

Australian Central Credit Union Ltd (ABN 11 087 651 125)

# Constitution

As approved by a special resolution of members at the  
Annual General Meeting held 30 October 2014

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# Part 1 - Preliminary

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## 1.1 Definitions

In this Constitution, unless the context requires otherwise:

**ADI** means an Authorised Deposit-Taking Institution **APRA** has authorised to conduct banking business in Australia under the *Banking Act 1959* (Cth)

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

**APRA** means the Australian Prudential Regulation Authority

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

**board appointed director** means a **director** for the time being of the **credit union** that the **board** appoints in accordance with Clause 10.21

**candidate** means a **nominated person** whom the **board** determines to be a **candidate** pursuant to Clause 10.5(8)~~10.6(7)~~

**Corporations Act** means the *Corporations Act 2001* (Cth)

**credit union** means the company described in this Constitution

**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**

**direct vote** means a vote on a resolution made by a **member** by the delivery of a valid notice of their voting intention, following a determination by the **board** under Clauses 9.6 to 9.9 inclusive, such vote to be made in accordance with these clauses (including under any regulations made by the **board** under Clause 9.6(2))

**executive director** means a **director** for the time being of the **credit union** that the **board** appoints in accordance with Clause 10.22

**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

**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 elected director** means:

- (a) a **director** for the time being of the **credit union** elected (or declared elected) by **members** under Clause 10.3; or
- (b) a **director** appointed by the **board** under Clause 10.23(1) to fill a vacancy of a **director** elected by **members** under Clause 10.3

**member share** means a share as described in Part 6

**members' meeting** means a general meeting of the **members** held pursuant to Part 8

**merger appointed director** means a **director** for the time being of the **credit union** appointed under Clause 10.21

**nominated person** means a person nominated in accordance with Clause 10.5 to stand for election as a **member elected director**

**non-executive director** means a **director** who is not an **executive**

**director 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; and
  - (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.
- (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 Clause applies to all notices and documents that the **Corporations Act** or, subject to any other notice provision specified, this Constitution requires a party to this Constitution to send to another party to this Constitution.

**Corporations Act Commentary**

The parties to the Constitution are the **credit union** and its **members**, **directors** and **secretaries**: see s 140(1).

- (2) In this Clause, **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 that may be electronic or otherwise as the **credit union** specifies to **members** from time-to-time; and
  - (b) if to a **member** — at the **member's** address appearing on the Register of Members or such other address that may be electronic or otherwise as the **member** specifies to the **credit union** from time-to-time.

**Note:** Clause 3.2(2) deals with sending notices to joint **members**.

- (4) A person may deliver a notice or other document to another person in any of the ways set out in column 2 of the table. The other person receives the notice at the time set out in column 3:

<b>Delivery Method</b>	<b>Time Person Receives Notice</b>
<b>1 Hand delivering the notice personally</b>	The other person receives the notice: <ul style="list-style-type: none"><li>(i) if hand delivered before 5:00pm on a <b>business day</b> — on that <b>business day</b></li><li>(ii) if hand delivered after 5:00pm on a <b>business day</b> — on the next <b>business day</b></li><li>(iii) if hand delivered on a day other than a <b>business day</b> — on the next <b>business day</b>.</li></ul>
<b>2 Sending the notice by pre-paid post</b>	The other person receives the notice on the third <b>business day</b> after posting unless it is actually delivered earlier.
<b>3 Sending the notice by facsimile transmission</b>	The other person receives the notice: <ul style="list-style-type: none"><li>(i) if sent before 5:00pm on a <b>business day</b> — on that <b>business day</b></li><li>(ii) if sent after 5:00pm on a <b>business day</b> — on the next <b>business day</b></li><li>(iii) if sent on a day other than a <b>business day</b> — on the next <b>business day</b></li></ul> This Clause does not apply where the person sending the facsimile has evidence that the transmission was unsuccessful.
<b>4 Sending the notice by electronic means</b>	The other person receives the notice: <ul style="list-style-type: none"><li>(i) if sent before 5:00pm on a <b>business day</b> — on that <b>business day</b></li><li>(ii) if sent after 5:00pm on a <b>business day</b> — on the next <b>business day</b></li><li>(iii) if sent on a day other than a <b>business day</b> — on the next <b>business day</b></li></ul> This Clause does not apply where the person sending the notice by electronic means has evidence that the notice did not reach the other person's electronic address.

- (5) If a person sends a **member** a notice in accordance with this Clause, any person to whom that **member's** share has been transmitted is taken to have received the notice when the **member** would, but for the **member's** death, have received the notice. This Clause does not apply if the person to whom the share has been transmitted has advised the **credit union** of an alternative address in which case the notice must be sent to that address.

## Part 2 - Objects & Limit on Powers

### *Corporations Act Commentary*

The *Corporations Act* provides that the *credit union* has the legal capacity and powers of an individual and of a body corporate: see s 124.

### 2.1 Objects

The *credit union* has the following objects:

- (a) to raise funds by subscription, **deposit** or otherwise, as authorised by the *Corporations Act* and *Banking Act 1959* (Cth);
- (b) to apply the funds in providing **financial accommodation**, subject to the *Corporations Act* and *Banking Act 1959* (Cth);
- (c) to encourage savings and wealth management amongst **members**;
- (d) to provide products and services to **members** to assist them to meet their financial, economic and social needs;
- (e) to further the interests of **members** and the communities within which they work and live through co-operation and alliances with:
  - (i) other credit unions and co-operatives; and
  - (ii) associations of credit unions and co-operatives; and
  - (iii) other businesses that will broaden the *credit union's* scope in achieving these objects, locally, nationally and internationally;
- (f) to conduct such other business as authorised by the *Corporations Act*, the *Banking Act 1959* (Cth) or any other applicable legislation; and
- (g) to do anything reasonably incidental to the above objects.

### 2.2 Members and Customers

- (a) Subject to the exceptions in Clause 2.2(b) the *credit union* may only accept **deposits** from, or provide **financial accommodation** to, its **members**.
- (b) The restrictions in Clause 2.2(a) do not apply to the following persons who are not **members**:
  - (i) bodies that do not have the power to acquire, or that the law prohibits from acquiring, the *credit union's* shares; or
  - (ii) **ADIs**; or
  - (iii) any person or class of persons as determined by the **board** in its absolute discretion.



## Part 3 - Membership

### 3.1 Admission to Membership

#### **Corporations Act Commentary**

A person becomes a **member** of the **credit union** if the person agrees to become a **member** and the **credit union** enters the person's name in the Register of Members: see s 231.

- (1) Subject to any other Clause allowing admission of **members**, the **credit union** may admit a person as a **member** only if:
  - (a) the person makes a written application in a form the **credit union** requires;
  - (b) the person applies for a **member share**;
  - (c) the full **subscription price** for the **member share** is paid in cash or, at the discretion of the **board**, partly or wholly in the form of an obligation to pay cash:
    - (i) by the person; or
    - (ii) by another person on behalf of the person (which other person may, subject to the **Corporations Act** include the **credit union**).

**Note:** The **credit union** may also admit a person as a **member** by the transmission of a **member share** to the person under Clause 7.1, Clause 7.2 or Clause 7.3.

- (2) The **credit union** may admit a minor who is eligible to membership of the **credit union** as a **member**.
- (3) The **board** has an absolute discretion in exercising the **credit union's** power to admit **members** without any obligation to give a reason for not admitting a person as a **member**.
- (4) When the **credit union** admits a person as a **member**, the **credit union** must:
  - (a) issue the **member share** to the person; and
  - (b) enter the person's particulars in the Register of Members as required by the **Corporations Act**.

### 3.2 Joint Members

#### **Corporations Act Commentary**

The **Corporations Act** allows 2 or more persons jointly to be a **member** and hold shares in a credit union. The joint **members**:

- are taken to be a single **member** of the **credit union**; and
- may also be **members** in their own right or jointly with others: see s 169(8).

- (1) The **credit union** may admit 2 or more persons eligible for admission under Clause 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 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 severally liable for any liability that the joint **member** may have in relation to the joint **member's** shares.

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## Part 4 - Termination of Membership

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

- (1) 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 Clause 4.2, Clause 4.3 or Clause 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 Clause 7.2; 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 Clause 7.3;
  - (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:** Clause 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 Clause 4.2(1), the **credit union** must redeem the **member's member share** as soon as practicable after receiving the request.

### 4.3 Termination by the Credit Union

- (1) The **credit union** may redeem a **member's member share**:
  - (a) if the **member** fails to discharge the **member's** obligations to the **credit union** (other than as specified in Clause 4.3(4));
  - (b) if the **member** engages in conduct detrimental to the **credit union**;
  - (c) if the **member** obtains membership by misrepresentation or mistake; or
  - (d) in the circumstances specified in Clause 4.3(4).
- (2) The **credit union** must give notice (in accordance with Clause 1.5) of the proposed redemption under Clause 4.3(1)(a), (b) or (c) to the **member** at least 14 days before considering the proposed redemption. The application of this Clause 4.3(2) to a proposed redemption under Clause 4.3(1)(b) is subject to the **credit union's** right to redeem without notice under Clause 4.3(4)(c).
- (3) At the time the **credit union** considers a proposed redemption under Clause 4.3(1)(a), (b) or (c), 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.
- (4) The **credit union** may redeem a **member's member share** without notice to the **member**, where:
  - (a) the **member** is in default of any payment obligation to the **credit union** for a continuous period exceeding 90

days; or

- (b) the **credit union** has written off or accepted a compromise in respect of monies owing by the **member** and there have been no transactions on any account of the **member** (other than to reflect the write off or compromise) for a period of **90** days after the write off or compromise; or
  - (c) notwithstanding Clause 4.3(1)(b), the **member** engages in conduct which endangers other **members** or employees of the **credit union** or represents an immediate risk to any assets of the **credit union**.
- (5) Subject to Clause 4.3(6), on redeeming the **member share**, the **credit union** may pay the amount payable on redemption of the **member share** (if any) to the **member** by either:
- (a) sending a cheque to the **member's** address as set out in the Register of Members; or
  - (b) crediting any of the **member's** accounts with the **credit union**, at the time the **member share** is redeemed.
- (6) The **credit union** may from time to time and without notice to **members** affected, impose an administration fee in respect of redemption under Clause 4.3(1) such fee not to exceed the amount payable on redemption of the **member share**. The **credit union** may set off against the amount payable on redemption, any such administration fee payable to it.

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

- (1) This Clause does not apply to a retirement savings account to the extent that the *Retirement Savings Account Act 1997* (Cth) provides otherwise.
- (2) The **credit union** may classify a **member's deposit** account as a dormant account if:
- (a) there have been no **transactions** in the account for at least 1 year; and
  - (b) the **credit union** has given the **member** 28 days written notice stating that, unless the **member** gives to the **credit union** a written notice within 1 month stating that the **member** wishes the account to remain open, the **credit union** intends to declare the account dormant, close the account, redeem the **member's member share** and transfer the amount payable on redemption of the share (if any) and the amount (if any) standing to the credit of the **member's deposit** account into a general account maintained by the **credit union** for the purposes of holding dormant account monies and/or redemption proceeds for affected **members** ("**general account**"); and
  - (c) the **credit union** does not receive a written notice from the person required under Clause 4.4(2)(b).
- (3) The **credit union** may classify a **member** as inactive if, for a continuous period of 12 months:
- (a) the **member** has not had any **deposit** or other account open with the **credit union**;
  - (b) the **member** is not the holder of any security (other than the **member share**) issued by the **credit union**;
  - (c) the **credit union** has not received payments or remuneration (including commissions) which are directly attributable to the **member** using services supplied by, or made available through, the **credit union**; and
  - (d) the **credit union** has given the **member** not less than 28 days' 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 transfer the amount payable on redemption of the share (if any) into the **general account**.
- (4) The **credit union** may redeem the **member's member share** on classifying a **member's deposit** account as dormant (a "**dormancy declaration**") or upon classification of the **member** as inactive (an "**inactive declaration**").
- (5) If the **credit union** redeems a person's **member share** as a result of a **dormancy declaration** under this Clause, 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** accounts as soon as practicable; and

- (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 Clause, "**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**; or
- (b) the charging of a fee by the **credit union**.
- (7) Subject to Clause 4.4(8), 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** (if any) by crediting the amount to a sub-account in the name of the **member** in the **general account**.
- (8) The **credit union** may from time to time and without notice to **members** affected, impose an administration fee in respect of redemption under Clause 4.4(4) such fee not to exceed the amount payable on redemption of the **member share**. The **credit union** may set off against the amount payable on redemption, any such administration fee payable to it.

#### Banking Legislation Commentary

Section 69 of the *Banking Act 1959* (Cth) deals with unclaimed money.

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## Part 5 - Issue of Shares

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### 5.1 Classes of Shares

- (1) The *credit union* may only issue *member shares*.
- (2) The *credit union* may only issue *member shares* to a person on the basis that the person complies with Clauses 3.1(1)(a) to 3.1(1)(c) (inclusive).

### 5.2 Board Power to Issue Shares

The *board* may exercise the *credit union's* power to issue shares to the exclusion of the *members' meeting*.

### 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 1 *member share* to any person.

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

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## Part 6 - Member Shares

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### 6.1 Subscription Price

- (1) The *subscription price* for a *member share* is \$2.00.

### 6.2 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 this Part and the Constitution generally;
  - (b) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in Clause 6.4; and
  - (c) the right to redeem the *member share* on the terms set out in this Constitution.
- (2) The restriction on transfer of *member shares* in Clause 6.7 attaches to each *member share*.

### 6.3 Voting Rights

- (1) Holders of *member shares* may vote:
- (a) at a *members' meeting*;
  - (b) in a ballot to appoint *directors* by election or a ballot conducted pursuant to Section 4 of the Appendix (Demutualisation Approval Procedure Rules).
- (2) At a *members' meeting*:
- (a) on a show of hands — each holder of *member shares* other than a minor has 1 vote; and
  - (b) on a poll — each holder of *member shares* other than a minor has 1 vote for each *member share* that they hold.

However:

- (c) a *member* who holds more than 1 *member share* has 1 vote regardless of the number of *member shares* held; and
- (d) a *member* who is a minor has no vote.

### 6.4 Distribution on Winding-Up

- (1) Subject to Section 5 of the Appendix, on a winding-up of the *credit union* the holder of a *member share* is entitled:
- (a) to payment of the *subscription price* for the *member share* when the *member* subscribed for the *member share*; and
  - (b) if any assets remain after the payments in paragraph (a) — to any surplus assets of the *credit union* on an equal basis with other holders of *member shares*.
- (2) The *credit union* may offset against the amount payable under this Clause:
- (a) any amount unpaid on the *member share*; and
  - (b) any other amount payable by the *member* to the *credit union*.

### 6.5 Transfer of Member Shares

- (1) Subject to Clause 6.5(2), a *member* may not transfer their *member share*.
- (2) A trustee for an unincorporated association may transfer the *member share* that they hold as trustee

for the unincorporated association to another person who is to act as trustee for the unincorporated association.

## **6.6 No Dividends**

No dividend is payable on a *member share*.

## **6.7 Non-Transferability of Shares**

A *member* may not transfer, sell or assign their *member share* but may only require the *member share* to be redeemed in accordance with this Constitution.



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## Part 7 - Transmission of Shares

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### 7.1 Transmission of Shares on Death

- (1) On the death of a **member**, the **credit union** may recognise either the personal representative of the deceased **member** or another person who appears to the **credit union** to be entitled to the deceased **member's** estate as being entitled to the deceased **member's** interest in the **member share**.
- (2) If the personal representative gives the **credit union** the information it reasonably requires to establish an entitlement to be registered as holder of the **member share**, the personal representative may elect to:
  - (a) be registered as the holder of the **member share**; or
  - (b) apply to terminate the membership.

### 7.2 Transmission of Shares on Bankruptcy

#### **Corporations Act Commentary**

The **Corporations Act** sets out the rights of the trustee of the bankrupt's estate in relation to the **member share** held by the bankrupt **member**, whether or not the trustee has become registered as the holder of the **member share**.

The trustee has the same right of transfer of the **member share** as the bankrupt **member** had. Furthermore, the Constitution cannot override the trustee's rights: see s 1072C.

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 share**, the trustee may require the **credit union** to register the trustee as holder of the **member share**.

### 7.3 Transmission of Shares on Mental Incapacity

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

## Part 8 - Holding Members' Meetings

### Corporations Act Commentary

#### Holding a *members' meeting*

A *members' meeting* must be held at a reasonable time and place: see s 249R.

A *members' meeting* can be held using any technology (such as video conferencing), provided that it gives the *members* as a whole a reasonable opportunity to participate in the meeting: see s 249S.

#### Notice of *members' meeting*

At least 21 days' notice must be given of a *members' meeting*. A meeting can be called on shorter notice with the consent of the requisite number of *members*, but not to remove a *director* or auditor: see s 249H.

Written notice must be given individually to each *member* and *director*.

In the case of joint *members*, notice is given to the first named *member* in the Register of Members. See Clause 3.2.

Notice must be given personally, by post, facsimile or electronically: see s 249J. See Clause 1.5(4) as to service by post, facsimile or by electronic means.

The auditor must also receive the notice convening a *members' meeting* and other communication *members* are entitled to receive: see s 249K.

#### Content of notice

A notice convening a *members' meeting* must:

- set out the place, date and time of the meeting and the technology to be used to conduct the meeting if it is to be held in 2 or more places;
- state the general nature of the meeting's business;
- state the terms of any special resolution and the fact that it is proposed as a special resolution;
- in relation to proxies:
  - that the *member* has a right to appoint a proxy;
  - whether or not the proxy needs to be a *member* of the *credit union*; and
  - that a *member* entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise: see s 249L.

#### Auditor's right to attend

The auditor has a right to attend any *members' meeting* and to speak: see s 249V.

#### Members' right to give notice of a resolution

*Members* with at least 5% of the votes that may be cast at a *members' meeting* or at least 100 *members* may give the *credit union* notice of a resolution that they propose to move at a *members' meeting*: see s 249N.

This resolution is to be considered at the next *members' meeting* that occurs more than 2 months after the notice is given: see s 249O.

#### Members' request for statement to be distributed

The *credit union* must distribute a statement about a resolution, or other matter to be considered at a *members' meeting*, as requested by a certain number of *members*: see s 249P.

#### The AGM

A company must hold an *AGM* within 5 months after the end of its financial year: see s 250N.

The business of an *AGM* may include the following, even if not referred to in the notice of meeting:

- consideration of the annual financial report, *directors'* report and auditor's report;
- election of

*directors*; The chair of

the *AGM* must:

- allow *members* a reasonable opportunity to ask questions about, and to comment on, the management of the *credit union*: see s 250S; and
- allow *members* a reasonable opportunity to ask the auditor or the auditor's representative, when present, questions relevant to the conduct of the audit and the preparation and content of the auditor's report: see s 250T.

## 8.1 Calling a Members' Meeting

### *Corporations Act Commentary*

#### **Members' right to call a general meeting**

A **members' meeting** must be held if ~~100 members~~, or **members** with at least 5% of the votes ask for it. The **board** has to call a **members' meeting** within 21 days after the request and the meeting itself must be held within 2 months: see s 249D and s 249F. In any case, **members** who hold at least 5% of the votes can call and arrange to hold a meeting themselves: see s 249F.

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

## 8.2 Adjourning a Members' Meeting

- (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.
- (3) The only business that an adjourned **members' meeting** may deal with is business unfinished at the **members' meeting** that was adjourned.

## 8.3 Proceedings at a Members' Meeting

- (1) The quorum for a **members' meeting** is 30 **members** present in person.
- (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 a **members' meeting** 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) — another person appointed by the **board**.

If the chair of meetings of the **board**, or another person appointed by 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.

## 8.4 Voting in Different Capacities

A **member** may only exercise 1 vote at a **members' meeting** of the **credit union** or on an election of **directors** regardless of the fact he or she may hold more than one membership or hold more than one account.

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## Part 9 - Voting at Members' Meetings

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### 9.1 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) On a poll being demanded at a **members' meeting** the chair must inform the meeting prior to the poll being taken as to:
  - (a) how many valid proxy documents the **credit union** has received;
  - (b) how many of these proxy documents direct the proxies how to vote on the resolution; and
  - (c) if the **board** has determined that **members** may cast votes by **direct vote** in accordance with Clause 9.6, the number of valid **direct votes** received.
- (3) After a poll has been held, the chair must inform the meeting how the proxies were directed to vote on the resolution and if the **board** has determined that **members** may cast votes by **direct vote** in accordance with Clause 9.6, how the members casting such votes, voted.
- (4) 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.
- (5) The chair does not have a casting vote in addition to his or her deliberative vote.

### 9.2 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.

### 9.3 Voting on a Poll

#### **Corporations Act Commentary**

Section 250L allows the following to demand a poll:

- 5 **members** entitled to vote on the resolution;
- **members** with at least 5% of the votes to be cast on the resolution; or
- the chair.

A proxy may join a demand for a poll: see s 249Y(1).

Section 250K states that a poll may be demanded on any question and that the demand may be withdrawn.

- (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.

### 9.4 Body Corporate Representatives

#### **Corporations Act Commentary**

Section 250D says that a body corporate **member** may appoint a representative to exercise the **member's** powers at a **members' meeting**. The appointment can be a standing appointment. The appointment can set out restrictions on the representative's powers. A **member** can appoint more than 1 representative but only 1 can exercise the **member's** powers at any one time.

- (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.

## 9.5 Proxies

### **Corporations Act Commentary**

Sections 249X to 250C set out **members'** powers to appoint proxies and the rights and obligations of proxies.

- (1) The **board** may determine the form of proxy document from time to time.
- (2) An appointment of a proxy for a **members' meeting** is invalid unless the **credit union** receives the following documents at least 48 hours before the meeting, or at such later time as the **board** determines before the meeting:
  - (a) the proxy's appointment; and
  - (b) if the **member's** attorney signs the proxy's appointment – the authority under which the attorney signed the proxy's appointment or a certified copy of the authority.
- (3) 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.
- (4) A proxy does not have a right to vote on a show of hands.
- (5) Unless the **credit union** receives written notice of the matter before the meeting at which a proxy vote starts or resumes, the proxy's vote at that meeting will be valid if, before the proxy votes:
  - (a) the appointing **member** dies; or
  - (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.

## 9.6 Board may determine Direct Voting to apply

- (1) The **board** may determine that **members** may cast votes to which they are entitled on any or all of the resolutions (including any special resolution) proposed to be considered at, and specified in the notice convening, a meeting of members, by **direct vote**.
- (2) If the **board** determines that votes may be cast by **direct vote**, the **board** may make such regulations as it considers appropriate for the casting of **direct votes**, including regulations for:
  - (a) the form, method and manner of voting by **direct vote**; and
  - (b) the time by which the votes of **members** to be cast by **direct vote** must be received by the **credit union** in order to be effective (which must be no later than the time appointed for the commencement of the meeting or, in the case of an adjournment, the resumption of the meeting).

## 9.7 Direct Votes count on a poll

- (1) **Direct votes** are not counted if a resolution is decided on a show of hands.
- (2) Subject to Clauses 9.8 and 9.9, if a poll is held on a resolution, votes cast by **direct vote** by a **member** are taken to have

been cast on the poll as if the **member** had cast the votes in the poll at the meeting, and the votes of the **member** are to be counted accordingly.

- (3) A **direct vote** received by the **credit union** on a resolution is taken to be a **direct vote** on that resolution as amended, if the chairman of the meeting determines this is appropriate.
- (4) Receipt of a **direct vote** from a **member** has the effect of revoking (or, in the case of a standing appointment, suspending) the appointment of a proxy, attorney or representative made by the **member** under an instrument received by the **credit union** before the **direct vote** was received.

## 9.8 Withdrawal of Direct Vote

- (1) A **direct vote** received by the **credit union**:
  - (a) may be withdrawn by the **member** by notice in writing received by the **credit union** before the time appointed for the commencement of the meeting (or in the case of any adjournment, the resumption of the meeting); and
  - (b) is automatically withdrawn if:
    - (i) the **member** attends the meeting in person (including, in the case of a body corporate, by representative);
    - (ii) the **credit union** receives from the **member** a further **direct vote** or **direct votes** (in which case the most recent **direct vote** is, subject to Clauses 9.6 to 9.9 inclusive, counted in lieu of the prior **direct vote**); or
    - (iii) the **credit union** receives, after the **member's direct vote** is received, an instrument under which a proxy, attorney or representative is appointed to act for the **member** at the meeting in accordance with this constitution.
- (2) A **direct vote** withdrawn under this clause is not counted.

## 9.9 Direct Vote not affected by death, etc. of member

Unless the **credit union** receives written notice of the matter before the meeting at which a **direct vote** starts or resumes, the **direct vote** at that meeting will be valid if, before the **direct vote**:

- (a) the **member** dies;
- (b) the **member** is mentally incapacitated;
- (c) the **member** revokes the **direct vote**; or
- (d) the **member** transfers the share in respect of which the **member** has cast a **direct vote**.

## 9.10 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.

## Part 10 - Directors - Appointment & Vacation of Office

### 10.1 Number of Directors

(1) The **board** shall comprise:

- (a) 4 (or such greater number as the **board** may resolve) **member elected directors**;
- (b) the **board appointed directors** (if any);
- (c) the **merger appointed directors** (if any);
- (d) the **executive director** (if any);

but in any case, the **member elected directors** shall at all times constitute a majority of **directors**.

#### Corporations Act Commentary

Section 201A(2) provides that credit unions must have at least 3 **directors** (not counting alternate **directors**) and that at least 2 must ordinarily reside in Australia.

### 10.2 Eligibility to be a Director

(1) An individual is eligible to be a director if the person:

- (a) is a **member**;
- (b) in the case of a **member elected director**:
  - (i) has been a **member** since at least for a continuous period of 2 years immediately prior to the closing of nominations for the election for which they are nominated, or are otherwise entitled to be elected without nomination, as a **member elected director** pursuant to Clause 10.4; and
  - (ii) is not a current employee of the **credit union** and has not been an employee of the **credit union** within the 3 year period immediately prior to the closing of nominations for an election for which they are nominated, or are otherwise entitled to be elected without nomination, as a **member elected director** pursuant to Clause 10.4; and
- (c) in the case of an **executive director** – is employed as the chief executive of the **credit union**;
- (d) has not had a personal representative or trustee appointed to administer the person's estate or property because of their mental incapacity; and
- (e) in the case of a **member elected director**, the **board** has determined that the person is of appropriate fitness and propriety to be and act as a **director** for the purposes of the **credit union's** obligations under applicable legislation and the **credit union's** fit and proper policy, by reference to the **board's** model set of criteria for **member elected directors** under Clause 10.6 (3).

#### Corporations Act Commentary

Section 201B(1) provides that only individuals (not bodies corporate) who are at least 18 may be **directors**.

Section 201B(2) provides that a person who has been disqualified from managing corporations under Part 2D.6 may only be appointed a **director** if the appointment is made with ASIC's permission under s 206F or the Court's leave under s 206G.

### 10.3 Appointment by Members — Election by Ballot

Subject to this Clause Part 10, the **members** may appoint a person to be a **director** by election held under the provisions of in accordance with Clauses 10.4 to 10.18.

#### Corporations Act Commentary

Section 201C imposes restrictions on the appointment and reappointment of persons over the age of 72 as **directors**.

## 10.4 Election by Ballot

An election of **directors** under Clause 10.3 is held by secret ballot to which the provisions of Clauses 10.4 to 10.18 apply.

Call for nominations (see Clause 10.5(1))	not less than 56 days before <b>AGM</b>
Nominations close (see Clause 10.5(2))	at least 36 days before <b>AGM</b>
Nominations Committee interviews undertaken (see Clause 10.6(4))	within 7 days of the close of nominations
Nominations Committee to issue draft statement to <b>nominated person</b> (see Clause 10.6(6))	within 7 days of the close of nominations
<b>Nominated person's</b> response to Nominations Committee draft statements (see Clause 10.6(6))	within 12 days of the close of nominations
Nomination withdrawal period ends (see Clause 10.19(2))	on a date determined by the <b>board</b>
<b>Candidate</b> to advise of any material changes to information provided in the <b>candidate's</b> declaration (see Clause 10.8(3))	up to 21 days before ballot papers are sent to <b>members</b>
Ballot papers sent to <b>members</b> (see Clause 10.13)	at least 21 days before <b>AGM</b>
Closure of ballot (see Clause 10.14)	at least 7 days before the <b>AGM</b>
Announcement of <b>secretary</b> (see Clause 10.16(6)).	<b>AGM</b>

### 10.510.4 Nominations

- (1) The **board** must give **members** a notice calling for nominations not less than 56 days before the **AGM**. The **board** may give this notice by advertisement (or other communication) and in any media it considers reasonable to maximise, to the extent reasonably practicable, the likelihood that **members** will become aware of the notice including, without limitation, by any combination of the following media or means of communication:
  - (a) notice at the **credit union's** offices;
  - (b) notice on the **credit union's** website (if available) and any other website considered suitable by the **board**;
  - (c) notice (or notification) in the national or local print, television or radio media; or
  - (d) electronic communication of the notice (or of the existence of the notice-) in any media including, where appropriate and practicable, by direct electronic communication to **members**.
- (2) Nominations close at least 36 days before the **AGM**.
- (3) 5 **members** who are each eligible to nominate a **member** to stand for election as a **member elected director** in accordance with Clause 10.4(4) together have the right to nominate a **member** to stand for election as a **member elected director-nominated person**. To nominate a **member-nominated person**, the 5 **members** must give the **credit union** a notice of nomination that contains the information required by Clause 10.4(5) and includes information, and is otherwise in a form, required by the **board**, before nominations close.
- (4) A **member** is eligible to nominate a **nominated person member** to stand for election as a **member elected director** if the nominating **member**:
  - (a) has attained the age of 18 years;
  - (b) has known the **nominated person member** it proposes to nominate for 12 months or more; and
  - (c) has been a **member** for a continuous period of 2 years immediately prior to the closing date of nominations for an election.
- (5) The notice of nomination must:
  - (a) declare that the **nominated person member** being nominated is eligible to be a **director** under Clause 10.2(1)(a)40.2 (a) to (d);



- (b) state the ~~nominated person's~~ age of the member being nominated; and
  - (c) be signed by the nominating *members* and the ~~nominated person~~member being nominated.
- (6) A retiring *member elected director* may stand for re-election without nomination but must be eligible for election.
- (7) ~~\_\_\_\_\_~~ A retiring *member elected director* standing for re-election must comply with Clauses 10.540.6 and 10.740.8 ~~below~~.
- ~~(7)(8)~~ \_\_\_\_\_ A *board appointed director* may stand for election and must comply with Clauses 10.2 to 10.840.
- ~~(8)(9)~~ \_\_\_\_\_ A *merger appointed director* may stand for election and must comply with Clauses 10.5 to 10.840.9.

## ~~10.6~~10.5 **Nominations Committee**

- (1) The *board* shall establish a Nominations Committee to manage the process for nomination for election of *member elected directors*.
- ~~(2)~~ \_\_\_\_\_
- ~~(3)~~(2) The Nominations Committee is to comprise:
- (a) the chair of the *board* except when standing for re-election in which case, another *director* who is not standing for re-election nominated by the *board*; and
  - (b) two other persons with an overall suitable mix of character, skills, knowledge and experience who are not *directors*, employees or *members* of the *credit union*, or who meet other criteria determined by the *board*.
- ~~(4)~~(3) The *board* shall develop, and provide to the Nominations Committee a model set of criteria for *member elected directors* against which *nominated persons* will be assessed.
- ~~(5)~~(4) Each *nominated person* is required to attend an interview with the *Nominations Committee* at a time and place selected by the *nominations committee* within 7 days of the close of nominations. A *nominated person* who does not attend the interview will cease to be eligible for election as a *member elected director*.
- ~~(6)~~(5) After interviewing each *nominated person*, and after considering the information provided by a *nominated person* under Clause 10.740.8, and the ~~nominated person's~~ statement under Clause 10.9(2), the Nominations Committee ~~will~~shall prepare:
- (a) a statement on ~~each the~~ *nominated person* advising whether the *nominated person* has the appropriate skills, knowledge and experience (including as assessed against the *credit union's* model set of criteria), to be a *director*, and has demonstrated an ability (as assessed against the model criteria) to be a *director*; and
  - (b) a recommendation to the *board* on each *nominated person* as to whether that person:
    - (i) is of appropriate fitness and propriety to be and act as a *director* for the purposes of the *credit union's* obligations under applicable legislation and the *credit union's* fit and proper policy; and
    - (ii) has the appropriate skills, knowledge and experience to be a *director*, by reference to the *credit union's* model set of criteria.
- ~~(7)~~(6) The Nominations Committee must, ~~within 7 days of the close of nominations~~, provide a copy of the statement to the *nominated person* requesting the *nominated person's* comments within such timeframe as determined by the *nominations committee*. The Nominations Committee will consider such comments and make such changes, if any, to the statement as the Nominations Committee thinks fit. The Nominations Committee's decision on the need for, or the content of such changes, is final.
- (7) The *board* must consider (but not be bound by) the recommendation from the Nominations Committee referred to in Clause 10.5(5)(b)40.5(b), and any other information it considers appropriate (which may include information prepared by a committee of the *board*), and determine whether the *nominated person*:
- (a) each *nominated person* is of appropriate fitness and propriety to be and act as a *director* for the purposes of the *credit union's* obligations under applicable legislation and the *credit union's* fit and proper policy; and
  - (b) has the appropriate skills, knowledge and experience to be a *director*, by reference to the *credit union's* fit

model set of criteria.

- (8) If the **board** determines that a **nominated person** is of appropriate fitness and propriety to be and act as a **director** and that the **nominated person** has the appropriate skills, knowledge and experience to be a **director** by reference to the **credit union's** model set of criteria, and the **board** has not otherwise determined that the **nominated person** not become a **candidate** in accordance with Clause 10.8(1), the person becomes a **candidate**.

#### 10.710.6 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** of the **credit union** or a **nominated person**.
- (2) The **secretary** must prepare and give the returning officer a roll of **members**.

#### 10.810.7 Declaration

- (1) A **nominated person** must provide the **credit union** with a declaration in such form as the **board** may require (and by the time determined by the **board**):
- (a) identifying the **nominated person's** eligibility for election under the Constitution and the **Corporations Act**;
- (b) in which they consent to be a **director** in accordance with the **Corporations Act**;
- ~~(b)(c)~~ identifying whether the **nominated person**:
- (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**;
- ~~(e)(d)~~ attaching such other information as determined by the **board**; and
- ~~(d)(e)~~ if the **nominated person** wishes to do so, containing a brief statement not exceeding 250 words for distribution to the **members**.
- (2) A **nominated person** must ensure that all information provided under Clause 10.7(1)10.8(4) is accurate and not misleading (including by the omission of material information) and in any event, must provide documentary evidence verifying the information to the satisfaction of the **board**.
- (3) A **candidate** must ensure that the **credit union** is advised of any material changes to the information provided under Clause 10.7(1)10.8(4) as soon as reasonably practicable after the changeup to 21 days before ballot papers are sent to **members**.

#### 10.910.8 Distribution of Information

- (1) Prior to becoming a **candidate**, a **nominated person** must not directly or indirectly distribute information to, or otherwise communicate with, the **members** in connection with a **director** election (including by doing so before they become a **nominated person** except to the extent reasonably necessary to procure members to nominate the **member** to stand for election as a **member elected director**). If the **nominated person**, or any person reasonably considered by the **board** to be acting on behalf of the **nominated person**, does so, the **board** may determine that the **nominated person** will not become a **candidate**.
- (2) Subject to any constraints imposed in accordance with Clause 10.8(5), a **candidate** may contact **members** in connection with a **director** election, but must not:
- (a) in any way (directly or indirectly, including by permitting another to do so on their behalf) campaign on, impede or interfere with, any of the premises of the **credit union**, the property where the premises or facilities of the **credit union** are situated, or other property of the **credit union**;
- (b) interfere with, or seek assistance from, any employee, officer, services provider or agent of the **credit union** or its related bodies corporate;
- (c) provide any **member** with information that, or in any manner that, in the reasonable opinion of the **board**, is likely to mislead or deceive a **member** in relation to the casting of their vote at a director election or the operations of the **credit union** generally, contains any defamatory material, is not relevant to a **director** election, disparages the **credit union** or brings the **credit union** into dispute, or contravenes a provision of the **Corporations Act** or any

other law in force in the state in which the information is being distributed.

- (4)(3) The statement prepared by the Nominations Committee under Clause 10.5(5)(a)~~10.6(5)(a)~~ (as amended under Clause 10.5(6)~~10.6(6)~~, if applicable) and the information provided under Clause 10.7(1)~~10.8(1)~~ for each **candidate** will be distributed to **members** together with the ballot material distributed at Clause 10.13(1).
- (2)(4) Any statement or information submitted by a **candidate** for election must not contain any matter or thing that is likely to mislead or deceive a **member** in relation to the casting of their vote or that contains any defamatory material.
- (3) ~~Where the **board** reasonably considers that a **candidate**'s information provided under Clause 10.8(1) contains any matter or thing that is inaccurate, misleading or deceptive, the **board** will request that the **candidate** provide additional information verifying the matter or amend the information. The **board** will consider such additional information or amendments and then approve the information to be published as it thinks fit. The **board**'s decision on the publication of the information is final.~~
- (4)(5) Without limiting the provisions of this Clause 10.8~~10.9~~, but subject to Clause 10.8(6)~~10.9(6)~~, the **board** may from time to time impose constraints, including restrictions or prohibitions ("**direct communication constraints**") on **candidates**, or persons reasonably considered by the **board** to be acting on behalf of the **candidates**, directly or indirectly distributing information to, or otherwise communicating with, the **members** in connection with a **director** election. The **direct communication constraints** may, without limitation, cover:
- (a) the method (including frequency) of communication;
  - (b) the subject matter and contents (including the length and relevance) of the information;
  - (c) the persons or groups of persons to whom the information is distributed or the communication made;
  - (d) the approval process (if any) for the information or communication; and
  - (e) anything incidental to the above.
- (5)(6) The **board** may only impose **direct communication constraints** under Clause 10.8(5)~~10.9(5)~~ to the extent that it reasonably considers that the **direct communication constraints** are necessary or desirable to ensure promote the integrity, fairness, efficiency and/or efficacy of the **director** election process and that the constraints are otherwise consistent with the following principles:
- (a) the **direct communication constraints** must apply equally to all **candidates**;
  - (b) all **nominated persons** are to be given notice of the **direct communication constraints** as soon as practicable after they are nominated;
  - (c) **members** should not be harassed by **candidates** or unreasonably burdened by the distribution or communication having regard to the method of the distribution or communication, its contents or the frequency of the distribution or communication;
  - (d) **candidates** must not make comments which criticise or disparage other **candidates**;
  - (e) the primary method of distribution of information about **candidates** is intended to be pursuant to Clause 10.13(1)~~10.9(2)~~; and
  - (f) **members** should have sufficient information to properly consider the merits of each **candidate**.
- (6)(7) Without limiting the above, and whether or not the **board** imposes any **direct communication constraint** of this nature or at all, the information and, where relevant, the method of communication must not be misleading or deceptive or otherwise breach any law (including defamation laws).
- (7)(8) If a **candidate** or any person reasonably considered by the **board** to be acting on behalf of the **candidate**, breaches in any material respect Clause 10.8(2), Clause 10.8(7) or any **direct communication constraint** and such breach is, in the **board**'s opinion:
- (a) not capable of remediation; or
  - (b) capable of remediation, but is not rectified by the **candidate** to the reasonable satisfaction of the **board** within a reasonable period after the breach is brought to the attention of the **candidate**,

the **board** may in its sole discretion determine that the person ceases to be a **candidate**, in which case the person will no longer be eligible for election as a **member elected director** as part of the then current director elections by written notice to the **candidate** require the **candidate** to withdraw from the **director** elections and, if so, the **candidate** must withdraw. The **board** may then take such action in relation to the **director** elections as it considers reasonable in the circumstances in consequence of the withdrawal including by modifying the requirements of this Clause 10 to the extent reasonably necessary to accommodate the withdrawal.

#### 10.10.9 Rejection of Nomination

- (1) The returning officer must scrutinise a nomination as soon as reasonably practicable after receipt and the finalisation of the **nominated person's** eligibility and reject a nomination where the returning officer determines - that the **nominated person** person nominated is not eligible to be a **member elected director** under this Constitution, or has not otherwise complied with this Constitution or the nomination does not otherwise comply with this Constitution.
- (2) Upon rejecting a nomination, the returning officer is to shall notify as soon as reasonably practicable the **nominated person**, the **nominated person's** proposers and the **board**.
- (3) There is no obligation on the **Nominations Committee** or the **board** to release to a **nominated person** the results of any referee checks undertaken on the **nominated person**.

#### 10.110.10 A Subsequent Adverse Information About a Candidate

- (1) This Clause 10.10A applies if, after Where the **board** makes a determination under Clause 10.6(7) that a **nominated person** is of appropriate fitness and propriety and therefore a **candidate**, the **board** becomes aware of any information about, or conduct of, about the **candidate** that, in the **board's** opinion, could have been relevant to the **board's** determination in accordance with Clause 10.5(7), or could be relevant to the board's determination in accordance with Clause 10.5(7) if the **board** was required to again make that determination upon becoming aware of the information or conduct, then the **board** must again determine whether, in light of the information and/or conduct, the **candidate**:
  - (a) causes the **board** to consider that the **candidate** is not, or is no longer, is of appropriate fitness and propriety to be and act as a **director** for the purposes of the **credit union's** obligations under applicable legislation and the **credit union's** fit and proper policy; and
  - (b) has the appropriate skills, knowledge and experience to be a **director**, by reference to the **credit union's** model set of criteria,  
("revised assessment").
- (4)(2) Upon a **revised assessment** being made that the **candidate** does not meet the criteria in Clause 10.10(1), the returning officer may must by written notice to the **candidate**:
  - (a) inform the **candidate** of the **revised assessment**;
  - (b) provide to the **candidate** a summary of the potential information and/or conduct upon which the **revised assessment** is based (but the returning officer is not required to reveal how or from whom it has derived that information or become aware of that conduct); and
  - (c) specify that the **candidate** will be required to withdraw cease to be a **candidate** unless the **candidate** can demonstrate to the **board**, within 5 business days of the notice, that the information is not correct in any material particular or that the relevant conduct did not occur.
- (2)(3) If the **candidate** does not demonstrate the matters specified in Clause 10.10(2)(c)10.10A(2)(c) to the reasonable satisfaction of the **board**, the **board** may require determine that the **candidate** to withdraw from the **director** elections and, if so, the returning officer must notify the **candidate** of this decision and the **candidate** must withdraw cease to be eligible for election as a **member elected director**. The **board** may then take such action in relation to the **director** elections as it considers reasonable in consequence of the withdrawal, including by modifying the requirements of this Clause 10 to the extent necessary to accommodate the withdrawal.

#### 10.1210.11 Proceeding with Election

- (1) The number of positions to be filled in the an election of **directors** is the maximum number of **member elected directors** under Clause 10.1 less the number of **member elected directors** who are not due to retire at the **AGM** in accordance with Clause 10.24.
- (2) If the number of **candidates** is equal to or less than the number of **member elected director** positions to be filled:

- (a) those **candidates** are declared elected by the **members** with effect from the end of the next **AGM** and for the purposes of Clause 10.24(2)(a) their election is deemed to have been announced at that **AGM**;
  - (b) the election process otherwise set out in this Constitution is discontinued; ~~and~~
  - (~~b~~)(c) the **board** must give **members** a notice that:
    - (i) states that the election process has been discontinued;
    - (ii) sets out the name of each **candidate** declared elected in accordance with Clause 10.11(2)(a);
    - (iii) sets out any other information as required by the **Corporations Act**.
- (3) The **board** may give the notice referred to in Clause 10.11(2)(c) by advertisement or other communication and in any media it considers reasonable to maximise, to the extent reasonably practical, the likelihood that **members** will become aware of the notice including, without limitation, by any combination of the following media or means of communication:
- (a) notice at the **credit union's** offices;
  - (b) notice on the **credit union's** website (if available), and any other website considered suitable by the **board**;
  - (c) notice (or notification) in the national and local print, television or radio media; or
  - (d) electronic communication of the notice (or the existence of the notice) in any media including, where appropriate and practical, by direct electronic communications to **members**.

#### ~~10.13~~10.12 **Ballot Papers**

- (1) After nominations have closed, the returning officer must prepare ballot papers for the election.

##### **Corporations Act Commentary**

Section 201C imposes requirements on the manner in which persons over the age of 72 can be appointed or reappointed.

- (2) The **board** is to determine the form of the ballot, including how determination of the order in which the **candidates** will appear on the ballot paper is to be undertaken.
- (3) In determining the order in which the **candidates** will appear on the ballot paper, the **board** may only choose one of the following options:
  - (a) by lot; or
  - (b) by lot for the first ballot paper printed, and then **candidates** appearing on subsequent ballot papers printed as rotated through each position on the ballot paper.
- (4) The returning officer is to carry out the process of the determination of the order, as determined by the **board** in Clause 10.12(3), in which the **candidates** appear on the ballot paper.
- (5) The names of any existing **directors** seeking re-election or election may appear on the ballot paper with a distinguishing mark.
- (6) The **board** may request that the names of any **candidates** endorsed or not endorsed by the **board** appear on the ballot paper with a distinguishing mark. The **board** may also remain silent on their endorsement or otherwise of a candidate.

#### ~~10.14~~10.13 **Postal Voting**

- (1) At least 21 days before the **AGM**, ~~The returning officer must send to each **member** who (at the date of sending) is eligible to vote in an election of **directors**, at least 21 days before the **AGM**:~~
  - (a) a ballot paper;

(b) in respect of each candidate:

- (i) a statement prepared by the **board**, which may include the statement prepared by the **nominations committee** under Clause 10.5(5)(a) and any other information about the **candidate** that the **board** reasonably considers is relevant to their candidacy for election as a **member elected director**; and
- (ii) the statement (if any) provided by the **candidate** in accordance with Clause 10.7(1)(e);

(b)(c) an unsealed envelope, marked "Ballot Paper" with a removable slip for the **member** to note:

- (i) membership number;
- (ii) name of **member**;
- (iii) **member's** address;
- (iv) **member's** signature; and
- (v) a postal envelope addressed to the returning officer.

(2) Ballot papers may be delivered personally or posted to **members** at their addresses shown in the Register of **Members** and may be included with other **credit union** postal materials.

(3) Any **member** exercising a right to vote must:

- (a) complete the ballot paper in accordance with this Constitution;
- (b) place the ballot papers in the envelope marked "Ballot Paper";
- (c) complete the slip on the ballot paper envelope and return the envelope with the slip attached to the returning officer in the envelope supplied prior to 5.00pm on the day fixed for the closing of the ballot.

~~(4) A **member** must ensure that his or her ballot papers are received by the returning officer by 5.00pm on the day fixed for the closing of the ballot.~~

~~(5)~~(4) Any ballot paper not received by the returning officer prior to 5.00pm on the day fixed for the closing of the ballot is excluded from the ballot.

~~(6)~~(5) Any ballot paper received by the returning officer is to be kept in secured ballot boxes until the closure of the ballot.

~~(7)~~(6) A **member** who does not receive a ballot paper or who spoiled it may send to the returning officer a declaration to that effect in such form that is satisfactory to the returning officer, upon which and the returning officer must:

- (a) send a ballot paper or duplicate ballot paper (as applicable) to that **member**;
- (b) mark the envelope "Ballot Paper – Duplicate" (if applicable); and
- (c) keep a record of all duplicate ballot papers issued.

#### **10.1510.14 Closure of the Ballot**

The ballot closes at a date determined by the **board**, which must be at least 7 days before the **AGM**.

#### **10.1610.15 Appointment of Scrutineer**

(1) A **candidate** may appoint a scrutineer.

(2) Any costs associated with the appointment of a scrutineer are the responsibility of the **candidate** appointing the scrutineer. No reimbursements will be made by the **credit union**.

(3) The duties and responsibilities of scrutineers are:

- (a) to observe the sorting, counting and recording of ballot papers; and
- (b) to raise any query with the returning officer regarding any of the ballot papers.

- (4) In the event of a dispute in relation to any ballot papers (including in relation to the sorting, counting and recording of ballot papers) between a scrutineer and the returning officer, the determination of the returning officer will be final and binding.

#### **10.17**10.16 Procedures After Close of the Ballot

- (1) ~~The **board** shall adopt, and may amend from time to time, a procedure for the counting of votes which must, in the reasonable opinion of the **board**:~~
- ~~(a) be reasonable and consistent with this Constitution; and~~
  - ~~(b) as far as reasonably practical, ensure that votes be counted without disclosing or revealing to any person (including the **returning officer**) a specific **member's** vote, ensure that each **member** must only exercise 1 vote and that persons who are not **members** do not vote in a ballot, ensure that all **members** are given a reasonable opportunity to vote in a ballot and ensure that all **members** are treated equally in relation to voting.~~

- ~~(1)(2) As soon as reasonably practicable after the close of the ballot, the returning officer must deal with the ballots/votes in accordance with the procedure adopted by the **board** in accordance with Clause 10.16(1), as follows:~~

~~(a) open all postal envelopes and extract envelopes marked "Ballot Paper";~~

~~(b) for each envelope marked "Ballot Paper", mark the **member's** name as shown on the attached slip off the electoral roll;~~

~~where a duplicate ballot paper has been issued and the original envelope marked "Ballot Paper" received, mark the original envelope "rejected";~~

~~if the envelope marked "Ballot Paper" has not been signed, or the signature is identified as not being the **member's** or there is insufficient detail to identify the **member**, mark the envelope "rejected";~~

~~remove the slip attached to the "Ballot Paper" envelope from all unrejected envelopes marked "Ballot Paper", ensuring that no envelope could subsequently be identified with any particular **member**;~~

~~when all the envelopes marked "Ballot Paper" have been so dealt with, cause all the envelopes marked "Ballot Paper" to be opened and the ballot papers to be taken out;~~

~~cause the ballot papers to be scrutinised under his or her supervision and reject such ballot papers as he or she finds to be informal under Clause 10.16(2);~~

~~count the votes in accordance with Clause 10.18 (Voting System);~~

~~prepare and sign a declaration of the ballot as to:~~

~~the number of ballot papers lodged;~~

~~the number of formal votes;~~

~~the number of informal votes;~~

~~the number of votes cast for each **candidate**; and~~

~~the number of those persons elected.~~

~~deliver the declaration to the **secretary**.~~

- ~~(2) A ballot paper is informal if it has no vote indicated on it or it does not indicate the **member's** preference for a **candidate**.~~

~~The returning officer must preserve the ballot papers for a period of at least 3 months after the declaration of the ballot.~~

~~No election shall be voided on account of any error or omission of the returning officer that did not affect the results of the election.~~

~~The **secretary** may advise the **board** of the result of the ballot prior to the **AGM**.~~

~~The **secretary** must announce the result of the ballot at the next **AGM**.~~

## ~~10.18~~10.17 Changes to Postal-Voting Procedures

- (1) The **board** may, from time to time, approve changes to the procedures for ~~postal~~-voting specified in, or adopted in accordance with any of, Clauses 10.13 to 10.16 where, in the view of the **board**, such changes are reasonable and are not inconsistent with the following principles:
  - (a) ~~\_\_\_\_\_~~ are capable of ensuring accurate receipt and treatment of votes and the integrity of the director election process;
  - ~~(a)(b)~~ \_\_\_\_\_ as far as reasonably practical, ~~the procedures must ensure that~~ the procedures continue to require that ~~postal~~ votes be counted without disclosing or revealing to any person (including the returning officer) a specific member's vote;
  - ~~(b)(c)~~ \_\_\_\_\_ as far as reasonably practical, ~~the procedures must ensure that~~ the procedures continue to require that each member must only exercise 1 ~~postal~~-vote and that persons who are not members do not vote in a ~~postal~~-ballot;
  - ~~(c)(d)~~ \_\_\_\_\_ ~~the procedures must ensure that~~ the procedures continue to require that all members are given a reasonable opportunity to vote in a ~~postal~~ ballot; and
  - ~~(e)~~ \_\_\_\_\_ ~~the procedures must ensure that~~ the procedures continue to require that all members are treated equally in relation to ~~postal~~-voting.
- (2) Without limiting the above power, the **board** may, from time to time, adopt procedures and make regulations to provide for electronic / online voting procedures (including for notification of elections, provision of ballot papers, distribution of election materials, voting, processing and counting of votes and all related matters) provided that the principles set out in -paragraphs (1)(a) to (1)(e)~~(d)~~ above are observed (where necessary as reasonably modified to apply to electronic / online voting procedures) and the procedures are, as far as reasonably practical, capable of ensuring accurate receipt and treatment of votes and the integrity of the **director** election process.

## ~~10.19~~10.18 Voting System

- (1) The **candidates** with the highest number of votes in accordance with the number of vacancies are appointed as **member elected directors** with effect from the time specified in Clause 10.24.
- (2) If 2 or more **candidates** have the same number of votes, the **candidate** appointed as a **member elected director** is determined by lot in such manner as is determined by the board.

~~Members are to vote for the number of vacancies.~~

- (3) The result of the ballot must be announced at the next AGM by the secretary, by the chairman of the board or by such other person as the board determines.

## ~~10.20~~10.19 Withdrawal or Death of a Candidate

- (1) No election will be invalid where a **candidate** subsequently becomes mentally incapable or dies provided:
  - (a) the **credit union** provides written notice to all **members** of the subsequent mental incapacity or death of the **candidate** prior to the ballot opening; or
  - (b) the deceased **candidate** or the **candidate** lacking mental capacity fails to obtain sufficient votes to have been elected.
- (2) A **candidate** may not withdraw his or her nomination after a date as determined by the **board**.

## ~~10.21~~10.20 Appointment by the Board - Additional Directors

- (1) The **board** may from time to time appoint not more than 2 **directors** ("**board appointed directors**") additional to **member elected directors**, the **executive director** and **merger appointed directors** and those appointed to fill casual vacancies.
- (2) The **board** may appoint a **board appointed director** only where it considers that the person has appropriate skills, experience or expertise not otherwise available on the board.
- (3) The **board** may only initially appoint a **board appointed director** for a period of 12 months.
- (4) The **board** may re-appoint a **board appointed director** for additional periods of up to 36 months.
- ~~(5) Notwithstanding Clauses 10.20(1), (2), (3) and (4), if a board appointed director is elected to the office of chair or deputy chair of meetings of the board (other than as acting chair under Clause 12.3(2) or chair of committees under~~



Clause 12.6(2)), that **board appointed director** must stand for election at the next **AGM**.

#### **10.2210.21 Merger Appointed Directors**

- (1) The **board** may appoint "**merger appointed directors**":
  - (a) where:
    - (i) there is a transfer of business between the **credit union** and another financial institution where the **credit union** is the receiving body within the meaning of the *Financial Sector (Business Transfers and Group Restructure) Act 1999* (Cth);
    - (ii) a **members' meeting** has resolved to approve the transfer and also the appointment to the **board** of a person or persons specified in the resolution who were, prior to the transfer, **directors** of the transferring body within the meaning of such Act; and
    - (iii) **APRA** has approved the transfer; or
  - (b) where:
    - (i) there is a transfer of business between the **credit union** and another financial institution where the **credit union** is the receiving body within the meaning of the *Financial Sector (Business Transfers and Group Restructure) Act 1999* (Cth); and
    - (ii) **APRA** has approved the transfer.
- (2) **Merger appointed directors** hold office for either:
  - (a) the term specified in the resolution passed by **members** (if applicable); or
  - (b) 3 years, whichever is shorter.
- (3) The total number of **merger appointed directors** shall at all times constitute less than 50% of the total number of **directors**.

#### **10.2310.22 Appointment by the Board – Executive Director**

- (1) From time to time the **board** may appoint a person to be an **executive director**. The **board** may only appoint a person under this Clause who is eligible to be an **executive director** under Clause 10.2(1)(c).
- (2) The **board** may appoint an **executive director** for the period of the **executive director's** employment with the **credit union** or such lesser period as determined by the **board**.
- (3) Notwithstanding Clause 10.22(2), if the **executive director** ceases employment with the **credit union**, the term of office for the **executive director** immediately ceases.

#### **10.2410.23 Appointment by the Board – Casual Vacancies**

- (1) The **board** may appoint a person to be a **director**:
  - (a) if a **director's** office becomes vacant other than because the **director's** term of office has ended; or
  - (b) if, for any other reason, the number of **member elected directors** is less than 5 **directors**.
- (2) The **board** may only appoint a person who is eligible to be a **director** under Clause 10.2 (excluding Clause 10.2(1)(b)).
- (3) The term of office for a **director** appointed to fill a vacancy in Clause 10.23(1)(a) ends at the end of the term of office of the **director** whose office has become vacant.
- (4) The term of office for a **director** appointed to fill a vacancy in Clause 10.23(1)(b) ends at the end of the next **AGM** after the **director's** appointment.

#### **10.2510.24 Term of Office**

- (1) This Clause only applies to **member elected directors**.

- (2) Subject to the **Corporations Act**, a **member elected director's** term of office:
  - (a) starts at the end of the **AGM** at which the **member elected director's** election is announced; and
  - (b) ends at the end of the third **AGM** after the **AGM** at which the **member elected director's** election is announced.
- (3) At the end of this term, a **member elected director**, must retire from office, but may offer themselves for re-election provided that:
  - (a) they meet the eligibility criteria contained in this Constitution and the **Corporations Act**; and
  - (b) in respect of **member elected directors** other than the persons that are **directors** immediately before the 2014 **AGM**, they have not served the **board** as a **member elected director** for more than any consecutive period equal to or exceeding 12 years.

**Corporations Act Commentary**

Section 201C(3) requires **directors** who turn 72 to retire at the end of the next **AGM** after they turn 72.

Section 201C(8) requires **directors** who are 72 or more when appointed to retire at the end of the next **AGM** after the **members' meeting** at which they are appointed.

### ~~10.26~~10.25 Automatic Vacation of Office

- (1) The office of a **director** automatically becomes vacant if the **director**:
  - (a) dies;
  - (b) ceases to be eligible to be a **director** under Clause 10.2;
  - (c) is absent from 3 consecutive ordinary meetings of the **board** without leave; or
  - (d) is 3 months 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 **members' meeting** may waive the operation of this Clause.

**Corporations Act Commentary**

Section 203D provides that the **members' meeting** of the **credit union** may remove a **director** by ordinary resolution.

### ~~10.27~~10.26 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) on the date of resignation if the notice of resignation specifies a date of resignation; or
  - (b) on the date the **credit union** receives the notice of resignation.

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## Part 11 - Directors' Powers

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### 11.1 Powers and Duties of the Board

- (1) \_\_\_\_ 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 **members' meeting**.

### 11.2 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 electronic method.

### 11.3 Delegation

- (1) The **board** may delegate any of its powers to any committee of the **board** or any other person or persons. The **board** may permit the delegate to sub-delegate any powers so delegated.

#### **Corporations Act Commentary**

The delegate must exercise the powers delegated in accordance with any directions of the **board**. A power so exercised is taken to have been exercised by the **board**: see s 198D.

- (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 the **board** determines, 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.

### 11.4 Board Policies

The **board** may from time to time specify policies applicable to the conduct of the **board** or of its **directors** and, to the extent that such policies are not inconsistent with this Constitution or the **Corporations Act**, such policies will bind the **board** and the **directors**. Specification in such policy of any matter which is not dealt with in, or is in addition to the requirements imposed by, the Constitution or the **Corporations Act** is not, of itself, to be treated for the purposes of this Clause 11.4 as being inconsistent with the Constitution or the **Corporations Act**.

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## Part 12 - Directors' Meetings

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### *Corporations Act Commentary*

Section 248D says that a meeting may be called and held using any technology consented to by all **directors**. The consent may be a standing one. A **director** can withdraw consent within a reasonable period before the meeting.

### 12.1 Calling and Conduct of Board Meetings

- (1) Any 2 **directors** or the **secretary** (upon the authority of any 2 **directors**) may call a **board** meeting.
- (2) At least 48 hours' notice of a **board** meeting must be given except where:
  - (a) the chair of meetings of the **board** determines there are exceptional circumstances for shorter notice; or
  - (b) a majority of the **directors** authorise the **secretary** to convene a meeting on shorter notice.
- (3) The **board** may meet, adjourn and otherwise regulate its meetings as it thinks fit.

### 12.2 Quorum of the Board

- (1) The quorum for a **board** meeting is more than 50% of the total number of **directors**.

### 12.3 Chair of the Board

- (1) The **board** may appoint a **director** to chair its meetings and appoint a deputy chair. The **board** may determine the period for which the **director** is to be the chair or deputy chair. The **board** may remove the chair or deputy chair from their respective positions at any time.
- (2) The **board** must elect a **director** present to chair a meeting (or part of it) if:
  - (a) a **director** has not already been appointed to chair the meeting; or
  - (b) a previously appointed chair is not available, or declines to act, for the meeting (or part of it).

### 12.4 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.
- (2) The chair has no casting vote in addition to his or her deliberative vote.

### 12.5 Circulating Resolutions

- (1) The **board** may pass a resolution without a **board** meeting if all of the **directors** entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document and the resolution is passed when all of the **directors** have signed the document.
- (2) Subject to Clause 12.5(4):
  - (a) separate copies of a document may be used for signing by different **directors** if the wording of the resolution and the statement is identical in each copy; and
  - (b) the resolution is passed when the last **director** signs.
- (3) For the purposes of this Clause 12.5 a reference to "all of the **directors**":
  - (a) does not include:
    - (i) a **director** who, at a meeting of directors, would not be entitled to vote on the resolution;
    - (ii) a **director** who disqualifies himself or herself from considering the resolution in question; or

(iii) any **director** on leave of absence approved by the **board**; and

(b) means the number of **directors** not being less than the number required for a quorum at a meeting of the **board**.

(4) The **board** may determine a policy about the use of electronic communication (including telephone) for the purpose of passing a resolution contemplated by this Clause 12.5 and a **director** will be taken to have signed the document containing the statement referred to in Clause 12.5(1) and the last **director** will be taken to have signed the document in the manner and at the time determined in accordance with any policy established from time to time by the **board** for that purpose.

(5) A resolution passed in accordance with this Clause 12.5 shall be tabled at the next following meeting of the **board** and be noted in the minutes of that meeting.

## 12.6 Committees of Directors

(1) The **board** may establish one or more committees consisting of such number of **directors** as the **board** thinks fit.

(2) The **members** of a committee may appoint one of their number as chair of their meetings.

(3) Subject to any restrictions that the **board** imposes, a committee may meet, adjourn and otherwise regulate its meetings as it thinks fit.

(4) Questions arising at a meeting of a committee are to be determined by a majority of votes of those present and voting.

(5) The chair of a committee does not have a casting vote in addition to his or her deliberative vote.

## 12.7 Audit Committee

(1) The **board of directors** must establish an Audit Committee.

(2) The Audit Committee may comprise such **directors** and officers of the **credit union** as the **board** determines but the **non-executive directors** must be in the majority.

(3) The object of the Audit Committee is to monitor the credibility and objectivity of the financial reporting to assist the **board** to discharge its responsibilities.

(4) The **board** must determine a policy for the role, terms of reference, responsibilities and method of operation of the Audit Committee.

## Part 13 - Conflicts of Interest

### **Corporations Act Commentary**

Part 2D.1 and Chapter 2E deal with conflicts of interest and financial benefits to related parties.

### **13.1 Director Not in Breach if that Director Acts in Matters Relating to Director's Interests**

- (1) This Clause applies if:
  - (a) a **director** has an interest or duty in relation to a matter that is not a **material personal interest**; or
  - (b) if 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.

### **13.2 Director Not in Breach if that Director Does Not Act in Matters Relating to Director's Interests**

- (1) This Clause 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 union's** affairs; but
  - (b) must not be present and vote on the matter under the **Corporations Act**.

### **Corporations Act Commentary**

Section 195 provides that a **director** of a **credit union** who has a **material personal interest** in the matter that a **board** meeting is considering must not:

- be present while the matter is being considered at the **board** meeting; or
- vote on the matter, unless:
  - the other **directors** approve the **director** being present: see s 195(2);
  - ASIC approves the **director** being present: see s 195(3); or
  - the interest does not have to be disclosed: see s 191.

- (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.
- (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.

### 13.3 Execution of Instruments

- (1) 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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## Part 14 - Remuneration, Indemnity and Insurance

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### 14.1 Remuneration of Directors

- (1) Subject to Clause 14.1(2), in any period, the remuneration of **directors** may not exceed the aggregate amount for that period that the **members' meeting** determines by resolution.
- (2) If the **members' meeting** does not approve a resolution for an aggregate amount of **directors** remuneration in respect of the period until the next **members' meeting**, then the aggregate remuneration of **directors** will be the same as applied in respect of the period immediately before that **members' meeting**.
- (3) The **board** may determine the allocation of the aggregate amount of remuneration among the **directors**. If the **board** does not determine the allocation, the aggregate amount of remuneration must be allocated equally among the **directors**.
- (4) The **directors'** remuneration accrues daily (other than if the **board** has determined alternative policies where a **director** is on leave of absence) from the day that the **members' meeting** approves the remuneration to the day that the **members' meeting** next determines the **directors'** remuneration.

### 14.2 Travelling Expenses and Insurance

- (1) 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 properly incurred:
    - (i) in attending **board** meetings or any meetings of committees of **directors**;
    - (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**.

### 14.3 Indemnities for Officers and Former Officers

#### **Corporations Act Commentary**

Section 199A restricts the **credit union** from giving an indemnity to persons who are, or have been, officers or auditors against certain liabilities they incur while acting in that position. Those liabilities include:

- liability incurred to the **credit union** or a related body corporate;
- liability for pecuniary penalty orders under s 1317G or compensation orders under s 1317H;
- liabilities arising out of conduct involving a lack of good faith;
- liability for costs or expenses that the officer incurs:
  - in defending proceedings where the person is found liable (on the grounds described above);
  - in defending criminal proceedings where the person is found guilty;
  - in defending proceedings brought by ASIC or a liquidator for a court order if the grounds for the court order are established;
  - in connection with proceedings for relief under the **Corporations Act** where the court denies relief.

Section 199B restricts the **credit union** from providing insurance for liability arising out of conduct involving a wilful breach of duty or a contravention of their duty not to misuse their position or information.

- (1) In this Clause "**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 Clause 14.3(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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## Part 15 - Administration

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### 15.1 Secretary

#### *Corporations Act Commentary*

Under s 204A(2), the **credit union** must have at least 1 **secretary** who must reside in Australia.

Section 204B(1) provides that only individuals (not bodies corporate) who are at least 18 may be **secretaries**.

Section 204B(2) provides that a person who has been disqualified from managing corporations under Part 2D.6 may only be appointed a **secretary** if the appointment is made with ASIC's permission under s 206F or the Court's leave under s 206G.

Subject to Clause 15.2, 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.

### 15.2 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) on the date of resignation if the notice of resignation specifies a date of resignation; or
  - (b) on the date the **credit union** receives the notice of resignation.

# Appendix - Demutualisation Approval Procedure Rules

## Section 1 - Application, Interpretation and Effect

### 1.1 When the Demutualisation Approval Procedure Rules Apply

(1) This Appendix applies in the following situations:

(1)	<b>Modification or Repeal of Constitution</b>	<p>the <b>credit union</b> proposes to modify or repeal this Constitution where the effect of the modification or repeal is:</p> <ul style="list-style-type: none"> <li>(a) to vary any of: <ul style="list-style-type: none"> <li>(i) the terms on which it issues shares; or</li> <li>(ii) the rights and restrictions attaching to its shares;</li> </ul> so that they are inconsistent with those set out in the <b>Principles of Mutuality</b>;</li> <li>(b) to enable the <b>credit union</b> to issue shares where: <ul style="list-style-type: none"> <li>(i) the terms on which it issues the shares; or</li> <li>(ii) the rights and restrictions attaching to the shares,</li> </ul> are inconsistent with those set out in the <b>Principles of Mutuality</b>;</li> <li>(c) to vary any of the rights, obligations or restrictions attaching to membership so that they are inconsistent with those set out in the <b>Principles of Mutuality</b>;</li> <li>(d) to enable the <b>credit union</b> to admit <b>members</b> where the rights, obligations or restrictions attaching to membership are inconsistent with those set out in the <b>Principles of Mutuality</b> (whether or not any <b>members</b> are admitted);</li> <li>(e) that the <b>credit union's</b> Constitution is otherwise inconsistent with the <b>Principles of Mutuality</b>.</li> </ul>
(2)	<b>Issue of Shares or Admission of Members</b>	<p>the <b>credit union</b> (whether acting through its <b>board</b>, its <b>members</b> or otherwise) proposes:</p> <ul style="list-style-type: none"> <li>(a) to issue shares where: <ul style="list-style-type: none"> <li>(i) the terms on which it issues the shares; or</li> <li>(ii) the rights and restrictions attaching to the shares,</li> </ul> are inconsistent with those set out in the <b>Principles of Mutuality</b>;</li> <li>(b) to issue <b>securities</b> which confer the right or obligation to subscribe for shares (whether on conversion of the securities or exercise of any option) where: <ul style="list-style-type: none"> <li>(i) the terms on which it issues the shares; or</li> <li>(ii) the rights and restrictions attaching to the shares,</li> </ul> are inconsistent with those set out in the <b>Principles of Mutuality</b>; or</li> <li>(c) to admit <b>members</b> with rights, obligations or restrictions attaching to membership which are inconsistent with those set out in the <b>Principles of Mutuality</b>.</li> </ul>
(3)	<b>Restructure</b>	<p>the <b>credit union</b> (whether acting through its <b>board</b>, its <b>members</b> or otherwise) proposes to conduct a reduction of capital, scheme or arrangement, deed of arrangement, transfer of business, or any other form of corporate restructure, where after completion of the restructure:</p> <ul style="list-style-type: none"> <li>(a) the <b>credit union</b> no longer complies with the <b>Principles of Mutuality</b>;</li> <li>(b) one person, other than a person entitled to use either the words "credit union", "credit society" or "credit co-operative" in their name, holds more than 90% of the shares in the <b>credit union</b>;</li> <li>(c) a group of <b>associates</b>, other than a group all of the members of which are entitled to use either the words "credit union", "credit society" or "credit co-operative" in their name, between them hold more than 90% of the shares in the <b>credit union</b> other than shares fitting the description of "additional shares" in the <b>Principles of Mutuality</b>;</li> <li>(d) a person not entitled to use either the word "credit union", "credit society" or "credit co-operative" in their name has a legal or equitable interest in more than 20% of the <b>credit union's</b> gross assets, based on the latest report that the <b>credit union</b> has given the Australian Prudential Regulation Authority as at the time of the transfer;</li> <li>(e) a group of <b>associates</b>, other than a group all of the members of which are entitled to use either the words "credit union", "credit society" or "credit co-operative" in their name, between them have a legal or equitable interest in more than 20% of the <b>credit union's</b> gross assets, based on the latest report that the <b>credit union</b> has given the Australian Prudential Regulation Authority as at the time of the transfer; or</li> <li>(f) the successor to the <b>credit union's</b> business is not entitled to use either the words "credit union", "credit society" or "credit co-operative" in its name.</li> </ul>
(4)	<b>Modification or Repeal of this Appendix</b>	<p>The <b>credit union</b> proposes to modify or repeal:</p> <ul style="list-style-type: none"> <li>(a) any of the Rules in this Appendix;</li> <li>(b) any of the Principles of Mutuality; or</li> <li>(c) this Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the Rules in this Appendix.</li> </ul>

- (2) This Appendix does not apply to proposed modifications or repeals set out in item (4) of the Table in Rule 1.1(1) that:
- (a) increase the range of **proposed transactions** (including any changes to this Appendix so that it applies to the increased range of **proposed transactions**);
  - (b) impose, modify or repeal additional restrictions on the conduct of **proposed transactions** other than those set out in this Appendix;
  - (c) impose, modify or repeal additional obligations that must be complied with in relation to **proposed transactions** other than those set out in this Appendix;
  - (d) require disclosure of additional types of information other than those set out in Rule 1.1(1); or
  - (e) modify or repeal any requirement specified in this Constitution, apart from this Appendix or the **Principles of Mutuality**, in relation to a **proposed transaction**.

However, this Appendix does apply to:

- (f) a proposed modification or repeal that makes more than one change, and one or more of the changes is within the scope of item (4) of the Table in Rule 1.1(1) but not excluded by this Rule; or
  - (g) a proposed modification or repeal where some other clause in this Constitution applies this Appendix to the modification or repeal.
- (3) This Appendix, other than Rule 1.1(4), ceases to have effect immediately upon the Australian Securities and Investments Commission publishing a written notice to that effect and giving a copy of that notice to the **credit union**.
- (4) If this Appendix ceases to have effect by reason of Rule 1.1(3), it will again come into effect by **board** resolution upon the Australian Securities and Investments Commission permitting the **credit union** to recommence operation of this Appendix.

## 1.2 Definitions

- (1) In this Appendix:

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

- (a) a spouse or de facto spouse of the primary person;
- (b) a parent, son or daughter of the primary person, spouse or de facto 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) any **entity**, other than the **credit union**, 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**;
- (g) any **entity**, other than the **credit union**, 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 20% of any class of **security**; or

- (ii) two or more persons of a kind referred to in paragraphs (a), (b), (c), (d) or (f) together are beneficially entitled to more than 20% 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:
  - (iii) trusts;
  - (iv) relevant agreements; and
  - (v) 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**.

**demutualisation benefit** means any benefit received, whether in cash or in any other form which has value as a result of a restructure referred to in item (3) of Rule 1.1(1) of this Appendix.

**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.

**independent expert** means an expert who is not an officer of the **credit union** or an associate of an officer of the **credit union**.

**Principles of Mutuality** refers to Principles 4 to 24 of the **Principles of Mutuality** in the Schedule to this Appendix to the extent that any of those Principles are not inconsistent with ASIC Policy Statement 147: Mutuality – Financial Institutions.

**proposed transaction** means any of the modifications, repeals, issues, admissions, restructures or other transactions referred to in Rule 1.1(1).

**qualifying member** means:

- (a) a person who has been admitted to membership of the credit union on the date on which this Appendix takes effect pursuant to section 137(a)(i) of the **Corporations Act**; or
- (b) a person admitted to membership of the **credit union** after the date on which this Appendix takes effect and who has been a **member** for a continuous period of not less than two years after that date; or
- (c) a person who was a member of Savings and Loans Credit Union (S.A) Limited (“Savings & Loans”) at the time immediately preceding the total business transfer of Savings & Loans to the **credit union** and who became a **member** when that total business transfer took effect; or
- (d) a person who was a member of Savings & Loans at the time immediately preceding the total business transfer of Savings & Loans to the **credit union** and who was also a **member** of the **credit union** when that total business transfer took effect.

**securities** has the same meaning as in **Corporations Act** from time to time, but also includes options.

- (2) Unless the context requires otherwise, terms that are not expressly defined in this Constitution, but that are defined in the **Corporations Act** from time to time, have the same meaning as in the **Corporations Act**.

### 1.3 Demutualisation Approval Procedure

- (1) If this Appendix applies, the **credit union** must comply with the procedure set out in Section 2, 3 and 4 before:
- (a) convening a meeting of **members** to vote on the proposed modification or repeal of the Constitution set out in items (1) and (4) of the Table in Rule 1.1(1);
  - (b) issuing the **securities** or admitting the **members** as set out in item (2) of the Table in Rule 1.1(1); or
  - (c) either convening, or, where relevant, applying for a court or other order to convene, one or more meetings (whichever is the earlier) to vote on the proposed restructuring or to appoint an administrator as set out in item (3) of the Table in Rule 1.1(1).
- (2) If a meeting of **members** approves a proposed modification of the Constitution set out in items (1) and (4) of the Table in Rule 1.1(1):
- (a) the resolution is of no effect until the procedure set out in Section 2, 3 and 4 is complied with; and
  - (b) the **credit union** must send each **member** a notice that the resolution has been passed in breach of this Appendix, together with the other documents required to be sent in Rule 2.1.
- (3) The procedures in this Appendix apply in addition to any requirements specified in the **Corporations Act** or in this Constitution in relation to the **proposed transaction**.
- (4) If the **proposed transaction** is proposed by:
- (a) the **board** – the **credit union** bears all costs associated with disclosure and conduct of the postal ballot;
  - (b) a **member** or a group of **members** – the **member** or group of **members** must pay all costs associated with disclosure, including printing and postage.

The **board** is not required to assist any **member** or group of **members** proposing the **proposed transaction** unless they give the **credit union** an indemnity in a form satisfactory to the **board**.

- (5) If Rule 1.3(4)(b) applies, **members** in **general meeting** may resolve that:
- (a) the **credit union** pay all costs associated with disclosure and conduct of the postal ballot;
  - (b) the **credit union** reimburse the **members** proposing the **proposed transaction** for the costs they incur associated with disclosure and conduct of the postal ballot.

### 1.4 Approval of Demutualisation

- (1) If this Appendix applies, the **credit union** may only act upon the **proposed transaction** if:
- (a) it has complied with the procedure set out in Sections 2, 3 and 4; and
  - (b) if the **credit union** has only one class of **members**:
    - (i) not less than 25% of the **members** have voted at the postal ballot conducted under Section 4; and
    - (ii) not less than 75% of the **members** who have voted approved of the proposed transaction;
  - (c) if the **credit union** has more than one class of **members**:
    - (i) not less than 25% of the **members** in each class have voted at the postal ballot conducted under Section 3; and

- (ii) not less than 75% of the **members** in each class approved of the proposed transaction.
- (2) For the purposes of this Rule **members** entitled to repayment of different amounts on redemption of their **member shares** are to be treated as in different classes.

## Section 2 - Disclosure

### 2.1 Disclosure Documents Sent With Ballot Paper

The **credit union** must send the following documents with the ballot paper that it must send each **member** under Rule 4.6:

- (a) a disclosure statement as described in Rule 2.2;
- (b) a **director's** statement from each **director** as described in Rule 2.3; and
- (c) an **independent expert's** report, commissioned by the **credit union**, as described in Rule 2.4.

### 2.2 Disclosure Statement

- (1) The disclosure statement must adequately set out or explain the following (if relevant):
- (a) the procedural steps required in relation to the **proposed transaction**;
  - (b) how **members'** rights will change as a result of the proposed transaction and the consequences of the **proposed transaction** for **members**, including any:
    - (i) loss of rights;
    - (ii) change as to voting rights and rights to participate in the reserves and profits of the **credit union**,
  - (c) what benefits (if any) will be offered to **members** if the **proposed transaction** occurs, and why the benefits are considered appropriate, taking into account, among other things, the extent to which the benefits compensate the **members** for loss of rights;
  - (d) the basis upon which **members'** entitlement to the benefits will be determined, including:
    - (i) any minimum period of membership that a **member** must satisfy to receive benefits;
    - (ii) whether **members** must pay any amount or provide other value to receive benefits;
  - (e) any preferential allocation of benefits to **members**, or a class of **members**, and how that allocation is to be determined;
  - (f) any benefits that officers of the **credit union** (including retiring officers) or any **associates** of any officers may receive (whether directly or indirectly) in connection with the **proposed transaction**, other than in their capacity as a **member** on the same terms as are available to other **members**, including without limitation:
    - (i) any money or goods;
    - (ii) any preferential allocation of **securities**;
    - (iii) any retirement or superannuation benefits;
    - (iv) any compensation for loss of office;
    - (v) any concessional loans or other favourable or non-arms length transactions;
  - (g) the implications of the **proposed transaction** in relation to:

- (i) the continuation of the **credit union's** business;
  - (ii) any major changes to be made to the **credit union's** business;
  - (iii) changes to benefits, products and services; and
  - (iv) the future employment of the present employees of the **credit union**;
- (h) whether the **credit union's** financial position has changed materially since the last statement of financial position put before members at the **credit union's** last annual general meeting;
- (i) the availability and consequences of other alternatives; and
  - (j) any other information that the **members** and their professional advisers would reasonably require to make an informed assessment whether to approve the **proposed transaction**.
- (2) If the **proposed transaction** involves the allocation of **securities** (whether by the **credit union** or some other **entity**) the disclosure statement must adequately set out or explain the following (if relevant):
- (a) who will and will not be allocated **securities**;
  - (b) the rights and obligations attaching to the **securities** being allocated, including voting rights and rights to participate in the reserves and profits;
  - (c) the class and approximate number of **securities** being allocated;
  - (d) the allocation formula for the **securities** (including the implications of any undersubscription or oversubscription of **securities** offered), including, without limitation:
    - (i) the manner in which the allocation formula will apply as between **members**; and
    - (ii) the basis on which the allocation formula has been determined;
  - (e) if rights to **securities** are allocated – whether the rights are renounceable or non-renounceable;
  - (f) the consideration payable for the **securities**, including, if the **securities** are partly paid, any call dates and amounts payable on calls;
  - (g) if the allocation of **securities** is underwritten:
    - (i) the name of the underwriters;
    - (ii) the amount of the underwriting fee or commission payable;
    - (iii) details of clauses in the underwriting agreement that may affect the underwriter's rights and obligations under the underwriting agreement;
  - (h) whether the **securities** will be listed on a **securities** exchange or exempt market; and
  - (i) the implications of allocation of **securities** for the structure of the **credit union**.
- (3) If the **proposed transaction** involves the modification, or repeal, as set out in item (4) of the Table in Rule 1.1, and the person proposing the modification or repeal is aware of any proposal to conduct any of the transactions set out in items (1) to (3) of the Table in Rule 1.1, then the disclosure statement must disclose the matters set out in Rule 2.1 and Rule 2.2 in relation to:
- (a) the proposed modification or repeal; and
  - (b) each **proposed transaction** set out in items (1) to (3) of the Table in Rule 1.1 of which the person is aware (to the extent that the person is aware of the matters relating to those transactions).



## 2.3 Director's Statement

The **director's** statement must contain:

- (a) a statement;
  - (i) recommending that the **proposed transaction** be approved or not approved and giving reasons for the recommendation; or
  - (ii) giving reasons why a recommendation is not made;
- (b) a statement whether the **director** proposes to approve or not approve the **proposed transaction**;
- (c) a statement confirming that neither the **director** nor any **associate** of the **director** will receive any payment, other valuable consideration or any other benefit in connection with the **proposed transaction** other than as disclosed in the disclosure statement; and
- (d) particulars of any agreement between the **director** and any other person in connection with, or conditional upon, the outcome of the **proposed transaction**.

## 2.4 Independent Expert's Report

- (1) The **independent expert's** report must adequately set out or explain the following (if relevant):
  - (a) whether, in the **independent expert's** opinion, the **proposed transaction** is in the best interests of the **members**, and giving reasons for that opinion;
  - (b) whether, in the **independent expert's** opinion, the benefits being provided to the **members** are fair and reasonable, having regard to any:
    - (i) loss of rights; and
    - (ii) change as to voting rights and rights to participate in the reserves and profits of the **credit union**; andgiving reasons for that opinion; and
  - (c) details of:
    - (i) any relationship between the **independent expert** and the **credit union**, including any circumstances in which the **independent expert** gives it advice or acts on its behalf, in the proper performance of the functions attaching to the **independent expert's** professional capacity or business relationship with the **credit union**,
    - (ii) any financial or other interest of the **independent expert** that could reasonably be regarded as being capable of affecting the **independent expert's** ability to give an unbiased opinion; and
    - (iii) any benefit that the **independent expert** or any **associate** of the **independent expert** may receive (whether directly or indirectly) in connection with making the report or in connection with the **proposed transaction**.
- (2) If the **credit union** commissions more than one **independent expert's** report, all of the reports must be sent to each **member**.

## Section 3 - Exchange of Information and Debate

### 3.1 Member Submissions

- (1) **Members** are entitled to make written submissions (**submissions**) to the **credit union** relating to the **proposed transaction** on the terms set out in this Rule 3.1.
- (2) The **credit union** must, at the time when the ballot paper is sent to **members** under Rule 4.6, notify **members** that they may make **submissions** relating to the **proposed transaction** to the **credit union** a summary of which will be distributed to the other **members**, and specify a date by which submissions must be received (the **submission date**). **Submissions** must be:
  - (a) made in legible writing or by email; and
  - (b) not more than 1,000 words in length.
- (3) The **credit union** must distribute a summary of the main points raised in the **submissions** to all **members** not later than 21 days after the **submission date** unless in the reasonable opinion of the **board** or its delegate:
  - (a) they contain material which is defamatory, misleading or deceptive; or
  - (b) it would be illegal to distribute the **submissions**.
- (4) When distributing a summary of **submissions**, the **credit union** may also distribute further information including recommendations by **directors**.

### 3.2 Website Publication

The **credit union** must, from the time when the ballot paper is sent to **members** under Rule 4.6 of this Appendix until the postal ballot closes, provide a facility on its website for **members** to provide written comment on the **proposed transaction**. Subject to this Rule 3.2, all comments must be included on this facility and displayed for at least 7 days. The credit union may refuse to include comments where they exceed 1,000 words in length or which in the reasonable opinion of the **board** or its delegate:

- (a) contain material which is defamatory, misleading or deceptive; or
- (b) are otherwise contrary to law;.

### 3.3 Discussion Forums

- (1) The **board** must cause a discussion forum (**discussion forum**) to be held in each capital city of Australia in which the **credit union** has a physical presence for the purpose of providing an opportunity for members to discuss the **proposed transaction**. These **discussion forums** are not **members meetings** and no resolution in relation to the **proposed transaction** is to be proposed at any such **discussion forums**.
- (2) The **discussion forums** must be held not less than 14 days and not more than 28 days after the ballot paper is sent to **members** under Rule 4.6. The time and place of **discussion forums** and their purpose must be published in a newspaper circulating generally throughout all Australian States and Territories in which the **credit union** has **members** not less than 7 days before each **discussion forum**. The **board** may also provide such other notice of the **discussion forums** to **members** as it considers reasonable. At least 1 **director** must attend a **discussion forum** and the **board** shall designate one of the **directors** attending, chairperson of the **discussion forum**. No persons other than **members** or **directors** are permitted to attend a **discussion forum**. The **board** may determine appropriate procedures for the **discussion forums** which procedures must be published on the **credit union's** website or as otherwise determined by the **board** and are binding on all persons attending the **discussion forum**.

### 3.4 Funding of Advice for Members

- (1) Any group of 5 or more **members** may apply in writing to the **credit union**, signed by all **members** in the group, for payment of reasonable legal or other professional costs incurred or proposed to be incurred by the group in taking advice relating directly to the **proposed transaction** for any matter relevant to the decision of **members** whether to vote for or against the **proposed transaction** in the ballot. Requests must specify the nature of the advice being sought and from whom it is being sought.
- (2) Subject to the limits specified in Rule 3.4(3), the **board** must approve all reasonable requests unless (acting reasonably) it determines that the request was not made in good faith.
- (3) The maximum amount payable by the **credit union** in respect of such requests will be:
  - (a) \$15,000 for any one group; and
  - (b) \$50,000 for all groups;

in both cases adjusted annually on 1 July each year, commencing 1 July 2007, according to changes in the consumer price index (All groups, City of Adelaide) over the preceding 12 month period.

If more than one request is received, each request will be dealt with in the order of receipt and if requests are received at the same time in amounts which in aggregate equal or exceed the then unallocated balance, the unallocated balance will be allocated pro rata in proportion to the numbers of **members** in the groups.

### 3.5 Dispute Resolution

- (1) The **board** must develop and make available to **members** a procedure for resolution of disputes between **members** and the **credit union** relating to the **proposed transaction**. The procedure must provide for conduct of the dispute resolution by a person independent from the **credit union** with appropriate qualifications and experience in dispute resolution.
- (2) **Members** must be given reasonable notice of the dispute resolution procedure.

## Section 4 - Postal Ballot

### 4.1 Appointment of Returning Officer

- (1) The **board** must appoint as returning officer for the ballot a person having the qualifications, experience or standing appropriate for appointment.
- (2) The returning officer may, if necessary, appoint one or more persons to act as assistant returning officers or clerical assistants.
- (3) A **member** is not eligible to be appointed as a returning officer or assistant returning officer.
- (4) The returning officer may delegate any of the returning officer's functions in this Section to an assistant returning officer having the qualifications, experience or standing to exercise those functions.
- (5) A person ceases to hold office as a returning officer or assistant returning officer if the person:
  - (a) dies; or
  - (b) resigns by notice of resignation delivered to the **credit union**; or
  - (c) is removed from office by the **members**.

## 4.2 Roll

- (1) As soon as practicable after the **board** appoints the returning officer for the postal ballot, the **secretary** must give the returning officer a roll showing, as at the time the roll is given:
  - (a) the **members** and the number of shares each **member** holds; and
  - (b) if the shares are divided into different classes – the **members** who hold shares in each class and the number of shares of each class each **member** holds.

## 4.3 Notice of Proposed Postal Ballot

- (1) As soon as practicable after being appointed as returning officer for a postal ballot, the returning officer must cause notice of the proposed ballot to be:
  - (a) sent to each **member** entitled to vote; or
  - (b) published in a newspaper circulating generally throughout all Australian States and Territories in which the **credit union** has **members**.
- (2) The notice must:
  - (a) state that a postal ballot is to be held;
  - (b) state the proposed transaction that is to be put to voters at the ballot; and
  - (c) state the closing date for the ballot.

## 4.4 Printing of Ballot Papers

The returning officer must ensure that a sufficient number of ballot papers is printed for the purposes of the ballot.

## 4.5 Postal Voting Procedures

- (1) Postal voting will be conducted according to procedures specified by the returning officer as approved by the **board**.
- (2) In approving postal voting procedures the **board** must have regard to these matters:
  - (a) the extent to which the procedures are efficient in enabling the returning officer to detect any fraud or impropriety in the voting process;
  - (b) the extent to which the procedures protect the anonymity of the voter;
  - (c) instructions for voting are legible and clearly expressed so as to accurately inform **members** how to complete and lodge a ballot paper;
  - (d) provisions for issuing a duplicate ballot paper when the original has been lost or spoiled;
  - (e) the extent to which procedures for receiving, checking, scrutinizing and counting ballot papers are efficient; and
  - (f) the conduct and functions of scrutineers appointed by **candidates**.
- (3) The **board** must cause the postal voting procedures, as approved, to be displayed at the **credit union's** registered office and every branch office from the day before ballot papers are sent to **members** until the day after closure of the ballot.
- (4) A **member** is entitled to a copy of the postal voting procedures, on request.

## 4.6 Distribution of Ballot Papers

Not less than 42 days before the closing date for the ballot, the returning officer must cause to be sent to each **member** on the roll, at the address specified in respect of the **member** in the roll:

- (a) a ballot paper;
- (b) any other documents as required by the postal voting procedure.

## 4.7 Replacement of Ballot Papers

- (1) If any **member** to whom a ballot paper has been sent satisfies the returning officer that the ballot paper has been spoiled, lost or destroyed, the returning officer may issue the **member** with a replacement ballot paper.
- (2) The returning officer must keep a record of all replacement ballot papers so issued.

## 4.8 Voting

- (1) A **member** who wishes to vote in a postal ballot must:
  - (a) Complete the ballot papers in accordance with the postal voting procedures; and
  - (b) Subsequently deal with the ballot paper in accordance with the postal voting procedures.
- (2) A **member's** vote in the postal ballot may be counted only if:
  - (a) the **member** has voted in the way required by this Rule; and
  - (b) the returning officer receives the ballot paper in accordance with the postal voting procedures on or before the date for the close of the postal ballot.

## 4.9 Appointment of Scrutineers

- (1) The **board** may appoint a scrutineer to monitor the scrutiny and the counting of postal votes.
- (2) Any other interested person, with the consent of the returning officer, may appoint a scrutineer to monitor the scrutiny and counting of the postal votes.
- (3) A scrutineer is entitled to be present at the scrutiny and counting of postal votes.

## 4.10 Scrutiny

- (1) As soon as practicable after the ballot closes, the returning officer must check, scrutinise and deal with the ballots in accordance with the postal voting procedures.
- (2) A ballot paper is informal if:
  - (a) it is not authenticated as required by the postal voting procedures;
  - (b) it has not been completed so as to show a vote.

## 4.11 Counting of Votes

- (1) The returning officer must then proceed to count the votes.
- (2) The returning officer may make use of electronic data processing equipment in the counting of votes.
- (3) On completing the count, the returning officer must make out a return to the **credit union** certifying:
  - (a) If the **credit union** has only one class of **members**;

- (i) the number and percentage of **members** who voted in the postal ballot; and
  - (ii) the number and percentage of votes in favour of the **proposed transaction**; and
- (b) If the **credit union** has more than one class of **members**:
- (i) the number and percentage of **members** in each class who voted in the postal ballot; and
  - (ii) the number and percentage of votes in each class in favour of the proposed transaction.
- (4) For the purposes of this Rule, **members** entitled to repayment of different amounts on redemption of their **member shares** are to be treated as in different classes

## Section 5 Entitlement to Demutualisation Benefits

### 5.1 Qualifying Members

Only a **qualifying member** is entitled to participate in the surplus and profits of the **credit union** or in any other **demutualisation benefit** if the **members**, in accordance with this Appendix, approve a restructure referred to in Item (3) of Rule 1.1(1) of this Appendix.

### 5.2 No Separate Class

The fact that some **members**, at any particular time, are not entitled to a **demutualisation benefit** by virtue of Section 5 of this Appendix, does not for any purpose under this Constitution, including without limitation, Rules 1.4(1)(c) and 4.11(3)(b), constitute them a class of **members** separate from those **members** who are so entitled at that time.

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# Schedule

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## Principles of Mutuality

### Customers Must be Members

1. Subject to the exceptions in Principles 2 and 3 or as expressly provided for in the Constitution, a Credit Union may not accept a deposit from, or grant financial accommodation to, a person who is not a member.
2. A Credit Union may accept deposits from, or grant financial accommodation to, a body that does not have the power to acquire, or that the law prohibits from acquiring, the Credit Union's shares.
3. A Credit Union may accept deposits from, or grant financial accommodation to, another **ADI**.

### Membership and Members Shares

#### *How to become a member*

4. A person can only become a member by subscribing for a member share.

#### *How many member shares a Credit Union may issue a person*

5. Subject to the exception in Principle 6, a Credit Union may only issue one member share to any person.
6. A trustee for an unincorporated association may be issued 1 member share in the trustee's own right, and 1 member share as trustee for the unincorporated association.

#### *Consideration paid for membership shares*

7. A Credit Union may issue member shares as wholly paid or partly paid.
8. A Credit Union may only issue a member share to a person in return for a valuable consideration.
9. The person must provide consideration in cash or, in relation to partly paid member shares, partly or wholly in the form of an obligation to pay cash.

#### *Voting*

10. A member share must confer the right to 1 vote, and only 1 vote, at meetings of the Credit Union's members.

#### *Dividends and Surplus*

11. A member share may confer a right to participate in the credit union's profits through payment of dividends.
12. Subject to Appendix 1, a member share must confer a right to participate in surplus when the Credit Union is wound up.
13. Any participation in profit or surplus must be on equitable terms.

#### *Redemption and Transfer*

14. A member share must confer on the member a right to redeem the member share on request, subject only to compliance with prudential standards or prudential regulations.
15. Subject to the exception in Principle 16, member shares may not be transferred.
16. A trustee for an unincorporated association may transfer the member share that the trustee holds on trust for the unincorporated association.

## **Additional Shares**

### *Definition*

17. All shares issued by a credit union other than member shares are additional shares.

### *Voting*

18. Subject to the exceptions in Principle 19, an additional share must not confer the right to vote.
19. Additional shares may confer the right to vote, at meetings of the holders of additional shares, on questions affecting the continuing existence of the credit union.

### *Dividends and Surplus*

20. An additional share may confer the right to participate in the credit union's profits through payment of dividends.
21. An additional share may confer a right to participate in surplus when the credit union is wound up but only to the extent of:
  - (a) repayment of capital paid on the additional shares; and
  - (b) payment of arrears of cumulative dividends.
22. The right to participate in profits and surplus conferred by additional shares may be preferred, equal or deferred to the rights conferred by the member shares.

### *Redemption and Transfer*

23. An additional share may confer on the holder of the additional share a right to redeem or to transfer the additional share.

## **Accumulation of Securities**

24. Accumulation of securities issued by a Credit Union must be restricted so that no person, or group of associated persons, may exercise a significant degree of influence over the affairs of the Credit Union.

These Principles of Mutuality are not binding, except to the extent that the Constitution expressly provides otherwise.