfer date* means the date when the certificate of transfer granted under section 18 of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* in relation to the *transfer of business* comes into force.
- (2) On the *transfer date* those of the *persons* listed in the left column of the following table who were *directors* of the *credit union* or *United* immediately before the *transfer date* (in this Rule 1.6 referred to as *transfer directors*) are deemed to be *elected directors* and their terms of office end, subject to Rule 1.6(3)(a), at the end of the *AGMs* indicated in the right column:

Name of Director	Year of AGM
Stephanie Chapman	2008
Daniel Cloghan	2010
Christopher Doogan	2010
Gary Green	2009
Barry Hanna	2008
Catherine Nance	2010
Anne O'Donnell	2009
Frances Raymond	2009
Richard Ryan	2009
Heather Webster	2010

- (3) If the 2008 *AGM* of the *credit union* was held before the *transfer date* then:
- (a) the term of office of any *transfer director* whose re-election was announced at the 2008 *AGM* ends at the end of the 2011 *AGM*; and
- (b) any *person* other than a *transfer director* whose election as an *elected director* was announced at the 2008 *AGM* and who is a *director* immediately before the *transfer date*, his or her current term of office ends at the end of the 2011 *AGM*.
- (4) Subject to Subrule 1.6(5), on the *transfer date* the *credit union's* Chair and Deputy Chair are those *directors* who were the Chair and Deputy Chair immediately before the *transfer date*, and the appointment of each to the relevant office will end:
- (a) if the *transfer date* occurs before the meeting of the *board* scheduled to be held in December 2008:

- 
- (i) at the end of that meeting unless they are reappointed during that meeting; or
    - (ii) if that scheduled meeting is not held the relevant office will end at 5.00 pm on 31 December 2008; or
  - (b) if the *transfer date* occurs after the meeting of the *board* scheduled to be held in December 2008:
    - (i) at the end of the meeting of the *board* scheduled to be held in December 2009 unless they are reappointed during that meeting; or
    - (ii) if that scheduled meeting is not held the relevant office will end at 5.00 pm on 31 December 2009.
- (5) Notwithstanding Subrule 1.6(4), the appointment of the Chair and Deputy Chair to those respective offices will end if:
- (a) for any reason, he or she ceases to be a *director*;
  - (b) he or she resigns from the relevant office; or
  - (c) if he or she is removed from the relevant office by a resolution passed by a majority of the *directors*;
- whichever occurs first.
- (6) On the *transfer date* the term of office of any *director* appointed pursuant to Rules 13.4 or 13.5(1) before the *transfer date* ends.
- (7) On the *transfer date*, any election of *directors* that has commenced will continue but the number of vacancies to be filled will be determined by reference to this Rule 1.6.
- (8) The maximum number of *directors* is:
- (a) 10 from the end of the 2008 *AGM* until the end of the 2009 *AGM*; and
  - (b) 9 from the end of the 2009 *AGM* until the end of the 2010 *AGM*.
- (9) Before the end of the 2010 *AGM* the *board* may not appoint a *person* as a *director* pursuant to Rule 13.5 unless the number of *elected directors* is less than 9.
- (10) To the extent of any inconsistency between the provisions in this Rule 1.6 and any other provisions in this Constitution the provisions in this Rule 1.6 will prevail.
- (11) This Rule 1.6 will cease to apply at the end of the 2011 *AGM*.

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## Division 2. — Objects & Limit on Powers

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### 2.1 Objects

The *credit union* has the objects set out in Appendix 1.

### 2.2 Customers Must be Members

- (1) Subject to Subrule (2) the *credit union* may only accept *deposits* from, or provide *financial accommodation* to, its *members* unless the *deposits* are made by or on behalf of former *members* prior to the cancellation of all authorities in relation to that membership.
- (2) Subrule (1) does not apply to the following *persons* who are not *members*:
  - (a) bodies that do not have the power to acquire, or that the law prohibits from acquiring, the *credit union's* shares;
  - (b) *ADIs*; or
  - (c) any *person* or class of *persons* as determined by the *board* from time to time in its absolute discretion.

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## Division 3. — Membership

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### 3.1 Admission to Membership

- (1) Subject to any other Rule allowing admission of *members*, the *credit union* may admit a *person* as a *member* only if:
  - (a) the *person* accepts a written offer of membership from the *credit union*;
  - (b) the *person* applies for a *member share*; and
  - (c) the *person* pays the *subscription price* for the *member share*.

**Note:** The *credit union* may also admit a *person* as a *member* by registering a transfer or transmission of a *member share* to the *person* under Rule 9.3, Rule 10.1, Rule 10.2 or Rule 10.3.

- (2) The *board* has an absolute discretion in exercising the *credit union's* power to admit a *person* as a *member* without any obligation to give a reason for not offering membership or not admitting a *person* as a *member*.
- (3) When the *credit union* admits a *person* as a *member*, the *credit union* must:
  - (a) issue the *member share* to the *person*;
  - (b) enter the *person's* particulars in the Register of Members as required by the *Corporations Act*; and
  - (c) give the *person* notice that it has admitted the *person* as a *member*.

### 3.2 Delegation of Power to Admit Members

The *board* may delegate its power to admit *members*, and its power to reject an application for membership, to a committee of *directors*, a *director*, or an officer or officers of the *credit union*. The delegation must not include authority to further delegate the power.

### 3.3 Joint Members

- (1) The *credit union* may admit 2 or more *persons* eligible for admission under Subrule 3.1(1) as a joint *member* of the *credit union*.
- (2) The *persons* constituting the joint *member* may determine the order in which their names appear in the Register of Members. If the *persons* constituting the joint *member* do not do so, the *credit union* may determine the order in which their names appear in the Register of Members.
- (3) The *person* named first in the Register of Members is the primary joint *member*. The *credit union* may duly send any notice, certificate or other document to the joint

*member* by sending it to the primary joint *member*. Only the primary joint *member* is entitled to vote on behalf of the joint *member*.

- (4) At any time, the joint *member* may give the *credit union* a notice requiring the *credit union* to change the primary joint *member* or otherwise change the order in which their names appear in the Register of Members. Each *person* constituting the joint *member* must sign the notice. The *credit union* must change the Register of Members as soon as practicable after receiving the notice.
- (5) Any *person* constituting a joint *member* may give an effective receipt for any dividend, distribution on winding-up or return of capital in relation to the joint *member's* shares.
- (6) The *credit union* may accept *deposits* from, or provide *financial accommodation* to, the joint *member* or to any *person* constituting the joint *member*.
- (7) The *persons* constituting a joint *member* are jointly and individually liable for any liability that the joint *member* may have in relation to the joint *member's* shares.
- (8) In this Constitution, the joint *member* is taken to be a *person* separate to the *persons* constituting the joint *member*.
- (9) A joint *member* is regarded as one *member*, regardless of the number of *persons* who may constitute that joint *member*.
- (10) If one of the *persons* constituting a joint *member* dies, the *credit union* will recognise only the survivor or survivors of the *persons* constituting the joint *member* as being entitled to the deceased *person's* interest in the joint *member's member share*. The *credit union* may require the survivor or survivors to produce such evidence of the deceased's death as it sees fit.

### 3.4 Minors

The *board* may admit a *minor* who is eligible for admission under Subrule 3.1(1) as a *member* of the *credit union*.

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## Division 4. — Termination of Membership

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### 4.1 Removal of the Member's Name from the Register of Members

The *credit union* can remove the *member's* name from the Register of Members if:

- (a) the *credit union* redeems the *member's member share* under Rule 4.2, Rule 4.3 or Rule 4.4;
- (b) if the *member* is an individual — the *member*:
  - (i) dies;
  - (ii) becomes a bankrupt and the *credit union* registers the *member's* trustee in bankruptcy as the holder of the *member's member share* under Rule 10.2; or
  - (iii) becomes mentally incapable and the *credit union* registers the *member's* trustee or guardian as the holder of the *member's member share* under Rule 10.3;
- (c) if the *member* is a body corporate — the *member* is deregistered or dissolved; or
- (d) if the *member* is a trustee for an unincorporated association — the *credit union* registers the transfer of the *member's member share* to another *person* who is to act as trustee for the unincorporated association.

**Note:** Rule 2.2 restricts the *credit union* from accepting further *deposits* from, or providing further *financial accommodation* to, *persons* who cease to be *members*.

### 4.2 Member's Request for Termination

- (1) A *member* may request termination of membership but only upon withdrawing all *deposits* and repaying all *financial accommodation*.
- (2) If a *member* makes a request under Subrule (1), the *credit union* must redeem the *member's member share* as soon as practicable after receiving the request. However, the *credit union* may defer redeeming the *member's member share* until the *board* is satisfied that the *member* has withdrawn all *deposits* and repaid all *financial accommodation*.

### 4.3 Termination by the Credit Union

- (1) The *board* may redeem a *member's member share* if:
  - (a) the *member* fails to discharge the *member's* obligations to the *credit union*;
  - (b) the *member* is guilty or suspected of conduct that could reasonably be considered to be detrimental to the *credit union*;

- (c) the *member* obtains membership by misrepresentation or mistake; or
  - (d) the *member* has more than one *member share* (and if so, the *board* may determine which additional *member shares* to redeem to ensure that the *member* has only one *member share*).
- (2) The *board* may delegate its power to redeem a *member's member share* under Subrule (1) to a committee of *directors*, a *director*, or an officer or officers of the *credit union*. The delegation must not include authority to further delegate the power to redeem a *member's member share*.
- (3) A *member's member share* is redeemed under this Rule 4.3 upon:
- (a) the *board* resolving that the *member's member share* be redeemed; or
  - (b) a *person* or *persons* to whom the *board* has delegated its power under Subrule (2) making a record of a decision that the *member's member share* be redeemed.
- (4) The *credit union* must give written notice that the *member's member share* may be redeemed under this Rule 4.3 to the *member* at least 14 days before the *board*, or a *person* or *persons* to whom the *board* has delegated its power under Subrule (2), makes a decision as to whether to redeem the *member's member share*. The notice must state whether it is proposed that the redemption will be by *board* resolution or by a decision made by a *person* or *persons* to whom the *board* has delegated its power under Subrule (2).
- (5) If a notice given to a *member* under Subrule (4) states that it is proposed that the redemption will be by a decision made by a *person* or *persons* to whom the *board* has delegated its power under Subrule (2), the *member* may, by written notice given to the *credit union* prior to the redemption of the *member's member share*, require that the matter be considered by the *board*. If a *member* gives such notice the *member's member share* may only be redeemed by *board* resolution.
- (6) At the time the *board* considers a resolution to redeem a *member's member share* under this Rule 4.3, the *member* is entitled:
- (a) to be present with or without the *member's* legal representative; and
  - (b) to be heard, either in *person* or through the *member's* legal representative.
- (7) On redeeming a *member's member share*, the *credit union* may pay the amount payable on redemption of the *member's member share* to the *member* by either:
- (a) sending a cheque to the *member's* address as set out in the Register of Members;
  - (b) crediting any of the *member's* accounts with the *credit union*, at the time the *member's member share* is redeemed; or

- (c) crediting the amount to a sub-account in the name of the *member* in a general account maintained by the *credit union* for the purposes of holding dormant account monies and/or general redemption proceeds for affected *members*.

#### 4.4 Termination Where Accounts Dormant or Membership Inactive

- (1) This Rule does not apply to a retirement savings account to the extent that the *Retirement Savings Account Act 1997 (Cth)* provides otherwise.
- (2) The *board* may determine that a *member's deposit* account(s) is dormant if:
  - (a) the member has not initiated any transactions in relation to any *deposit* account for at least 12 months before the date of the resolution; and
  - (b) the *credit union* has given the *member* written notice stating that, unless the *member* gives to the *credit union* a written notice within 1 month of the written notice being given by the *credit union* stating that the *member* wishes the account(s) to remain open, the *credit union* intends to declare the account(s) dormant, close the account(s) and redeem the *member's member share*; and
  - (c) the *credit union* does not receive a written notice from the *member* required under Rule 4.4(2)(b).
- (3) The *board* may determine a *member* as inactive if:
  - (a) the *member* has not had any deposit or other account open with the *credit union* for a continuous period of 12 months; and
  - (b) the *credit union* has given the *member* written notice stating that, unless the *member* gives to the *credit union* a written notice within 1 month stating that the *member* wishes to remain a *member* of the *credit union*, the *credit union* intends to redeem the *member's share*; and
  - (c) the *credit union* does not receive a written notice from the *member* required under Rule 4.4(3)(b).
- (4) The *credit union* may redeem the *member's member share* on the *board's* determination under Rule 4.4(2) that a *member's* deposit account(s) is dormant (a "*dormancy declaration*") or upon the board's determination under Rule 4.4(3) that the *member* is inactive (an "*inactive declaration*").
- (5) If the *credit union* redeems a person's *member share* as a result of a *dormancy declaration*, the person may require the *credit union* to reinstate the person's *deposit* account at any time before the *credit union* pays the money in the *deposit* account in accordance with the relevant unclaimed money legislation. If the person requires the *credit union* to reinstate the person's *deposit* account:
  - (a) the *credit union* must reinstate the person's *deposit* account as soon as practicable; and

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- (b) if the *credit union* has redeemed the *member's member share* — the *credit union* must issue a *member share* to the person and may debit the *member's deposit* account for the subscription amount.
- (6) In this Rule 4.4 "transaction" in a *member's deposit* account with the *credit union* means a debit or credit to the account, other than for:
- (a) the payment of interest by the *credit union*;
  - (b) the charging of a fee by the *credit union*; or
  - (c) any other transactions initiated by the *credit union*.
- (7) Upon redemption of a *member share* as a result of a *dormancy declaration* or an *inactive declaration*, the *credit union* must pay the amount payable on redemption of the *member share* by either:
- (a) sending a cheque to the *member's* address as set out in the Register of Members;
  - (b) crediting any of the *member's* accounts (if applicable) with the *credit union*, at the time the *member's member share* is redeemed; or
  - (c) crediting the amount to a sub-account in the name of the *member* in a general account maintained by the *credit union* for the purposes of holding dormant account monies and/or general redemption proceeds for affected *members*.
- (8) The *board* may delegate its power to determine under Subrules (2) and (3), and/or its power to redeem a *member's member share* under Subrule (4) to a committee of *directors*, a *director*, or an officer or officers of the *credit union*. The delegation must not include authority to further delegate the relevant power.
- (9) A *member's member share* is redeemed under this Rule 4.4 upon:
- (a) the *board* resolving that the *member's member share* be redeemed; or
  - (b) a *person* or *persons* to whom the *board* has delegated its power under Subrule (9) making a record of a decision that the *member's member share* be redeemed.

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## Division 5. — Issue of Shares

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### 5.1 Classes of Shares

Subject to ensuring that the *credit union* continues to have a mutual structure for the purposes of the *Corporations Act*, the *credit union* may issue *member shares*, "D" class shares and notes, securities or instruments as deemed required by the *board*.

### 5.2 Board Power to Issue Shares

The *board* may exercise the *credit union's* power to issue shares.

### 5.3 Restrictions on Issue of Member Shares

- (1) The *credit union* must not issue:
  - (a) options to subscribe for *member shares*;
  - (b) securities that may be converted to *member shares*; or
  - (c) securities with pre-emptive rights to *member shares*.
- (2) The *credit union* may only issue *member shares* in accordance with Subrule 3.1(3).
- (3) The *credit union* may only issue *member shares* on the basis that the *person* pays the full *subscription price* in cash on issue.
- (4) The *credit union* may only issue 1 *member share* to any *person*. However, the *credit union* may issue to a trustee for an unincorporated association:
  - (a) 1 *member share* to the trustee in the trustee's own right; and
  - (b) 1 *member share* to the trustee as trustee for the unincorporated association.

Note: The *credit union* can issue a *member share* to a *person* who already constitutes a joint *member*. See Rule 3.3.

### 5.4 D class shares

- (1) *D class shares* may only be issued after the date that this Rule 5.4 takes effect under the *Corporations Act*:
  - (a) to the holders of *member shares*; and
  - (b) if Part 5 of Schedule 4 of the *Corporations Act* still applies, the requirements of that Part are complied with or ASIC has granted an exemption to the *credit union* from the requirement to comply with that Part.
- (2) The amount payable on subscription for a *D class share* is \$1.00.

- (3) Each *D class share* issued confers on its holder a right to receive a cumulative dividend, payable in preference to any dividend on *member shares*. Subject to sufficient profits and satisfaction of regulatory obligations, the dividend will be payable on 30 September in each year or on the date of redemption of the share, whichever is earlier. The amount payable will be:

$$\$1.00 \times r_1 \times \frac{d_1}{365} + \$1.00 \times r_2 \times \frac{d_2}{365}$$

Where:

- $r_1$  is a percentage rate fixed by the *board* to apply from 1 October to 31 March in each year;
  - $d_1$  is the number of days from 1 October to 31 March or the redemption date of the shares, whichever is earlier;
  - $r_2$  is a percentage rate fixed by the *board* to apply from 1 April to 30 September in each year; and
  - $d_2$  is the number of days from 1 April to 30 September or the redemption date of the shares, whichever is earlier.
- (4) In addition to the right to receive a cumulative dividend in Subrule 5.4(3), the *board* may recommend to each *AGM* that a non-cumulative bonus dividend be payable on *D class shares*. However, no bonus dividend shall become payable unless recommended by the *board*.
- (5) Subject to the *Corporations Act*, *D class shares* are redeemable at the time and in the manner determined by the *board* from time to time.
- (6) *D class shares* carry no voting rights.
- (7) On a winding up, all *members* are entitled to participate in any surplus equally without regard to the number of shares held by any *member*.

## 5.5 No Share Certificates for Member Shares

Unless required by law to do so, the *credit union* will not issue share certificates in respect of *member shares*.

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## Division 6. — Calls, Forfeiture and Liens

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### 6.1 Payment of Calls on Shares

- (1) This Rule applies if some or all of the *subscription price* for a share is payable on the *credit union* calling up payment of some or all of the unpaid *subscription price*. This Rule applies in relation to a share subject to:
  - (a) any restriction in the terms of issue for the share; and
  - (b) any *special resolution* providing that the *credit union* can only call up some or all of the *subscription price* for shares if the *credit union* becomes an externally-administered body corporate.
- (2) The *credit union* may call for payment of any amount of the unpaid *subscription price* for a share by *board* resolution. The *credit union* must give a *member* holding a share on which the *credit union* has made a call a notice setting out how much, when and how the *member* must make the payment. The *credit union* must give the notice at least 14 days before the time the *member* must pay the call.
- (3) The *credit union* may revoke or postpone a call on a share by *board* resolution. The *credit union* must give each *member* holding a share for which the *credit union* has revoked or postponed a call notice as soon as practicable after the *board* resolution.
- (4) In any proceeding to recover unpaid instalments, a *member* is conclusively presumed to be liable for a call if:
  - (a) the *credit union's* minutes record the *board* resolution calling for payment of the amount of the call;
  - (b) the *member's* name appeared in the Register of Members as holder of the share on the date of the *board* resolution; and
  - (c) the *credit union* gave the *member* a notice in accordance with Subrule 2.
- (5) At any time, the *credit union* may accept from a *member* prepayment of any amount of the unpaid *subscription price* on a share.

### 6.2 Effect of Failure to Pay Unpaid Amounts

- (1) This Rule applies if a *member* does not pay any amount of the unpaid *subscription price* for a share at the time the amount becomes due. This Rule does not limit any other remedies that the *credit union* may have against the *member*.
- (2) The *member* must pay:
  - (a) the amount due on the share; and

- (b) all costs and expenses that the *credit union* incurs (including, without limitation, legal expenses on a solicitor and own client basis or full indemnity basis, whichever is the higher) because the *member* did not pay the amount when it became due.

The *credit union* may waive all or part of the expenses payable under this Subrule by *board* resolution.

- (3) At any time while the amount payable under Subrule 2 remains unpaid in respect of a share, the *credit union* may give the *member* a default notice:
  - (a) setting out:
    - (i) how much is due; and
    - (ii) when the *member* must pay the amount due; and
  - (b) stating that, if the *member* does not pay the amount due by that date, the *member* will forfeit the share.

The date for payment must be at least 14 days after the date on which the *credit union* gives the *member* the default notice. In the absence of any manifest error, the default notice is conclusive evidence of the amount that the *member* must pay the *credit union* as at the date the *credit union* issues the default notice.

### 6.3 Forfeiture and Surrender

- (1) If a *member* does not comply with the default notice issued under Subrule 6.2(3) the *credit union* may forfeit any share to which the default notice relates by *board* resolution. However, the *member* may always comply with the default notice at any time before forfeiture occurs.
- (2) The *credit union* may give the *member* a notice of forfeiture. In the absence of a manifest error, the notice is conclusive evidence of the facts stated in the notice against all *persons* claiming to be entitled to the share.
- (3) The forfeited shares become the *credit union's* property. The *credit union* may redeem, sell or otherwise dispose of the forfeited shares on the terms and in the manner that the *board* determines.
- (4) The transferee's title is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the shares. The transferee is not required to see the application of the purchase money.
- (5) A *member* may surrender any share to which a default notice relates. The *credit union* may deal with surrendered shares in the same way as it deals with forfeited shares.
- (6) A *member* whose shares have been forfeited remains liable to pay the *credit union* the amounts due:

- (a) less any amount that the *credit union* must pay the *member* on redemption of the shares; and
- (b) less any amount that the *credit union* receives on sale or disposal of the forfeited shares.

#### 6.4 Liens

- (1) The *credit union* may at any time exempt a share wholly or in part from this Rule by *board* resolution.
- (2) The *credit union* has a first and paramount lien on:
  - (a) every partly-paid share that a *member* holds; and
  - (b) the proceeds of sale of every partly paid share that the *member* holds; and
  - (c) dividends payable on every partly-paid share that the *member* holds,for all amounts, whether presently due or not:
  - (d) payable in relation to the share; or
  - (e) that the *member* or the *member's* estate otherwise owes to the *credit union*.
- (3) If an amount secured by a lien in Subrule (2) is presently due, the *credit union* may give the holder of the share a sale notice:
  - (a) setting out:
    - (i) how much is due; and
    - (ii) when the *member* must pay the amount due; and
  - (b) stating that, if the *member* does not pay this amount by that date, the *credit union* may sell the share.

The date for payment must be at least 14 days after the date on which the *credit union* gives the *member* the sale notice. In the absence of any manifest error, the sale notice is conclusive evidence of the amount that the *member* must pay the *credit union* as at the date the *credit union* issues the sale notice.

- (4) If a *member* does not pay the amount due by the date stated in the sale notice under Subrule 3, the *credit union* may sell the shares on the terms and in the manner that the *board* determines. The *credit union* may:
  - (a) execute a share transfer to give effect to a sale of the shares; and
  - (b) register the transferee as the holder of the shares.

The transferee's title is not affected by any irregularity or invalidity in connection with the sale of the shares. The transferee is not required to see the application of the purchase consideration.

- (5) A *member* whose shares have been sold remains liable to pay the *credit union* all amounts that the *member* or the *member's* estate owes to the *credit union*, whether or not presently due, less any consideration that the *credit union* receives on sale of the shares.

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## Division 7. — Dividends

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### 7.1 Payment of Dividends

(1) Subject to the terms on which shares in a class are issued and any specific provisions in this Constitution relating to the payment of dividends on particular classes of shares, the **board** may determine that the **credit union** pay a dividend on shares to which a right to participate in dividends attaches and may determine:

- (a) the amount of the dividend;
- (b) the time for payment of the dividend; and
- (c) the method of payment of the dividend.

The method of payment may include the payment of cash, the issue of securities and the transfer of assets. Where the **credit union** pays the dividend other than in cash, the **board** may fix the value of any securities issued or assets transferred.

(2) If the terms of issue for a share require the **general meeting's** approval to any payment of a dividend on the share, the **board's** determination under Subrule (1) is effective only if the **general meeting** approves the dividend before the time for payment of the dividend arrives. The **general meeting** may not vary the **board's** determination.

### 7.2 Differential Dividends

(1) Subject to the terms on which shares in a class are issued, the **board** may determine dividends to different **members** in a class that differ:

- (a) in amount; and
- (b) in the method of payment (whether cash, securities, assets or any combination of them).

(2) This Rule 7.2 does not apply to **member shares**.

### 7.3 Interest on Dividends

Interest is not payable on a dividend.

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## Division 8. — Share Certificates

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### 8.1 Share Certificates

- (1) This Rule does not apply in relation to *member shares*.
- (2) A *member* may require the *credit union* to issue to the *member* without charge 1 certificate for each class of shares in the *credit union* that the *member* holds.

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## Division 9. — Transfer of Shares

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### 9.1 Form of Share Transfer

A *member* wishing to transfer the *member's* shares must use a share transfer that complies with the following requirements:

- (a) the share transfer relates to 1 class of shares only;
- (b) the share transfer is in writing; and
- (c) the share transfer is:
  - (i) in a form that the *board* approves; or
  - (ii) in any other usual or common form.

**Note:** Rule A2-D1-7 prohibits the transfer of *member shares*, except from the retiring trustee of an unincorporated association to a replacement trustee.

**Note:** Subrule 9.3(1) prevents the *credit union* registering share transfers in some situations, even though the share transfer complies with the requirements set out in this Rule.

### 9.2 Ownership of Share Transfer

On receiving a share transfer (or a document that appears to be a share transfer), the *credit union* becomes the owner of the share transfer and has a right to exclusive possession of the share transfer.

### 9.3 Registration of Share Transfer

- (1) The *credit union* must not register a share transfer if:
  - (a) the terms of issue for the shares prohibit the transfer of the shares to the transferee;
  - (b) the share transfer is not in the form set out in Rule 9.1; or
  - (c) if the transfer of shares is dutiable — the share transfer is not duly stamped.
- (2) The *credit union* may refuse to register a share transfer unless:
  - (a) the shares are fully-paid;
  - (b) the *credit union* does not have a lien on the shares;
  - (c) the transferor has executed the share transfer;

- (d) the transferee has executed the share transfer;
  - (e) a certificate for the shares accompanies the share transfer;
  - (f) the *board* has all information that it reasonably requires to establish the right of the transferor to transfer the shares; and
  - (g) the *board* has all information that it reasonably requires to establish that the transferee agrees to be a *member* of the *credit union*.
- (3) The transferor of shares remains the holder of those shares until the *credit union* enters the transferee's name as holder of those shares in the Register of Members.

#### 9.4 Powers of Attorney

- (1) The *credit union* may assume that a power of attorney authorising the attorney to transfer some or all of the *member's* shares that a *member* appears to have granted:
- (a) is a valid and effective grant of the power it appears to grant; and
  - (b) continues in full force and effect.
- (2) The *credit union* may rely on the power of attorney until it receives a notice informing it that:
- (a) the power of attorney has been revoked; or
  - (b) the *member* has died.

#### 9.5 Suspension of Registration

The *board* may suspend the registration of share transfers at the times and for the periods it determines. The periods of suspension must not exceed 30 days in any 1 calendar year.

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## Division 10. — Transmission of Shares

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### 10.1 Transmission of Shares on Death

- (1) This Rule 10.1 does not apply when one of the *persons* constituting a joint *member* dies.
- (2) On the death of a *member*, the *board* may recognise either the personal representative of the deceased *member*, or another *person* who appears to the *board* to be entitled to the deceased *member's* estate, as being entitled to the deceased *member's* interest in the shares. The *board* will determine the information that is requires to establish an entitlement to the shares.
- (3) If the personal representative or other *person* (as the case may be) gives the *board* the information it requires to establish an entitlement to be registered as holder of the *member's* shares, the personal representative or other *person* may elect to:
  - (a) be registered as the holder of the shares; or
  - (b) apply to terminate the membership.

### 10.2 Transmission of Shares on Bankruptcy

If the trustee of a bankrupt *member's* estate gives the *credit union* the information it reasonably requires to establish the trustee's entitlement to be registered as holder of the *member's* shares, the trustee may require the *credit union* to register the trustee as holder of the *member's* shares.

### 10.3 Transmission of Shares on Mental Incapacity

If a *person* entitled to shares because of a *member's* mental incapacity gives the *credit union* the information it reasonably requires to establish the *person's* entitlement to be registered as a holder of the *member's* shares:

- (a) the *person* may require the *credit union* to register the *person* as holder of the *member's* shares; and
- (b) whether or not registered as the holder of the shares, the *person* has the same rights, obligations and restrictions as the *member*.

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## Division 11. — Holding Members' Meetings

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### 11.1 Calling Meetings of Members

The *board* may call a *members'* meeting.

### 11.2 Adjourning Meetings of Members

- (1) The Chair of a *members'* meeting at which a quorum is present:
  - (a) may adjourn the meeting with the consent of the meeting by ordinary resolution; and
  - (b) must adjourn the meeting if directed by ordinary resolution.
- (2) The *credit union* must give notice of an adjourned *members'* meeting, if the adjournment is for 1 month or more, to each *member* to whom notice of the meeting was given.
- (3) The only business that an adjourned *members'* meeting may deal with is business unfinished at the *members'* meeting that was adjourned.

### 11.3 Proceedings at Members' Meetings

- (1) The quorum for a *members'* meeting is:
  - (a) 30 *members* present in person; or
  - (b) if less than 50 *members* are eligible to attend and vote at a *member's* meeting — 50% of the *members* eligible to attend and vote at the *member's* meeting.

**Note:** Paragraph (b) may apply in relation to meetings of classes of *members*, where the only *members* eligible to attend the meeting are *members* of the relevant class.

- (2) If a quorum is not present within 30 minutes after the time for the *members'* meeting set out in the notice of meeting, the meeting is adjourned to the date, time and place the *board* specifies. If the *board* does not specify 1 or more of those things, the meeting is adjourned to:
  - (a) if the date is not specified — the same day in the next week;
  - (b) if the time is not specified — the same time; and
  - (c) if the place is not specified — the same place.

If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

- (3) The Chair of *members'* meetings is:

- (a) the Chair of meetings of the *board*; or
- (b) if the Chair of meetings of the *board* is not present or declines to act for the meeting (or part of it) — the Deputy Chair of meetings of the *board*.

If the Chair or Deputy Chair of meetings of the *board* is not available within 30 minutes of the appointed start of the meeting, or declines to act, the *members* must elect an individual present to chair the meeting.

- (4) The Standing Orders in Appendix 3 apply to the conduct of debate at *members'* meetings.

#### 11.4 Technology

- (1) The *credit union* may hold a meeting of *members* at more than one venue using any technology that gives the *members* as a whole a reasonable opportunity to participate. For the purposes of Rule 11.3, a member will be taken to be present in person if they are present at one of the venues.
- (2) If, before or during a meeting of *members* any technical difficulty occurs where all *members* may not be able to participate, the Chair may:
  - (a) adjourn the meeting until the difficulty is remedied; or
  - (b) where a quorum remains present (in the venue at which the Chair is present in person) and able to participate, subject to the *Corporations Act*, continue the meeting.

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## Division 12. — Voting at Members' Meetings

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### 12.1 Voting

- (1) A resolution put to the vote at a *members'* meeting must be decided on a show of hands unless a poll is demanded.
- (2) Before a *members'* meeting votes on a resolution, the Chair must inform the meeting:
  - (a) how many proxy documents the *credit union* has received that validly appoint a *person* present at the meeting as proxy;
  - (b) how many of these proxy documents direct the proxies how to vote on the resolution; and
  - (c) how the proxies are directed to vote on the resolution.
- (3) The *members'* meeting passes an ordinary resolution only if more than half the total number of votes cast on the resolution are in favour of it.
- (4) The Chair does not have a casting vote in addition to his or her deliberative vote.

### 12.2 Voting on a Show of Hands

On a show of hands, the Chair's declaration is conclusive evidence of the result, so long as the declaration reflects the show of hands. Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution. The minutes only need to record that the resolution was passed or not passed.

### 12.3 Voting on a Poll

- (1) A poll cannot be demanded on any resolution concerning the election of a *person* to chair the *members'* meeting.
- (2) A poll on the question of an adjournment must be taken immediately. The Chair may direct when and the manner in which any other poll must be taken.
- (3) The *members'* meeting may conduct other business even though a poll is demanded on a resolution.

### 12.4 Body Corporate Representatives

- (1) A *member* that appoints a body corporate representative must give the *credit union*:
  - (a) if the *member* appointed the representative by *board* resolution — a certified copy of the *board* resolution appointing the representative; and
  - (b) otherwise — a copy of the instrument appointing the representative,

as soon as practicable after appointing the representative, and in any event before any *members'* meeting at which the representative may exercise the *member's* rights.

- (2) In addition to the rights and powers a *member's* representative may exercise under the *Corporations Act*, the representative may exercise the *member's* right to vote in a ballot to appoint *directors* by election.

## 12.5 Proxies

- (1) The *board* may determine the form of proxy document from time-to-time.
- (2) An appointment of a proxy is not invalid merely because it does not contain all the information required for a valid proxy appointment, so long as it contains:
  - (a) the *member's* name; and
  - (b) the proxy's name or the name of the office that the proxy holds.
- (3) A proxy does not have a right to vote on a show of hands.
- (4) Unless the *credit union* receives written notice of the matter before the meeting at which a proxy votes starts or resumes, the proxy's vote at that meeting will be valid if, before the proxy votes:
  - (a) the appointing *member* dies;
  - (b) the *member* is mentally incapacitated;
  - (c) the *member* revokes the proxy's appointment;
  - (d) the *member* revokes the authority under which the proxy was appointed by a third party; or
  - (e) the *member* transfers the share in respect of which the *member* or a third party appointed the proxy.

## 12.6 Objections

An objection to the qualification of a voter:

- (a) may only be made at the *members'* meeting or adjourned *members'* meeting at which the vote objected to is cast; and
- (b) must be ruled upon by the Chair whose decision is final.

## 12.7 Consideration of any resolution that may alter the credit union's mutual structure

Appendix 5 applies to any Demutualisation Resolution (as defined in Appendix 5) to be submitted to *members*.

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## Division 13. — Directors — Appointment & Vacation of Office

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### 13.1 Number of Directors

- (1) The *credit union* must have not less than seven *directors* comprising:
  - (a) *elected directors* and any *directors* appointed pursuant to Rule 13.5(1);
  - (b) not more than two *appointed directors*, and
  - (c) the *Credit Union's* chief executive officer who the *board*, in its discretion, may appoint as a *director*. If the *Credit Union's* chief executive officer is appointed as a *director* then that position will not be counted in determining the minimum number of *directors* under this Rule 13.1(1).
- (2) Subject to Rule 13.1(1), the *board* may determine the maximum number of *directors* from time to time.

### 13.2 Eligibility to be a Director

An individual is eligible to be a *director* if the *person*:

- (a) is a *member*;
- (b) is not a current employee of the *credit union* and has not been an employee of the *credit union* in an executive capacity within the 3 year period immediately prior to the closing of nominations for an election;
- (c) has been a *member* continuously for a period of at least 3 years unless otherwise determined by the *Board* when the *person* is nominated as a *candidate* for election as a *director*;
- (d) has not had a personal representative or trustee appointed to administer the *person's* estate or property because of their mental incapacity;
- (e) is not a *minor*;
- (f) is not disqualified or prevented by law from being a *director* of the *credit union*; and
- (g) is of appropriate fitness and propriety to be and act as a *director*, by reference to the *fit and proper policy*

provided that:

- (h) paragraphs (a) (b) and (c) do not apply to an *appointed director*, to the *credit union's* chief executive officer if he/she is appointed as a *director* while he/she is Chief

Executive Officer, or to a *director* appointed to fill a casual vacancy pursuant to Rule 13.5; and

- (i) paragraph (c) does not apply to any *person* who was a *director*, or who was a *candidate* for election as a *director*, prior to paragraph (c) taking effect.

### 13.3 Appointment by Members — Election

The *members* may appoint a *person* to be an *elected director* by an election held under the provisions of Appendix 4.

### 13.4 Appointment by Board

- (1) The *board* may, by resolution at any time, appoint a *person* as an *appointed director*.
- (2) The *board* may, by resolution at any time, appoint the *credit union's* chief executive officer as a *director*.
- (3) A *board* resolution appointing an *appointed director* or the chief executive officer as a *director* must specify the *director's* term of office.

### 13.5 Appointment by Board — Casual Vacancies

- (1) The *board* may appoint a *person* to be a *director*:
  - (a) if an *elected director's* office becomes vacant other than because the *director's* term of office has ended; or
  - (b) if for any reason, the number of *directors* is less than the minimum under Rule 13.1(1).

The *board* may only appoint a *person* who is eligible to be a *director* under Rule 13.2.

- (2) The term of office for a *director* appointed to fill a vacancy under paragraph (1)(a) ends:
  - (a) if a *general meeting* approves the appointment before the end of the next AGM after the *director's* appointment — at the end of the term of office of the *director* whose office has become vacant; or
  - (b) otherwise — at the end of the next AGM after the *director's* appointment.
- (3) The term of office of a *director* appointed to fill a vacancy under paragraph (1)(b) ends at the end of the next AGM after the *director's* appointment.

### 13.6 Term of Office

- (1) Subject to the *Corporations Act*, Rules 1.6(2) and 1.6(3) and the rotation provisions in this Rule, an *elected director's* term of office:
  - (a) starts at the end of the AGM at which the *director's* election is announced; and

- (b) ends at the end of the third AGM after the AGM at which the *director's* election is announced.
- (2) If the number of *elected directors* that *members* appoint at one election is more than a third of the total number of *elected directors* on the *board* immediately following that election:
    - (a) the term of office of the *elected director* that receives the most votes at the election ends at the end of the third AGM after the AGM at which the *directors'* election is announced;
    - (b) the term of office of the *elected director* that receives the second most votes at the election ends at the end of the second AGM after the AGM at which the *directors'* election is announced; and
    - (c) the term of office of the remainder of the *elected directors* elected at the election ends at the end of the next AGM after the AGM at which the *directors'* election is announced.
  - (3) Subject to the *Corporations Act* and Subrule (4), the term of office of an *appointed director* or the chief executive officer as a *director* starts at the time of the *board* resolution appointing the *person* as a *director* and ends at the end of the term specified in the *board* resolution appointing the *person* as a *director*.
  - (4) Subject to the *Corporations Act* the term of office of the chief executive officer as a *director* ends if and when the *person* ceases to be the chief executive officer of the *credit union*.
  - (5) An *elected director* is not eligible to be re-elected if at the time of his or her re-election his or her cumulative period in office would be 9 years or more from the time he or she was first elected, re-elected, or appointed pursuant to Rule 13.5(1), after 1 July 2007.
  - (6) A person who is ineligible to become or remain an *elected director* in accordance with Subrule (5) is not prevented from being an *appointed director* in accordance with Rule 13.4.

### 13.7 Automatic Vacation of Office

The office of a *director* automatically becomes vacant if the *director*:

- (a) dies;
- (b) ceases to be eligible to be a *director* under Rule 13.2.
- (c) is absent from 3 consecutive ordinary meetings of the *board* without leave; or
- (d) is 3 months or more in arrears in relation to money due to the *credit union* and has failed to make arrangements for payment satisfactory to the *credit union*.

Neither the *board* nor the *general meeting* may waive the operation of this Rule.

### 13.8 Resignation

- (1) A *director* may resign by giving the *credit union* notice of the *director's* resignation.
- (2) The *director's* office becomes vacant:
  - (a) if the notice of resignation specifies a date of resignation — on the date of resignation; or
  - (b) otherwise — on the date the *credit union* receives the notice of resignation.

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## Division 14. — Directors' Powers

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### 14.1 Powers and Duties of the Board

The *board*:

- (a) manages the *credit union's* business; and
- (b) may exercise all the powers of the *credit union* except any powers that the *Corporations Act* or this Constitution expressly allocates to the *general meeting*.

### 14.2 Negotiable Instruments

The *board* may authorise a *person* or *persons* to sign, draw, accept, endorse or otherwise execute negotiable instruments for the *credit union*. The *board* may authorise the application of signatures to negotiable instruments by machine or other facsimile method.

### 14.3 Delegation

- (1) The *board* may delegate any of its powers to any committee or any other *person* or *persons*, subject to Rule 3.2 and Subrules 4.3(2) and 4.4(8). The *board* may permit the delegate to sub-delegate any powers delegated to them.
- (2) The *board* must establish policies for the guidance of delegates in the exercise of any powers so delegated.
- (3) Without limiting its powers, the *board* may appoint a *person* to be the *credit union's* attorney for purposes, with powers (being the *board's* powers), for the period and on terms the *board* determines. In particular, the power of attorney may:
  - (a) include terms protecting *persons* dealing with the attorney, as the *board* determines; and
  - (b) authorise the attorney to delegate any or all of the attorney's powers.

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## Division 15. — Directors' Meetings

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### 15.1 Calling and Conduct of Board Meetings

- (1) The Chair, any 2 *directors* or the *secretary* (upon the authority of the Chair or any 2 *directors*) may call a *board* meeting by giving reasonable notice to every other *director*.
- (2) The *board* may meet, adjourn and otherwise regulate its meetings as it thinks fit.

### 15.2 Quorum of Board

- (1) The quorum for a *board* meeting is:
  - (a) if the number of *directors* is divisible by 2, one half the number of *directors* plus one: or
  - (b) if the number of *directors* is not divisible by 2, round fractions up to the nearest whole number in determining how many *directors* are required for a quorum: or
  - (c) such other number as the *board* determines,and the quorum must be present at all times during the meeting.
- (2) If, at any time, the number of *directors* is less than the quorum:
  - (a) the *board* may meet only for the purpose of filling any casual vacancies or for calling a *general meeting* of *members*; and
  - (b) the *board* may conduct business by circulating resolutions under Rule 15.5.

### 15.3 Chair and Deputy Chair of the Board

- (1) Subject to Rule 1.6(4), the *board* may appoint a *director* (other than an employee *director*) to chair its meetings and one other *director* as Deputy Chair. The *board* may determine the period for which the *directors* are to be the Chair and Deputy Chair. The *board* may remove the Chair and/or Deputy Chair from the position of Chair or Deputy Chair at any time.
- (2) The *board* must elect a *director* present to chair a meeting (or part of it) if neither the Chair nor the Deputy Chair is present within 30 minutes of the time appointed for a meeting or neither is willing to act.

### 15.4 Passing of Directors' Resolutions

- (1) A resolution of the *board* must be passed by a majority of the votes cast by *directors* entitled to vote on the resolution. In the event of an equality of votes the resolution is not passed.
- (2) The Chair does not have a casting vote in addition to his or her deliberative vote.

## 15.5 Circulating Resolutions

- (1) The **board** may pass a resolution without a **board** meeting if a majority of **directors** entitled to vote on the resolution (and not being less than the number required for a quorum for a **board** meeting) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (2) Separate copies of a document may be used for signing by different **directors** if the wording of the resolution and statement is identical in each copy.
- (3) The resolution is passed when the last **director** to constitute a majority of **directors** signs.
- (4) A statement sent electronically by a **director** to an agreed electronic address that he or she is in favour of a resolution under Rule 15.5(1) is taken to be a document containing that statement and duly signed by the **director**. Such document is taken to have been signed by the **director** at the time of its receipt at the agreed electronic address.

## 15.6 Committees of Directors

- (1) Subject to Rule 15.6(2) the **board** may establish one or more committees consisting of such number of **directors** as the **board** thinks fit.
- (2) The **board** will establish any committee which it is required to establish to comply with any **prudential standard** or law which applies to the **credit union**. Paragraphs (3), (4), (5) and (6) of this Rule 15.6 shall not apply to any such committee to the extent that they are inconsistent with the requirements of any such **prudential standard** or law.
- (3) The **board** may appoint one of their number as Chair of a committee.
- (4) Subject to any restrictions that the **board** imposes, a committee may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (5) Questions arising at a meeting of a committee are to be determined by a majority of votes of those present and voting.
- (6) The Chair does not have a casting vote in addition to his or her deliberative vote.

## 15.7 Technology Meeting of Directors

- (1) A **directors** meeting may be called or held using any technology consented to by all the **directors**. The consent may be a standing one. A **director** may only withdraw their consent within a reasonable period before the meeting.
- (2) A **board** meeting held solely or partly by technology is treated as held at the place at which the greatest number of the **directors** present at the meeting is located or, if an equal number of **directors** is located at more than 1 place, at the place where the Chair of the meeting is located.

- (3) If, before or during a meeting, any technical difficulty occurs where one or more *directors* cease to participate, the Chair may adjourn the meeting until the difficulty is remedied or may, where a quorum of *directors* remains present, continue the meeting.

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## Division 16. — Conflicts of Interest

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### 16.1 Director Not in Breach if Acts in Matters Relating to Director's Interests

This Rule applies if:

- (a) a *director* has an interest or duty in relation to a matter that is not a *material personal interest*; or
- (b) a *director* with a material personal interest in relation to the credit union's affairs:
  - (i) complies with the requirements of the *Corporations Act* in relation to disclosure of the nature and extent of the interest and its relation to the *credit union's* affairs before acting in a matter that relates to the interest; and
  - (ii) may be present and vote on the matter under the *Corporations Act*.
- (2) The *director* is not in breach of his or her duties to the *credit union* merely because he or she acts in matters that relate to the *director's* interest.
- (3) The *director* may vote on matters that relate to the *director's* interest.
- (4) In relation to any transactions that relate to the *director's* interest:
  - (a) the transactions may proceed;
  - (b) the *credit union* cannot avoid the transactions merely because of the *director's* interest; and
  - (c) the *director* may retain benefits under the transactions despite the *director's* interest.

### 16.2 Director Not in Breach if Does Not Act in Matters Relating to Director's Interests

- (1) This Rule applies if a *director* with a *material personal interest* in relation to a matter:
  - (a) complies with the requirements of the *Corporations Act* in relation to disclosure of the nature and extent of the interest and its relation to the *credit unions* affairs; but
  - (b) must not be present and vote on the matter under the *Corporations Act*.
- (2) The *director* is not in breach of duty to the *credit union* merely because he or she does not act in relation to the matter.
- (3) The *board* may vote on matters that relate to the *director's* interest in the *director's* absence.

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- (4) In relation to any transactions that relate to the *director's* interest:
- (a) the transactions may proceed;
  - (b) the *credit union* cannot avoid the transactions merely because of the *director's* interest; and
  - (c) the *director* may retain benefits under the transactions despite the *director's* interest.

### 16.3 Execution of Instruments

A *director* may participate in the execution of an instrument for the *credit union*, regardless of any interest or duty that the *director* may have:

- (a) whether or not the *director* has complied with the requirements of the *Corporations Act* in relation to disclosure of the nature and extent of the interest and its relation to the *credit union's* affairs; and
- (b) whether or not the *director* may be present and vote in relation to the execution of the instrument under the *Corporations Act*.

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## Division 17. — Remuneration, Indemnity and Insurance

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### 17.1 Remuneration of Directors

- (1) In any financial year for the *credit union*, the remuneration of *directors* (other than an employee *director*) may not exceed the aggregate amount last fixed by ordinary resolution at a *general meeting*.
- (2) The *board* may determine the allocation of the aggregate amount of remuneration among the *directors* (excluding any employee *director*). If the *board* does not determine the allocation, the aggregate amount of remuneration must be allocated equally among the *directors* (excluding any employee *director*).
- (3) The expression "remuneration" in this Rule 17.1 does not include any amount which may be paid by the *credit union* under Rule 17.2

### 17.2 Travelling Expenses and Insurance

In addition to any remuneration to which a *director* may be entitled, the *credit union* may also pay:

- (a) the *director's* travelling and other expenses that they properly incur:
  - (i) in attending *board* meetings or any meetings of committees of *directors*, and
  - (ii) in attending any *members'* meetings; and
  - (iii) otherwise in connection with the *credit union's* business; and
- (b) subject to the *Corporations Act*, insurance premiums for a contract that insures the *director* against liabilities that the *director* incurs as an officer of the *credit union*.

### 17.3 Indemnities for Officers and Former Officers

- (1) In this Rule *indemnified person* means an officer or agent, or former officer or agent, of the *credit union*.
- (2) To the extent that the *Corporations Act* permits:
  - (a) the *credit union* must indemnify an *indemnified person* against any liability that the *indemnified person* incurs in conducting the *credit union's* business or exercising the *credit union's* powers as an officer or agent of the *credit union*; and
  - (b) the *credit union* may indemnify, agree to indemnify or enter into (and pay premiums on) a contract of insurance in relation to an *indemnified person* or any other *person*.

- (3) The indemnity in paragraph 2(a) applies in relation to an *indemnified person* for all incidents occurring during the period that *person* is an officer or agent of the *credit union*, even though a claim is made against the *indemnified person* after they have ceased to be an officer or agent of the *credit union*.

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## Division 18. — Administration

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### 18.1 Seal

- (1) The *board* is to provide for the safe custody of the seal.
- (2) The seal is to be used only by the authority of the *directors*.
- (3) The *board* may authorise:
  - (a) 2 *directors*, or
  - (b) a *director* and a *secretary*, or
  - (c) such other *persons* as the *board* appoints,

to witness the affixing of the seal on a document of a class specified in the resolution.

### 18.2 Secretary

Subject to Rule 18.3, the *board* may determine a *secretary's* terms of appointment, powers, duties and remuneration. At any time, the *board* may vary or revoke a determination, or an appointment, whatever the terms of the appointment.

### 18.3 Resignation of Secretary

- (1) A *secretary* may resign by giving the *credit union* notice of the *secretary's* resignation.
- (2) The *secretary's* office becomes vacant:
  - (a) if the notice of resignation specifies a date of resignation — on the date of resignation; or
  - (b) otherwise — on the date the *credit union* receives the notice of resignation.

## Appendix 1 — Objects

The *credit union* has the following objects:

- (a) to raise funds by subscription, *deposit* or otherwise, as authorised by the *Corporations Act* and the *Banking Act 1959 (Cth)*;
- (b) to apply the funds in providing *financial accommodation* subject to the *Corporations Act* and the *Banking Act 1959 (Cth)*;
- (c) to encourage savings amongst *members*;
- (d) to promote co-operative enterprise;
- (e) to provide programs and services to *members* to assist them to meet their financial, economic and social needs; and
- (f) to promote, encourage and bring about human and social development among individual *members* and within the larger community within which *members* work and reside.

# Appendix 2 — Shares

## Division 1 — Member Shares

### A2-D1-1 Subscription Price

The *subscription price* for a *member share* issued after this Constitution takes effect is \$2.00.

### A2-D1-2 Rights, Obligations and Restrictions Attaching to Member Shares

- (1) The following rights attach to each *member share*:
  - (a) the right to vote on the terms set out in clause A2-D1-3;
  - (b) the right to participate in dividends on the terms set out in clause A2-D1-4;
  - (c) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A2-D1-5; and
  - (d) the right to redeem the *member shares* on the terms set out in clause A2-D1-6.
- (2) The restriction on transfer of *member shares* in clause A2-D1-7 attaches to each *member share*.
- (3) The *credit union* may issue more *member shares* at any time. The issue of more *member shares* does not vary the rights attached to *member shares* that the *credit union* has already issued.

**Note:** For the holder of a *member share's* entitlement to make *deposits* with, and receive *financial accommodation* from, the *credit union*, see Rule 2.2 and Subrule 3.1(3).

### A2-D1-3 Voting Rights

- (1) Subject to subclause A2-D1-3 (3) and clause A2-D1-8, holders of *member shares* may participate and vote:
  - (a) at a *members'* meeting;
  - (b) at a meeting of the class of holders of *member shares*; and
  - (c) in a ballot to appoint *directors* by election.

- (2) Subject to subclauses A2-D1-3 (3) and (4) and clause A2-D1-8, each *member* who holds a *member share* has one vote.
- (3) A *member* who is a *minor* has no vote.
- (4) A *member* may exercise only one vote at a meeting or in a ballot to appoint *directors* by election even if the *member* holds more than one *member share*, provided that this rule does not:
  - (a) prevent a *member* who holds *member shares* in more than one capacity (eg an individual membership and a joint membership with another *member*) from having one vote for each membership; nor
  - (b) prevent a *member* who has been appointed as a body corporate representative or as a proxy from exercising a vote on behalf of the *member* who appointed him or her.

#### A2-D1-4 Dividend Entitlements

- (1) A holder of a *member share* has a right to participate in any dividend that the *credit union* pays only if the *general meeting* approves the payment of the dividend on *member shares*.
- (2) Each *member share* carries a right to participate in dividends equally with every other *member share*.

#### A2-D1-5 Distribution on Winding-Up

On a winding-up of the *credit union* each *member* is entitled to participate in any surplus equally and without regard to the number of *member shares* or *D class shares* held by each *member*.

#### A2-D1-6 Redemption of Member Shares

- (1) The *credit union* may redeem a *member share* only if one or more of the following conditions are satisfied:
  - (a) the *member* has given the *credit union* notice requesting termination of the *member's* membership of the *credit union* under Rule 4.2 in which event the *member share* must be redeemed in accordance with Subrule 4.2(2);
  - (b) the *member's member share* is redeemed under Rule 4.3; or
  - (c) the *board* or its delegate has determined that the *member's deposit* accounts with the *credit union* are dormant or the *member* is inactive under Rule 4.4.
- (2) On redemption, the *credit union* must (subject to Subrule 4.3(7) and Subrule 4.4(7)) pay the *member* an amount equal to the *subscription price* for that *member share*.
- (3) On redemption, the *member shares* are cancelled.

- (4) This Rule does not affect the terms on which *member shares* may be cancelled under a reduction of capital or a share buy-back under *Corporations Act* Part 2J.1.

#### A2-D1-7 Transfer of Member Shares

- (1) Subject to Subclause 2, a *member* may not transfer their *member share*.
- (2) A trustee for an unincorporated association may transfer the *member share* held as trustee for the unincorporated association to another *person* who is to act as trustee for the unincorporated association.

#### A2-D1-8 Entitlement to Exercise Vote – New Members

The entitlement of a holder of a *member share* to vote may not be exercised if the *member* was not a *member*:

- (a) in relation to an election of *directors* – on the day before nominations for the election of *directors* closed; and
- (b) in relation to a *general meeting* – at least 7 days before notice of the *general meeting* was given.

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## Division 2 — Reserves

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### A2-D2-1 Commencement Date

This Division 2 of Appendix 2 takes effect on the date provided for by section 137(a)(i) of the *Corporations Act*.

### A2-D2-2 Definitions

In this Division 2, unless the context requires otherwise:

*associate* means in relation to a primary *person*:

- (a) a spouse or defacto spouse of the primary *person*;
- (b) a parent, son or daughter of the primary *person*, spouse or defacto spouse;
- (c) a *person* who is a partner of the primary *person*;
- (d) a *person* who is a *director* of a body of which the primary *person* is a *director*;
- (e) a *person* who is a trustee of a trust in relation to which a *person* or entity of a kind referred to in paragraphs (a), (b), (c), (d), (f) or (g) benefits or is capable of benefiting;
- (f) an *entity* over which:
  - (i) a *person* of a kind referred to in paragraphs (a), (b), (c), (d) or (e) has *control*; or
  - (ii) two or more *persons* of a kind referred to in paragraphs (a), (b), (c), (d) or (e) together have *control*; and
- (g) any *entity* in which:
  - (i) a *person* of a kind referred to in paragraphs (a), (b), (c), (d), (e) or (f) is beneficially entitled to more than twenty per cent of any class of *securities*; or
  - (ii) two or more *persons* of a kind referred to in paragraphs (a), (b), (c), (d), (e) or (f) together are beneficially entitled to more than twenty per cent of any class of *securities*.

*control* means the ability or power of an *entity*.

- (a) whether direct or indirect;
- (b) whether or not enforceable; and

- (c) whether presently exercisable by means of, in breach of or by revocation of any combination of the following:
- (i) trusts;
  - (ii) relevant agreements; and
  - (iii) practices,

to dominate decision making, directly or indirectly, in relation to the financial and operating policies of any other *entity* so as to enable that other *entity* to operate with it in pursuing those objectives of the controlling *entity*.

*entity* means any:

- (a) incorporated or unincorporated body;
- (b) trust or partnership; or
- (c) any legal, administrative or fiduciary arrangement, organisational structure or other party (including a *person*) having the capacity to deploy scarce resources in order to achieve objectives.

*qualifying member* means:

- (a) a person who has been admitted to membership of the credit union under Division 3 of this Constitution on the date that this Division 2 of Appendix 2 takes effect under the *Corporations Act*; or
- (b) a person admitted to membership of the credit union under Division 3 of this Constitution after the date on which this Division 2 of Appendix 2 takes effect under the *Corporations Act* who has been a member for not less than one year.

*securities* has the same meaning as in the *Corporations Act*, but also includes exchange traded options.

Terms that are not expressed in this Constitution or this Division 2 of Appendix 2, but that are defined in the *Corporations Act*, have the same meaning as in the *Corporations Act*.

### A2-D2-3 Entitlement to Reserves

Only a *qualifying member* is entitled to participate in the surplus and profits of the *credit union* when the *credit union* (whether acting through its *board*, its *members* or otherwise) conducts a reduction of capital, scheme of arrangement, deed of arrangement, transfer of business or any other form of corporate restructure where after completion of the restructure:

- (a) the *credit union* is not entitled to use the words 'Credit Union' or 'Credit Society' in its name;

- (b) one *person*, other than a *person* entitled to use either the words 'Credit Union' or 'Credit Society' in their name, holds more than 90% of the shares in the *credit union*;
- (c) a group of *associates*, other than a group all of the *members* of which are entitled to use either the words 'Credit Union' or 'Credit Society' in their name, between them hold more than 90% of the shares in the *credit union*;
- (d) a *person* not entitled to use either the words 'Credit Union' or 'Credit Society' in their name has a legal or equitable interest in more than 20% of the *credit union's* gross assets, based on the latest report that the *credit union* has given *APRA* as at the time of the restructure;
- (e) a group of *associates*, other than a group all of the *members* of which are entitled to use either the words 'Credit Union' or 'Credit Society' in their name, between them have a legal or equitable interest in more than 20% of the *credit union's* gross assets, based on the latest report that the *credit union* has given *APRA* as at the time of the restructure; or
- (f) the successor to the *credit union's* business is not entitled to use either the words 'Credit Union' or 'Credit Society' in its name.

#### A2-D2-4 Special Consent Required for Modification or Repeal of Division 2 of Appendix 2

- (1) A special resolution does not have any effect in relation to:
  - (a) a modification or repeal of any clause in this Division 2 of Appendix 2; or
  - (b) a modification or repeal of the Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the Clauses in this Division 2 of Appendix 2,unless the written consent of 5% of *qualifying members* (by number) is obtained either before or within three months after the special resolution is passed.
- (2) The number of *qualifying members* whose written consent is required is to be determined as at midnight before the special resolution.

## Appendix 3 — Standing Orders

### A3-1 Time Limits for Speakers

- (1) The mover of a motion may speak for no more than 5 minutes.
- (2) Subsequent speakers may speak for no more than 5 minutes.
- (3) The mover of the motion may reply for no more than 5 minutes.
- (4) The meeting is free to extend the time a speaker may speak.

### A3-2 Amendment

- (1) Special resolutions

A motion to amend a notified special resolution cannot be made, unless it is merely to correct grammar or clerical errors in the text of the special resolution.

- (2) On an amendment being proposed to an original motion, no second amendment may be considered until the first amendment has been dealt with.
- (3) An amendment, when carried, displaces the original motion and becomes the motion to which any further amendment may be moved.
- (4) If the amendment is not carried, then further amendments to the original motion may be considered.

### A3-3 Speakers

- (1) The mover of an original motion has a right of reply.
- (2) The mover of an amendment does not have a right of reply.
- (3) Otherwise, a *member* may speak only once on the same question except to raise a point of order or, with the consent of the Chair of the meeting, to give an explanation.

### A3-4 Motions to be in Writing

Every motion and every amendment to a motion must be submitted in writing as and when the Chair of the meeting requests.

**A3-5 Closure of Debate**

- (1) Debate on a motion or an amendment may be brought to a close by a resolution 'that the question be now put'.
- (2) The motion 'that the question be now put' must be put to the meeting without debate.

# Appendix 4 — Election of Elected Directors and operation of Nomination Committee

## Election of Elected Directors - Postal or Electronic Ballot

### A4-1 Election

- (1) An election of *elected directors* is held by secret ballot to which the provisions of this Appendix apply.
- (2) The following table sets out the timetable for election of *elected directors* by *members*:

Steps in Election Procedure	Time
Call for nominations (see subclause A4-3(1))	Not less than 83 days before AGM
Nominations close (see subclause A4-3(2))	Not less than 63 days before AGM but shall remain open for at least 20 days.
<i>Nomination Committee</i> interviews undertaken (see subclause A4-9(1))	within 14 days of the close of nominations
<i>Nomination Committee</i> to give <i>candidate reports</i> to the <i>candidates</i> (see Clause A4-9(2))	within 16 days of the close of nominations
<i>Candidates</i> may submit comments about <i>candidate reports</i> to the <i>Nomination Committee</i> (see subclause A4-9(3))	within 23 days of the close of nominations
<i>Nomination Committee</i> to make any amendments to <i>candidate reports</i> and give <i>candidate reports</i> to the <i>board</i> and <i>candidates</i> (see subclause A4-9(3))	within 30 days of the close of nominations
Nomination withdrawal period ends (see clause A4-8)	30 days after the close of nominations
Returning officer must send ballot papers to <i>members</i> (see subclause A4-14(1)) together with notice of the AGM	Not less than 21 days before AGM
Closure of ballot (see clause A4-15)	7 days before the AGM
Announcement of <i>directors</i> (see subclause A4-16(7))	AGM

- (3) The **board** may from time to time determine that the **members** may record their votes by an electronic voting system (including, without limitation, a system using electronic and/or telephonic device(s)). If the board makes such a determination:
  - (a) the election procedures must incorporate the requirements of that determination; and
  - (b) the term "ballot paper" includes, when appropriate, a vote submitted by a **member** electronically using the electronic voting system.

#### A4-2 Appointment of Returning Officers

- (1) The **board** must appoint a returning officer, who may appoint assistant returning officers, none of whom can be a **director** or a **candidate**.
- (2) The **secretary** must prepare and give the returning officer a list of **members** eligible to vote on the election of **directors** (see clause A2-D1-8 of Division 1 of Appendix 2) made up to midnight on the day before the nominations for the election close.

#### A4-3 Nominations

- (1) The **board** must give **members** a notice calling for **members** to nominate **candidates** not less than 83 days before the AGM. A "**candidate**" is a **person** who is nominated for election as a **director**. The notice may be given by any of the methods allowed in Rule 1.5 or by advertisement:
  - (a) at each of the **credit union's** offices; or
  - (b) in at least one edition of a daily newspaper circulating generally in each jurisdiction in which the **credit union** conducts its business.
- (2) Nominations close on the date stated in the notice calling for nominations, which must be a date not less than 63 days before the AGM and provided that nominations must remain open for a period of not less than 20 days.
- (3) 3 **members** together have the right to nominate a **candidate**. To nominate a **candidate**, the 3 **members** must give the **credit union** a notice of nomination before nominations close. The notice of nomination must:
  - (a) declare that the **candidate** is eligible to be a **director** under Rule 13.2; and
  - (b) be signed by the nominating **members** and the **candidate**.
- (4) Subject to Rule 13.6(5), a retiring **director** may stand for re-election without nomination by **members** by giving notice of self-nomination to the returning officer before nominations close pursuant to subclause A4-3(2) (and will then be a **candidate**) but the retiring **director** must be eligible to be a **director** under Rule 13.2. A retiring **director** who becomes a **candidate** is subject to all the requirements of this Appendix 4 applying to **candidates** other than the requirement to be nominated by **members**.

#### A4-4 Rejection of Nomination

- (1) The returning officer must scrutinise nominations immediately upon receipt and reject a nomination where it appears to the returning officer that the *candidate* is not eligible under Rule 13.2 or is a retiring director who is ineligible to be re-elected because of the operation of Rule 13.6(5).
- (2) Upon rejecting a nomination, the returning officer is to notify the *candidate*, the *candidate's* proposers (if any) and the *board*.

#### A4-5 Candidate Declaration

- (1) A *candidate* must give the *credit union*, before nominations close, a declaration in such form as the *board* may require from time to time (a "*candidate declaration*"):
  - (a) confirming that the *candidate* satisfies any eligibility requirements for election as a *director* that are imposed by this Constitution, the *Corporations Act*, the *Banking Act (Cth)* or any other legislation or *Prudential Standard*; and
  - (b) stating whether the *candidate*:
    - (i) has any interest in a contract, or proposed contract, with the *credit union*, or
    - (ii) holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests may be created that could conflict with a *director's* duties or interests as a *director* of the *credit union*;

and giving particulars of any such interest or office; and
  - (c) attaching or containing such other information as may be required by the *board*.
- (2) A *candidate* must forthwith give written notice to the *credit union* if there is any material change to the information provided under subclause A4-5(1) up to 30 days after the close of nominations.
- (3) When nominations close the *credit union* must advise the returning officer of the name of any *candidate* who has not provided a declaration under subclause A4-5(1), and the returning officer must then reject that *candidate's* nomination and notify the *candidate*, the *candidate's* proposers (if any) and the *board*, and the *candidate* will thereupon cease to be eligible for election as a *director*.

#### A4-6 Candidate Statement

A *candidate* may give to the *credit union* a written statement not exceeding 150 words (a "*candidate statement*"). The *candidate statement* must be given at the same time as the *candidate declaration* under subclause A4-5(1).

#### A4-7 Information in Candidate Declarations and Candidate Statements

- (1) Neither the information provided by a *candidate* under subclause A4-5(1)(c) nor a *candidate statement* may contain any material that is inaccurate, misleading or

deceptive or likely to mislead or deceive (including by the omission of material information), or that is defamatory or offensive.

- (2) If the **board** considers the information provided by a **candidate** under subclause A4-5(1)(c) or in a **candidate statement** is inaccurate, misleading or deceptive, or likely to mislead or deceive, or defamatory or offensive, it must give notice to the **candidate** requiring the **candidate** to, within 7 days:
  - (a) give the **credit union** an amended version of the information required under clause A4-5(1)(c) or amended **candidate statement** (as the case may be) that complies with subclause A4-7(1); and/or
  - (b) provide written evidence of the accuracy of the information provided under subclause A4-5(1)(c) or in the **candidate statement** (as the case may be); and/or
  - (c) give the **credit union** a written submission setting out why, in the opinion of the **candidate**, the material provided under subclause A4-5(1)(c) or in the **candidate statement** is not inaccurate, misleading or deceptive, or likely to mislead or deceive, or defamatory or offensive (as the case may be).
- (3) The **board** will consider any information given, or amended documents provided, by a **candidate** under subclause A4-7(2) but, if it reasonably remains of the view that the information provided by a **candidate** under subclause A4-5(1)(c) or the material in the **candidate statement** (or the amended version given by the **candidate**) is inaccurate, misleading or deceptive, or likely to mislead or deceive, or defamatory or offensive, it may cause that material to be deleted from the version of the information provided under subclause A4-5(1)(c) or **candidate statement** (as the case may be) that is given or made available to **members**. The **board's** decision on the publication of the material is final.

#### A4-8 Withdrawal of a Candidate

A **candidate** may withdraw his or her nomination by written notice to the **credit union** given up to 30 days from the close of nominations, and will then no longer be a **candidate** for election.

#### A4-9 Assessment of candidates by Nomination Committee

- (1) Each **candidate** must submit to an interview by the **Nomination Committee** within 14 days of the close of nominations. An interview may be conducted in whatever manner the **Nomination Committee** deems appropriate, including (without limiting the generality of the forgoing) by telephone, email or other electronic means. At the end of the interview period the **Nomination Committee** must advise the returning officer of the name of any **candidate** who has not submitted to an interview, and the returning officer must then reject that **candidate's** nomination and notify the **candidate**, the **candidate's** proposers (if any) and the **board**, and the **candidate** will thereupon cease to be eligible for election or re-election (as the case may be) as a **director**.
- (2) Within 16 days of the close of nominations, the **Nomination Committee** must prepare a report in relation to each **candidate** it has interviewed (a "**candidate report**") setting out:

- (a) a summary of the material the *Nomination Committee* has considered to make its assessment;
- (b) whether the *Nomination Committee* is satisfied as to the matters set out in subclauses A4-22(3) and (4) in relation to the *candidate*;
- (c) if the *Nomination Committee* considers it appropriate, a brief explanation of the basis for the *Nomination Committee's* determination in relation to the *candidate*; and
- (d) such other information (if any) that the *Nomination Committee* considers appropriate,

and give to the *candidate*, by any of the means permitted by Rule 1.5, a copy of the *candidate report* relating to that *candidate*.

- (3) Within 23 days of the close of nominations, a *candidate* may submit to the *Nomination Committee*, in writing, any comments the *candidate* wishes to make in relation to the *candidate report* relating to that *candidate*. The *Nomination Committee* must consider any comments submitted to it and may, in its absolute discretion, make amendments to the *candidate report* relating to that *candidate*. Thereafter the *candidate report* will be deemed to be the *final candidate report* relating to that *candidate*. Within 30 days of the close of nominations the *Nomination Committee* must give the *final candidate report* relating to each *candidate* to the *candidate* and copies of all the *final candidate reports* to the *board*.
- (4) The *board* must consider (but is not bound by) the information contained in the *final candidate report* relating to each *candidate* and must determine whether in its opinion the *candidate* has demonstrated an ability (as assessed against the *model criteria* provided by the *board* to the *Nominations Committee* in accordance with subclause A4-20(3)) to be a *director* and is fit and proper to be and act as a *director* by reference to the *credit union's fit and proper policy*. Upon completing its determinations in relation to all *candidates* the *board* must provide the returning officer with a declaration as to:
  - (a) those *candidates* (if any) who in its opinion have demonstrated an ability to be a *director* and are fit and proper, and those *candidates* will remain eligible for election or re-election (as the case may be) as a *director*; and
  - (b) those *candidates* (if any) who in its opinion have not demonstrated an ability to be a *director* or are not fit and proper, and those *candidates* will thereupon cease to be eligible for election or re-election (as the case may be) as a *director* and the returning officer must reject those *candidates'* nominations and notify those *candidates* and their proposers (if any).

#### A4-10 Proceeding with Election if the number of candidates is equal to or less than the number of positions to be filled

If, after the returning officer has received the declaration of the *board* made under clause A4-9(4), the number of *candidates* who are eligible for election as a *director* is equal to or less than the number of positions to be filled:

- (a) those *candidates* shall be declared elected with effect from the end of the next *AGM* and for the purposes of Rule 13.6(1) their election shall be deemed to have been announced at that *AGM*;
- (b) the election process set out in clauses A4-12 to A4-19 of this Appendix will not apply; and
- (c) the *credit union* must give each *member* a notice (which may be given by advertisement in at least one edition of a daily newspaper circulating generally in each jurisdiction in which the *credit union* conducts its business) that:
  - (i) states that the election process has been discontinued; and
  - (ii) sets out the name of each *candidate* elected in accordance with subclause A4-10(a).

#### **A4-11 Proceeding with Election if the number of candidates is more than the number of positions to be filled**

If, after the returning officer has received the declaration of the *board* made under subclause A4-9(4), the number of *candidates* who are eligible for election as a *director* is more than the number of positions to be filled, the election process set out in clauses A4-12 to A4-19 of this Appendix will apply.

#### **A4-12 Appointment of Scrutineer**

- (1) The *board* may appoint a maximum of three scrutineers, none of whom is a *candidate*.
- (2) A *candidate* may appoint a scrutineer.
- (3) Any costs associated with the appointment of a scrutineer by a *candidate* are the responsibility of the *candidate*. No reimbursements will be made by the *credit union*.
- (4) The duties and responsibilities of scrutineers are:
  - (a) to observe the sorting, counting and recording of ballot papers;
  - (b) to ensure that the votes of unrejected ballot papers are correctly credited to the appropriate *candidates*; and
  - (c) to raise any query with the returning officer regarding any of the ballot papers.

#### **A4-13 Ballot Papers**

- (1) After nominations have closed, the returning officer must prepare ballot papers for the election.
- (2) The order in which the *candidates* appear on the ballot paper is to be determined by the returning officer by lot.

- (3) *Candidates* who are current *directors* standing for re-election may be identified as such on the ballot paper.
- (4) If the board has made a determination in relation to electronic voting pursuant to subclause A4-1(3), the returning officer must also ensure that an interactive copy of the ballot paper is posted and is available in a secure electronic and/or telephonic system.

#### A4-14 Vote

- (1) The returning officer must send to each *member* on the list referred to in subclause A4-2(2), at least 21 days before the AGM:
  - (a) a ballot paper;
  - (b) an unsealed envelope, marked "Ballot Paper", in which the *member* must enclose their completed ballot paper. The reverse side of this envelope must bear the following on a detachable flap:

<p>.....</p> <p><i>Name of member</i></p> <p>.....</p>
<p>.....</p> <p><i>Membership number</i></p> <p>.....</p>
<p>.....</p> <p><i>Signature of member or corporate member's representative</i></p> <p>.....</p>

- (c) an unsealed envelope marked "Returning Officer" addressed to the returning officer;
  - (d) any information provided by *candidates* under subclause A4-5(1)(c), and any *candidate statements* received; and
  - (e) if the *board* has made a determination in relation to electronic voting pursuant to subclause A4-1(3), all information reasonably necessary to facilitate electronic voting.
- (2) The returning officer must send ballot papers and instructions for electronic voting by mail and addressed to each *member* at the address shown in the Register of Members for the purposes of giving notices.
  - (3) A *member* exercising a right to vote by post must:
    - (a) first complete the ballot paper in accordance with this Constitution;
    - (b) secondly, place the ballot paper in the envelope marked "Ballot Paper", seal the envelope and complete the information required on the detachable flap attached to the envelope; and

- (c) thirdly, place the sealed "Ballot Paper" envelope in the envelope addressed to the returning officer and return it to the returning officer.
- (4) A *member* exercising a right to vote electronically must:
  - (a) complete the ballot paper; and
  - (b) submit the ballot paper to the returning officer,in accordance with the instructions for electronic voting as determined by the *board*.
- (5) A *member* must ensure that the returning officer receives the *member's* ballot papers by 5:00pm Central Standard Time on the day fixed for the closing of the ballot.
- (6) Any ballot paper that the returning officer receives after the ballot closes is informal.
- (7) A *member* who does not receive the *member's* ballot paper or who spoils it must give the returning officer a declaration to that effect. The returning officer must then:
  - (a) send a duplicate ballot paper to that *member*;
  - (b) mark the envelope marked "Returning Officer" "Duplicate"; and
  - (c) keep a record of all duplicate ballot papers issued.
- (8) If the *board* has made a determination in relation to electronic voting pursuant to subclause A4-1(3), *members* may lodge votes by post or electronically but may only vote once.
- (9) The returning officer is not liable for an electronic ballot paper not received in accordance with the instructions for electronic voting as a result of any failure in the electronic and/or telephonic system of the *credit union*, of the *member* or of any third party provider.

#### A4-15 Closure of the Ballot

The ballot closes 7 days before the AGM.

#### A4-16 Procedures After Close of the Ballot

- (1) Subject to subclause A4-16 (2), as soon as practicable after the ballot closes, the returning officer must ensure that the ballots are dealt with as follows:
  - (a) open all envelopes and extract the envelopes marked "Ballot Paper";
  - (b) for each envelope marked "Ballot Paper", mark the *member's* name off a roll of *members*;
  - (c) if a duplicate ballot paper has been sent to a *member* and the original Ballot Paper Envelope received — mark the original Ballot Paper Envelope "rejected";

- (d) if the *member* or the *member's* corporate representative has not signed the envelope marked "Ballot Paper", or there is insufficient detail to identify the *member* — mark the Ballot Paper envelope "rejected";
  - (e) remove the detachable flap containing the *member* information from the envelope marked "Ballot Paper" and securely dispose of the detachable flaps so that no ballot paper can be identified with any particular *member*. When all the envelopes marked "Ballot Paper" have been so dealt with, open all the envelopes marked "Ballot Paper" and take out the ballot papers;
  - (f) supervise the scrutinising of the ballot papers and reject informal ballot papers;
  - (g) count the votes;
  - (h) sign a declaration of the ballot as to the:
    - (i) names of the *candidates* appointed as *directors*;
    - (ii) votes cast for each *candidate*; and
    - (iii) number of votes rejected as informal; and
    - (iv) deliver the declaration to the *secretary*.
- (2) If the *board* has made a determination in relation to electronic voting pursuant to subclause A4-1(3), the returning officer must carry out the procedures determined by the board in relation to any electronic ballot papers received.
- (3) A ballot paper is valid if it:
- (a) has a vote indicated on it; and
  - (b) indicates the *member's* preference for a *candidate* or *candidates*; and
  - (c) the number of votes indicated on it are equal to or less than the number of vacancies to be filled.
- (4) A ballot paper is informal if it:
- (a) has no vote indicated on it; or
  - (b) does not indicate the *member's* preference for a *candidate* or *candidates*; or
  - (c) has a greater number of votes indicated on it than the number of vacancies to be filled.
- (5) If a member lodges both an electronic and a postal ballot paper, the returning officer will accept the last valid ballot paper received.
- (6) The *secretary* may advise the *board* of the result of the ballot prior to the next *AGM*.

- (7) The *secretary* must announce the results of the ballot at the next AGM.
- (8) If a *member* gives the *credit union* a written request, the *credit union* must make available to any *member* a copy of the returning officer's declaration of the ballot.
- (9) The returning officer must destroy the ballot papers three months after the declaration of the ballot.
- (10) No election shall be voided on account of any errors or omission of the returning officer, which did not affect the results of the election.

#### A4-17 Voting System

- (1) The method of voting and the counting of votes shall be in accordance with the first past the post system where if only one *candidate* is to be elected the *candidate* elected shall be the *candidate* with the highest number of valid votes irrespective of whether that number is a majority or not and where if two or more *candidates* are to be elected the *candidates* to be elected are those with the highest number of valid votes.
- (2) If 2 or more *candidates* have the same number of votes, the *candidate* appointed as a *director* is determined by lot.

#### A4-18 Mental Incapacity or Death of a Candidate

If a *candidate* dies or becomes mentally incapable whilst an election is in process, the election process is not in any way invalidated.

#### A4-19 Irregularity in the Conduct of an Election

- (1) The *candidates* that the returning officer declares to have been appointed are appointed unless the *secretary* receives an objection to the ballot within 7 days of the AGM.
- (2) If the *board* is of the opinion that the objection is reasonable, it may resolve to declare the returning officer's declaration void.
- (3) The returning officer must then conduct a further scrutiny in accordance with the Constitution the results of which prevail unless the *board* resolves to call a new poll by a unanimous resolution of all *directors* other than those appointed as a result of the ballot to which the objection relates.

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## Nomination Committee

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### A4-20 Nomination Committee

- (1) The *board* shall establish and maintain a *Nomination Committee* having at least 3 *members* being:
  - (a) the Chair of the *board* except when the Chair is standing for re-election (during which period another *director* appointed by the *board* and who is not standing for re-election shall be a *member* in the Chair's place); and
  - (b) at least 2 other *persons* who are independent of the *credit union* and who possess, in the opinion of the *board*, an overall suitable mix of character, skills, knowledge and experience or who meet any other criteria determined by the *board* from time to time.
- (2) No *director* may be a member of the *Nomination Committee* during any period in which it is dealing with an election in which the *director* is a *candidate*.
- (3) The *board* will provide to the *Nomination Committee* a model set of criteria for *directors* (the "*model criteria*") against which the *Nomination Committee* must assess *candidates*. The *board* may change the *model criteria* from time to time but may not do so during any election of *elected directors* in the period between the call for nominations and the closure of the ballot.
- (4) Subject to subclause A4-20(1), the *board* may at any time except during the period described in subclause A4-20(3) and in its absolute discretion:
  - (a) appoint *persons* to be members of the *Nomination Committee*;
  - (b) suspend or terminate the appointment of any *person* as a member of the *Nomination Committee*; and
  - (c) give directions to the *Nomination Committee* as to the procedures it is to follow.

### A4-21 Duty of Confidentiality

- (1) Each member of the *Nomination Committee* must enter into an agreement with the *credit union* to keep confidential their assessments of *candidates*, during and after their appointment, except to the extent that the *Nomination Committee* is required by this Constitution to provide a *candidate report* to the *board* and to the *candidate* to whom it relates.
- (2) Each *director* must keep confidential any assessment of any other *director*, or *person* seeking appointment as *director*, during and after their term of office, except to the extent where that disclosure is required by law or by this Constitution.

#### A4-22 Role of the Nomination Committee

The *Nomination Committee* must assess each *person*:

- (1) who is nominated as a *candidate* pursuant to subclause A4-3(3); or
- (2) who is a retiring *elected director* standing for re-election pursuant to subclause A4-3(4) and is therefore a *candidate*,

and for the purposes of carrying out its functions under clause A4-9 determine whether it is satisfied that:

- (3) the *person* has demonstrated an ability (as assessed against the *model criteria*) to be a *director*, and
- (4) the *person* is fit and proper to be and act as a *director*, by reference to the *credit union's fit and proper policy*.

## Appendix 5 - Consideration of Demutualisation Resolutions

### A5-1 Interpretation

In this Appendix, unless the contrary intention appears:

**'Additional Costs'** means all costs reasonably incurred by the *credit union* in complying with its obligations under clauses A5-4 and A5-5(1)(b) of this Appendix.

**'Additional Information'** means:

- (a) an explanation as to how the Demutualisation Resolution will affect *member* rights as a holder of *member shares* and as a customer of the *credit union*;
- (b) an explanation as to the effect of the Demutualisation Resolution on the *credit union* and *members* with respect to:
  - (i) the rights of *members* to vote and to participate in the distribution of profits and reserves of the *credit union* and the loss of any such rights; and
  - (ii) the effect on the business, operations, employees, products, services, pricing and distribution network of the *credit union*;
- (c) an explanation of the mutuality benefits to *members* that will be lost if the Demutualisation Resolution is passed; and
- (d) an explanation of the availability and effect of other alternatives to the Demutualisation Resolution.

**'Ballot Closing Date'** means the date upon which a Direct Ballot closes, being a date fixed by the *Returning Officer* under clause A5-4(6) and specified in the notice referred to in clause A5-4(7)(e).

**'Demutualisation Resolution'** means a proposed resolution, or combination of proposed resolutions:

- (a) which, if passed, will or may result in:
  - (i) the *credit union* ceasing to be an authorised deposit-taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "Credit Co-operative" without committing an offence under the *Banking Act 1959*;

- (ii) a voluntary transfer of the *credit union's* business, pursuant to the *Financial Sector (Transfers of Business) Act 1999*, to an Entity that is not an authorised deposit taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "Credit Co-operative" without committing an offence under the *Banking Act 1959*;
  - (iii) *member shares* becoming transferable or capable of sale or assignment otherwise than pursuant to Rule A2-D1-7(2);
  - (iv) a *member* becoming entitled to hold more than one *member share*, unless Rule 5.3(4)(a) and (b) apply; or
  - (v) a right to vote attaching to any share other than a *member share*;
- (b) in relation to which the consent of the Treasurer is required pursuant to either section 63 of the *Banking Act 1959* or section 11 of the *Financial Sector (Shareholdings) Act 1998*, unless the consent is required for the purposes of a voluntary transfer of the *credit union's* business, pursuant to the *Financial Sector (Transfers of Business) Act 1999*, to an Entity that is an authorised deposit taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "Credit Co-operative" without committing an offence under the *Banking Act 1959*;
- (c) the effect of which would be to modify or repeal any clause in this Appendix, unless the only effect would be to modify clause A5-7 in such a way that the date upon which this Appendix will cease to have effect pursuant to that clause is postponed; or
- (d) the effect of which would be to modify or repeal this Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the clauses in this Appendix, unless the only effect would be to modify this Constitution in such a way that the date upon which this Appendix will cease to have effect pursuant to clause A5-7 is postponed.

'Direct Ballot' means a ballot of Qualifying Members in respect of a *Demutualisation Resolution* that is conducted in accordance with Clause A5-4 of this Appendix.

'Directors' Statement' means a statement by the *directors* containing:

- (a) the recommendation of each *director* as to whether the *Demutualisation Resolution* should be passed and their reasons for making that recommendation; and
- (b) details of any benefit to be received by the *directors* if the *Demutualisation Resolution* is passed.

'Entity' includes any:

- (a) incorporated or unincorporated bodies;

- (b) trust or partnership; or
- (c) any legal, administrative or fiduciary arrangement, organisational structure or other party (including a *person*) having the capacity to deploy scarce resources in order to achieve objectives.

'Information' means:

- (a) a disclosure statement that:
  - (i) contains all the *information* that *members* would reasonably require and expect to be given to make an informed decision about the *Demutualisation Resolution*, including but not limited to the *Additional Information*;
  - (ii) states that the *Demutualisation Resolution* may alter the *credit union's* mutual structure and outlines the intentions of the *member* or Entity seeking to convene or convening a meeting of the *credit union*:
    - (a) in relation to the future of the *credit union* if the *Demutualisation Resolution* is passed;
    - (b) in relation to *members'* interests if the *Demutualisation Resolution* is passed;
    - (c) in relation to the *directors* if the *Demutualisation Resolution* is passed; and
  - (iii) explains the effect the passing of the *Demutualisation Resolution* is likely to have on the business, operations, employees, products, services, pricing and distribution network of the *credit union*;
- (b) an estimate of the financial benefits (if any) the *members*, the *directors* and/or other officers of the *credit union* will be offered if the *Demutualisation Resolution* is passed; and
- (c) a report by an expert that:
  - (i) states whether, in the expert's opinion:
    - (a) the *Demutualisation Resolution* is in the best interests of the *members* of the *credit union* as a whole; and
    - (b) the *Demutualisation Resolution* is fair and reasonable to *members* having regard to any change of voting rights and the right to participate in profits and reserves;
  - (ii) sets out the expert's opinions in relation to the *Additional Information*;
  - (iii) gives the expert's reasons for forming those opinions;

- (iv) complies with the requirements of clause 33 of Appendix 4 of the *Corporations Act*; and
- (v) contains any *additional information* required to be provided under the *Corporations Act*.

'Qualifying Member' means a *member*:

- (a) who has been admitted to membership of the *credit union* under this Constitution on the date that this Appendix takes effect under the *Corporations Act*; or
- (b) who is admitted to membership of the *credit union* under this Constitution after the date on which this Appendix takes effect under the *Corporations Act* and who has been a *member* for not less than one year.

'Requisitionists' means the *members* who request the convening of a *general meeting* that is convened by the *directors* at the request of *members* made under section 249D of the *Corporations Act* or who call the meeting in accordance with sections 249E or 249F of the *Corporations Act*.

'Returning Officer' means a *person* appointed by the *Directors* as a Returning Officer under clause A5-4(1) of this Appendix.

'Special Resolution' means a resolution:

- (a) in relation to which notice as set out in paragraph 249L(1)(c) of the *Corporations Act* has been given; and
- (b) that has been passed by at least 75% of the votes cast by *members* entitled to vote on the resolution.

## A5-2 Application of Appendix 5

Notwithstanding any provision contained in this Constitution to the contrary, this Appendix will apply if a meeting of the *credit union* is convened, or is to be convened, at which a *Demutualisation Resolution* will be considered.

### A5-3 Requirement for General Meeting and Direct Ballot

If a meeting of the *credit union* is convened, or is to be convened, at which a *Demutualisation Resolution* will be considered:

- (a) The *general meeting* must be convened and conducted in accordance with this Constitution to consider the *Demutualisation Resolution* as a *Special Resolution*;
- (b) The *information* required by clause A5-5 of this Appendix must be provided to *members* in convening the *general meeting* to consider the *Demutualisation Resolution*;
- (c) The *Demutualisation Resolution* may not be moved at the *general meeting*, or passed at the *general meeting*, if the *Demutualisation Resolution*, or a substantially similar *Demutualisation Resolution*, was moved at a *general meeting* held within the 3 years prior to the *general meeting* and:
  - (i) not passed; or
  - (ii) passed but its adoption was not subsequently approved by a *Direct Ballot*;
- (d) The *Demutualisation Resolution* shall only be passed at the general meeting if at least 75% of the votes cast by *members* entitled to vote on the *Demutualisation Resolution* approve the *Demutualisation Resolution*; and
- (e) The *Demutualisation Resolution*, if passed at the *general meeting*, shall not have any effect unless and until:
  - (i) a *Direct Ballot* is held within 4 months of the date of the *general meeting* to consider whether the adoption of the *Demutualisation Resolution* should be approved;
  - (ii) by the *Ballot Closing Date* the *credit union* has received votes from 25% of *Qualifying Members*; and
  - (iii) of the votes received from *Qualifying Members* by the *Ballot Closing Date*, 75% of the votes are in favour of approving the adoption of the *Demutualisation Resolution*.

### A5-4 Conduct of Direct Ballot

- (1) Within 7 days of a *Demutualisation Resolution* being passed at a *general meeting* the *directors* must appoint a *Returning Officer*, who must not be a *director* or officer of the *credit union*, and who must then conduct a *Direct Ballot* in accordance with this Clause A5-4.
- (2) The *Returning Officer* must prepare a roll of the full names and addresses of the *members* of the *credit union*, as disclosed by the register of *members* as at midnight

on the day before the *general meeting* referred to in Clause A5-3(a), who are *Qualifying Members*.

- (3) Only *members* who are *Qualifying Members* as at midnight on the day before the *general meeting* referred to in Clause A5-3(a) are entitled to vote in the *Direct Ballot*.
- (4) The *Returning Officer* must cause ballot papers to be prepared for the *Direct Ballot*.
- (5) Each ballot paper must be initialled or marked by the *Returning Officer* or an appointed assistant.
- (6) The *Returning Officer* must fix a *Ballot Closing Date*, which must be a date not more than 4 months after the date of the *general meeting* at which the *Demutualisation Resolution* was passed.
- (7) The *Returning Officer* must, at least 30 days prior to the *Ballot Closing Date*, send by post or otherwise deliver to every *Qualifying Member* one set of the following material:
  - (a) one ballot paper;
  - (b) an envelope (in this Appendix referred to as the outer envelope) addressed to the *Returning Officer*;
  - (c) a smaller envelope (in this Appendix referred to as the middle envelope), the reverse side of which contains provision for the name, membership number and signature of the *Qualifying Member*;
  - (d) a small envelope marked "Ballot Paper" (in this Appendix referred to as the inner envelope) into which the ballot paper is to be enclosed;
  - (e) a notice which sets out:
    - (i) details of the *Demutualisation Resolution* upon which the decision of the *Qualifying Members* is to be sought;
    - (ii) details of the number of *members* who were eligible to vote at the *general meeting* at which the *Demutualisation Resolution* was passed and of the number of those *members* who voted;
    - (iii) the *Ballot Closing Date*;
    - (iv) instructions for voting;
    - (v) such further *information*, if any, as the *directors* consider appropriate; and
  - (f) the *Information* supplied to the *credit union* and the *Directors Statement*.
- (8) The *Returning Officer* may send a duplicate ballot paper to any *Qualifying Member* if the *Returning Officer* is satisfied:
  - (a) that the *Qualifying Member* has not received a ballot paper; or

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- (b) that the ballot paper received by the *Qualifying Member* has been lost, spoilt or destroyed and the *Qualifying Member* has not already voted.
- (9) A *Qualifying Member* casts a vote in the *Direct Ballot* by:
- (a) firstly, completing the ballot paper according to the instructions on the ballot paper;
  - (b) secondly, placing the completed ballot paper in the inner envelope;
  - (c) thirdly, completing the details on the reverse side of the middle envelope and signing the middle envelope;
  - (d) fourthly, placing the middle envelope in the outer envelope; and
  - (e) fifthly, sending the outer envelope to the *Returning Officer* so that it is received by noon on the *Ballot Closing Date*.
- (10) The *Returning Officer* must:
- (a) provide a ballot box or boxes which must be locked immediately before the ballot papers are delivered to *Qualifying Members* in accordance with Clause A5-4(7) and must remain locked until noon on the *Ballot Closing Date*; and
  - (b) place all outer envelopes received from *Qualifying Members* in the ballot box or boxes as they are received.
- (11) The counting of votes received by *Direct Ballot* shall be supervised by the *Returning Officer*.
- (12) The *Returning Officer* may be assisted in the performance of his or her duties by any *person* (who would be eligible to be a *Returning Officer*) appointed by the *Returning Officer*.
- (13) Ballot papers received after noon on the *Ballot Closing Date* are informal and must not be taken into account in the *Direct Ballot*.
- (14) As soon as practicable after noon on the *Ballot Closing Date*, the *Returning Officer* must, in the presence of such scrutineers as may be appointed by the *directors*, open the ballot box or boxes and deal with the contents in accordance with clause A5-4(15).
- (15) The *Returning Officer* must:
- (a) remove the middle envelope from the outer envelope;
  - (b) if a duplicate outer envelope has been issued and the original outer envelope is received, reject the original envelope and mark it "Rejected";
  - (c) according to the *information* on the middle envelope, for each set of voting papers returned, mark the *Qualifying Member's* name on the roll;

- (d) if a *Qualifying Member's* name has already been marked on the role, reject the vote and mark it "Rejected";
  - (e) if the middle envelope has not been signed, or if the details shown on the envelope are not sufficient to disclose by whom the vote is being exercised, reject the envelope and mark it "Rejected";
  - (f) extract the inner envelopes containing the ballot papers from all un-rejected middle envelopes, separating the contents from the middle envelopes in such a way that no inner envelope could subsequently be identified with any particular *Qualifying Member*, and
  - (g) when all the middle envelopes have been dealt with in the above manner, open all un-rejected inner envelopes and take the ballot papers from them.
- (16) The ballot papers must be scrutinised by the *Returning Officer* who must reject as informal any ballot paper that:
- (a) is not duly initialled or marked by the *Returning Officer*;
  - (b) is so imperfectly completed that the intention of the *Qualifying Member* cannot be ascertained by the *Returning Officer*;
  - (c) has any mark or writing not authorised by this Appendix which, in the opinion of a *Returning Officer*, will enable the *Qualifying Member* to be identified; or
  - (d) has not been completed as prescribed on the ballot paper itself.
- (17) No meeting of *members* is required to be held for the counting of the votes received by the *credit union* by *Direct Ballot*.
- (18) The *Returning Officer* must count all votes cast and make out and sign a statement of:
- (a) the number of formal votes in favour of approving the adoption of the *Demutualisation Resolution*;
  - (b) the number of formal votes against approving the adoption of the *Demutualisation Resolution*;
  - (c) the number of informal votes;
  - (d) the number of middle envelopes marked "Rejected"; and
  - (e) the proportion of the formal votes that were in favour of approving the adoption of the *Demutualisation Resolution*.
- (19) The *Returning Officer* must forward a copy of the statement to the Chair of the *credit union*.
- (20) Following the counting of votes in the *Direct Ballot* the *credit union* will:

- (a) display the result at its registered office and on the *credit union's* website;
- (b) notify *members* of the result of the *Direct Ballot* within 21 days; and
- (c) retain the *Direct Ballot* votes in the possession of the *credit union* for a period of 3 months, at the end of which period they will be destroyed.

#### A5-5 Disclosure Requirements

- (1) If a meeting of the *credit union* at which a *Demutualisation Resolution* will be considered is convened or is to be convened at the request of *members* made under section 249D of the *Corporations Act*:
  - (a) the *member* or *members* requesting the convening of the meeting shall at the time of requesting the convening of the meeting provide the *Information* to the *credit union*; and
  - (b) the *credit union* shall at the time of convening the meeting provide the *members* with:
    - (i) notice of the *Demutualisation Resolution* and of the intention to consider the *Demutualisation Resolution* as a *special resolution* in accordance with section 249L(1)(c) of the *Corporations Act*;
    - (ii) the *Information* supplied to the *credit union*;
    - (iii) the *Directors' Statement*; and
    - (iv) such further *information*, if any, as the *directors* consider appropriate.
- (2) If a meeting of the *credit union* at which a *Demutualisation Resolution* will be considered is convened or is to be convened or by *members* in accordance with sections 249E or 249F of the *Corporations Act*, the *member* or *members* requesting the convening of the meeting shall at the time of convening the meeting provide the *Information* to the *members*.

#### A5-6 Costs

If a meeting of the *credit union* at which a *Demutualisation Resolution* will be considered is convened by the *directors* at the request of *members* made under section 249D of the *Corporations Act* or by *members* in accordance with sections 249E or 249F of the *Corporations Act*, then the *Requisitionists* will:

- (a) provide to the *credit union*, at the time of making the request or convening the meeting, an indemnity in respect of the liability that the *Requisitionists* may incur to the *credit union* for the *Additional Costs* in a form satisfactory to the *directors*; and
- (b) if the *Demutualisation Resolution* is not passed at a *general meeting*, or if the *Demutualisation Resolution* is passed at a *general meeting* but its adoption is not approved by a *Direct Ballot*, be jointly and severally liable to the *credit*

*union* for the *Additional Costs* and will pay the *Additional Costs* to the *credit union* within 7 days of the *credit union* making a written demand for payment.

**A5-7. Termination of this Appendix**

This Appendix will cease to have effect at the end of the first AGM of the *credit union* held after 1 July 2013.