

**SOUTH-WEST
CREDIT UNION CO-OPERATIVE LIMITED**

ABN 44 087 651 705

CONSTITUTION

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CONSTITUTION

DIVISION 1 — INTRODUCTORY MATTERS

1.1 Definitions

In this Constitution, unless the context requires otherwise:

ADI means a body corporate that **APRA** has authorised to conduct banking business in Australia under the *Banking Act 1959* (Cth)

APRA means the Australian Prudential Regulation Authority

board means the board of **directors**

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

direct vote means a vote at a meeting of **members** delivered to the **credit union** by such means as approved by the **board** under Rule 12.7

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

elected director means a **director**:

- (a) appointed by **members** under Rule 13.3; or
- (b) appointed by the **board** to fill a casual vacancy under Rule 13.4

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

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

fit and proper policy means the policy adopted by the **directors** in relation to the fitness and propriety of **directors**, senior managers and auditors required by **APRA prudential standard 520** or any other **prudential standard** or law applying from time to time.

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

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

member share means a share as described in Appendix 1 Part A.

prudential standard means:

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

Banking Legislation Commentary

APRA may determine prudential standards under *Banking Act 1959* (Cth) s 11AF.

The Treasurer may make prudential regulations under *Banking Act 1959* (Cth) s 11A.

Section 12 and Schedule 1 of the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999* (Cth) specify the APRA transitional prudential standards that apply to credit unions.

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**

voting procedures means voting procedures for the election of **directors** approved by the **board** under Appendix 3 Clause A3-12

1.2 Interpretation

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

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

1.3 Time

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

1.4 Replaceable Rules do not Apply

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

1.5 Notices

- (1) This Rule applies to all notices and documents that the *Corporations Act* or this Constitution requires a party to this Constitution to 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 Rule, *business day* means a day that is not:
- (a) a Saturday or Sunday; or

- (b) a public holiday or bank holiday in the place where the notice is received.
- (3) A person sending a notice must do so in writing and must address it to the recipient at the following respective addresses:
- (a) if to the *credit union* — at its registered office or such other address as the *credit union* specifies to *members* from time-to-time; and
- (b) if to a *member* — at the *member's* address appearing on the Register of Members from time-to-time or at any alternative address nominated by the *member*, or at any fax number or electronic address nominated by the *member*.

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

- (4) A person may send 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:

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

		<p style="text-align: center;"><i>business day</i></p> <p>(iii) if sent on a day other than a <i>business day</i> — on the next <i>business day</i></p> <p>This rule 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</p>
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- (5) If a person sends a ***member*** a notice in accordance with this Rule, any person to whom that ***member*** transfers or transmits a share is taken to receive the notice when the first person sent the ***member*** the notice.

1.6 Transitional

Upon this Constitution taking effect:

- (a) each person who is a *member* immediately before the Constitution takes effect remains a *member*;
- (b) each person who is a *director* immediately before the Constitution takes effect remains a *director*; and
- (c) each person who is a *secretary* immediately before the Constitution takes effect remains a *secretary*.

DIVISION 2 — 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 Customers

- (1) The *credit union* may only provide *financial accommodation* to its *members* or another *ADI*.
- (2) The *credit union* may accept a *deposit* of money from a person who is not a *member*.
- (3) This Rule does not limit the powers of the *credit union* to invest funds, otherwise than by way of *financial accommodation* to *members* and other *ADI*'s.

DIVISION 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 Rule allowing admission of *members*, the *credit union* may admit a person as a *member* only if:

- (a) the person applies for membership; and
- (b) the person pays in cash the *subscription price*, if any, for the *member share*.

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

(2) The *board* has an absolute discretion in exercising the *credit union's* power to admit *members* without any obligation to give a reason for not admitting a person as a *member*.

(3) When the *credit union* admits a person as a *member*, the *credit union* must:

- (a) issue the *member share* to the person;
- (b) enter the person's particulars in the Register of Members as required by the *Corporations Act*; and
- (c) give the person notice that it has admitted the person as a *member*.

3.2 Delegation of Power to Admit Members

The *board* may delegate its power to admit *members* to officers and employees of the *credit union*.

3.3 Joint Members

- (1) The *credit union* may admit 2 or more persons eligible for admission under Subrule 3.1(1) as a joint *member* of the *credit union*.
- (2) The persons constituting the joint *member* may determine the order in which their names appear in the Register of Members. If the persons constituting the joint *member* do not do so, the *credit union* may determine the order in which their names appear in the Register of Members.
- (3) The person named first in the Register of Members is the primary joint *member*. The *credit union* may duly send any notice, certificate or other document to the joint *member* by sending it to the primary joint *member*. Only the primary joint *member* is entitled to vote on behalf of the joint *member*.
- (4) At any time, the joint *member* may give the *credit union* a notice requiring the *credit union* to change the primary joint *member* or otherwise change the order in which their names appear in the Register of Members. Each person constituting the joint *member* must sign the notice. The *credit union* must change the Register of Members as soon as practicable after receiving the notice.
- (5) Any person constituting a joint *member* may give an effective receipt for any dividend, distribution on winding-up or return of capital in relation to the joint *member's* shares.
- (6) The *credit union* may accept *deposits* from, or provide *financial accommodation* to, the joint *member* or to any person constituting the joint *member*.
- (7) The persons constituting a joint *member* are jointly and individually liable for any liability that the joint *member* may have in relation to the joint *member's* shares.

Corporations Act Commentary

The *Corporations Act* recognises registration of joint members of 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).

DIVISION 4 — TERMINATION OF MEMBERSHIP

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

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

- (a) the *credit union* redeems the *member's member share* under Rule 4.2, Rule 4.3 or Rule 4.4;
- (b) the *credit union* forfeits the *member's member share* under Subrule 6.3(2);
- (c) the *member* surrenders the *member's member share* under Subrule 6.3(5);
- (d) if the *member* is an individual — the *member*:
 - (i) dies;
 - (ii) becomes a bankrupt and the *credit union* registers the *member's* trustee in bankruptcy as the holder of the *member's member share* under Rule 10.2; or
 - (iii) becomes mentally incapable and the *credit union* registers the *member's* trustee or guardian as the holder of the *member's member share* under Rule 10.3;
- (e) if the *member* is a body corporate — the *member* is deregistered or dissolved; or
- (f) 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.

4.2 Member's Request for Termination

- (1) A *member* may request termination of membership but only upon withdrawing all *deposits* and repaying all *financial accommodation*.
- (2) If a *member* makes a request under Subrule (1), the *credit union* must redeem the *member's member share* as soon as practicable after receiving the request. However, the *credit union* may defer redeeming the *member's member share* until the *board* is satisfied that:
 - (a) the *member* has withdrawn all *deposits* and repaid all *financial accommodation*;
 - (b) immediately after redeeming the *member share*, the *credit union* will not be in breach of any *prudential standard*;
 - (c) the *credit union's* capital base is adequate for purposes of APRA's supervision of capital adequacy;

- (d) if APRA has restricted the *credit union* redeeming *member share* (whether by direction or otherwise) – the restriction no longer apply; and
- (e) the *credit union* has sufficient profits available to pay the amount payable on redemption of the *member share*.

4.3 Termination by the Board

- (1) The *credit union* may redeem a *member's member share* by *board* resolution if:
 - (a) the *member* fails to discharge the *member's* obligations to the *credit union*;
 - (b) the *member* has engaged in conduct that the *board* reasonably considers to be detrimental to the *credit union*; or
 - (c) the *member* obtains membership by misrepresentation or mistake.
- (2) The *credit union* must give notice of the proposed resolution under Subrule (1) to the *member* at least 14 days before considering the proposed resolution.
- (3) At the time the *board* considers the proposed resolution, 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) On redeeming the *member share*, the *credit union* may pay the amount payable on redemption of the *member share* 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.

4.4 Termination Where Accounts Dormant

- (1) This Rule does not apply to a retirement savings account to the extent that the *Retirement Savings Account Act 1997* (Cth) provides otherwise.
- (2) The *credit union* may:
 - (a) determine that the *member's deposit* accounts are dormant; and
 - (b) redeem the *member's member share*,
 by board resolution if the *member* has not initiated any transactions in relation to any *deposit* account in the 12 month period before the date of the resolution.

- (3) The *credit union* must send notice of the proposed resolution under Subrule (2) to the *member* at the *member's* last known address as shown on the Register of Members at least 28 days before considering the proposed resolution.
- (4) On redemption of the *member share*, the *credit union* must pay the amount payable on redemption of the *member share* into the *member's* account.
- (5) If the *credit union* redeems a person's *member share* under this Rule, the person may require the *credit union* to reinstate the person's *deposit* accounts 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* accounts:
 - (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.

Banking Legislation Commentary

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

DIVISION 5 — ISSUE OF SHARES

5.1 Classes of Shares

The *credit union* may only issue *member shares*.

5.2 Board Power to Issue Shares

The *board* may exercise the *credit union's* power to issue shares to the exclusion of the *general 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 *member shares* in accordance with Rule 3.1.
- (3) The *credit union* may only issue 1 *member share* to any person. However, the *credit union* may issue to a trustee for an unincorporated association:
 - (a) 1 *member share* to the trustee in the trustee's own right; and
 - (b) 1 *member share* to the trustee as trustee for the unincorporated association.

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

DIVISION 6 — CALLS, FORFEITURE AND LIENS

6.1 Payment of Calls on Shares

Corporations Act Commentary

The *Corporations Act* states that a member holding partly paid shares must pay calls on them in accordance with the terms of issue. This Rule sets out the process for the board to make a call for payment on partly paid shares: see s 254M.

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

6.2 Effect of Failure to Pay Unpaid Amounts

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

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

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

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

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

6.3 Forfeiture and Surrender

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

- (6) A *member* whose shares have been forfeited remains liable to pay the *credit union* the amounts due:
- (a) less any amount that the *credit union* must pay the *member* on redemption of the shares; and
 - (b) less any amount that the *credit union* receives on sale or disposal of the forfeited shares.

6.4 Liens

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

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

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

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

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

DIVISION 7 — DIVIDENDS

Corporations Act Commentary

The *Corporations Act* states that dividends may be paid only out of profits: see s 254T.

7.1 Payment of Dividends

- (1) The **board** may determine that the **credit union** pay a dividend on shares to which a right to participate in dividends attaches and may determine:
- (a) the amount of the dividend;
 - (b) the time for payment of the dividend; and
 - (c) the method of payment of the dividend.

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

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

Corporations Act Commentary

Section 254V(1) provides that the credit union only incurs a debt when the time fixed for payment of the dividend arrives. The decision to pay the dividend may be revoked at any time before then.

7.2 Differential Dividends

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

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

7.3 Interest on Dividends

Interest is not payable on a dividend.

DIVISION 8 — SHARE CERTIFICATES**Corporations Act Commentary**

Credit unions do not have to issue certificates to members for member shares: see *Corporations Regulations* reg 12.08.08. However, credit unions that issue other classes of shares have to issue certificates for those other classes of shares: see s 1096.

A member whose certificate is lost or destroyed may apply to the credit union for a new certificate. The credit union must issue a new certificate although it may require the member to do one or more of the following:

- advertise the loss or destruction of the certificate; and
- provide the credit union with an indemnity: see s 1089.

8.1 Share Certificates

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

DIVISION 9 — TRANSFER OF SHARES

9.1 Form of Share Transfer

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

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

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

9.2 Ownership of Share Transfer

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

9.3 Registration of Share Transfer

- (1) The *credit union* must not register a share transfer if:
 - (a) the terms of issue for the shares prohibit the transfer of the shares to the transferee;
 - (b) the share transfer is not in the form set out in Rule 9.1; or
 - (c) if the transfer of shares is dutiable — the share transfer is not duly stamped.
- (2) The *credit union* may refuse to register a share transfer unless:
 - (a) the shares are fully-paid;
 - (b) the *credit union* does not have a lien on the shares;
 - (c) the transferor has executed the share transfer;
 - (d) the transferee has executed the share transfer;
 - (e) a certificate for the shares accompanies the share transfer;
 - (f) the *board* has all information that it reasonably requires to establish the right of the transferor to transfer the shares; and

- (g) the **board** has all information that it reasonably requires to establish that the transferee agrees to be a **member** of the **credit union**.
- (3) The transferor of shares remains the holder of those shares until the **credit union** enters the transferee's name as holder of those shares in the Register of Members.

Corporations Act Commentary

If a credit union refuses to register a transfer of shares, it must give the transferee notice of the refusal within 2 months of the date the share transfer was lodged at the credit union's registered office: see s 1093.

9.4 Powers of Attorney

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

9.5 Suspension of Registration

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

DIVISION 10 — TRANSMISSION OF SHARES

10.1 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 *board* to be entitled to the deceased *member's* estate as being entitled to the deceased *member's* interest in the shares.
- (2) If the personal representative gives the *board* the information it reasonably requires to establish an entitlement to be registered as holder of the *member's* shares, the personal representative may elect to:
 - (a) be registered as the holder of the shares; or
 - (b) apply to terminate the membership.

10.2 Transmission of Shares on Bankruptcy

Corporations Act Commentary

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

The trustee has the same rights as to dividend, transfer of shares and sale of share as the bankrupt member had. Furthermore, the Constitution cannot override the trustee's rights: see s 1091A.

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

10.3 Transmission of Shares on Mental Incapacity

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

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

DIVISION 11 — 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 249H.

Written notice must be given individually to each member and director who has elected to receive notice.

In the case of joint members, notice is given to the first named member in the register of members. See Subrule 3.3(3).

Notice must be given personally or by post (section 249J). See Subrule 1.5(4) as to service by post or by fax.

The auditor must also receive the notice convening a general 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 general 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 general meeting or at least 100 members may give a credit union notice of a resolution that they propose to move at a general meeting: see s 249N.

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

Members' request for statement to be distributed

A credit union must distribute a statement about a resolution, or other matter to be considered at a general 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;
- appointment of auditor;
- fixing of the auditor's remuneration: see s 250R.

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 250T.

11.1 Calling Meetings of Members**Corporations Act Commentary****Members' right to call a general meeting**

A general meeting must be held if 100, or members with at least 5% of the votes ask for it. The board has to call a general meeting within 21 days after the request and the meeting itself must be held within 2 months: see ss 249D and 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.

11.2 Adjourning Meetings of Members

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

11.3 Proceedings at Members' Meetings

- (1) The quorum for a *members'* meeting is:
- (a) 15 *members* present in person; or
 - (b) if less than 50 *members* are eligible to attend and vote at a *member's* meeting — 50% of the *members* eligible to attend and vote at the *member's* meeting,

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

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

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

- (3) If after the commencement of a meeting at which a quorum is present the attention of the meeting is drawn to the absence of a quorum and a quorum is not present within ten minutes:
- (a) after the time appointed for consideration of an item of ordinary business the meeting is adjourned to the same time and place seven days after the meeting or to the date, time and place the *board* specifies.

If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved;
 - (b) after the time appointed for consideration of an item of special business, the item lapses.

- (4) The chair of *members'* meetings is:
- (a) the chair of meetings of the *board*; or
 - (b) if the chair of meetings of the *board* is not present or declines to act for the meeting (or part of it) — the deputy chair of meetings of the *board*.

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

- (5) The Standing Orders in Appendix 2 apply to the conduct of debate at *members'* meetings.

DIVISION 12 — VOTING AT MEMBERS' MEETINGS

12.1 Voting

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

12.2 Voting on a Show of Hands

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

12.3 Voting on a Poll

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.
- (3) The *members'* meeting may conduct other business even though a poll is demanded on a resolution.

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

12.5 Proxies

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 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 address; and
 - (b) the proxy's name or the name of the office that the proxy holds.
- (3) A proxy does not have a right to vote on a show of hands.
- (4) If a **member** appoints the chair as the **member's** proxy and directs the chair to vote either in favour of or against the resolution, the chair must demand a poll on the resolution.
- (5) Unless the **credit union** receives written notice of the matter before the meeting, at which a proxy is to 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.

12.6 Objections

An objection to the qualification of a voter:

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

12.7 Direct Voting

(1) The *board* may determine:

- (a) that *members* entitled to attend and vote at a meeting of *members* may cast a *direct vote*;
- (b) the form, method and timing of giving a *direct vote* in order for the vote to be valid at a meeting;
- (c) whether *direct votes* are counted where the vote is by show of hands.

(2) A valid *direct vote* cast by a *member* has the same effect as if the *member* had cast the vote in person at the meeting.

DIVISION 13 — DIRECTORS — APPOINTMENT & VACATION OF OFFICE

13.1 Number of Directors

- (1) The *credit union* must have at least 5 *directors* comprising:
- (a) such number of *elected directors* as determined by the *board* from time to time; and
 - (b) up to 3 *directors* appointed by the *board* under Subrule (2).

The majority of *directors* must be *elected directors*.

- (2) In addition to *elected directors*, the *board* may appoint as *director*:
- (a) the Chief Executive Officer of the *credit union* - for a term of office that ends when the person ceases to be Chief Executive Officer, or such earlier date as determined by the *board* in the terms of appointment as *director*;
 - (b) a person who is not an employee of the *credit union* – for a term of office that ends 3 years after appointment, or such earlier date as determined by the *board* in the terms of appointment as *director*.

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.

APRA's Prudential Standard APS 510 Governance made under the Banking Act requires that the Board of an ADI must have a minimum of five directors at all times.

13.2 Eligibility to be a Director

- (1) An individual is eligible to be a *director* if the person:
- (a) is a *member*; and
 - (b) has not had a personal representative or trustee appointed to administer the person's estate or property because of their mental incapacity.
- (2) An individual is ineligible to be a *director* if the person:
- (a) is disqualified prevented or prohibited by law from being or becoming a director of a body corporate; or
 - (b) fails to provide all information and consents the *directors* reasonably request to determine if the person is of appropriate fitness and propriety to be and act as a *director* by reference to the *fit and proper policy* or is disqualified or prevented by law from being a director; or

- (c) is assessed as being not of appropriate fitness and propriety to be and act as a *director* by reference to the *fit and proper policy*.
- (3) An individual is ineligible to be appointed *director* by *members* under Rule 13.3 if, as at the date nominations close, the person:
- (a) is an employee of the *credit union*; or
 - (b) was an employee of the *credit union* in an executive capacity at any time within the immediately preceding 3 years.

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.

13.3 Appointment by Members — Election

- (1) The *members* may appoint a person to be a *director* by election held under the provisions of Appendix 3.

Corporations Act

13.4 Appointment by Board — Casual Vacancies

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

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

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

- (3) The term of office for a *director* appointed to fill a vacancy in paragraph (1)(b) ends at the end of the next AGM after the *director's* appointment.

13.5 Term of Office

- (1) This Rule 13.5 only applies to *directors* appointed by *members* under Rule 13.3.
- (2) Subject to the *Corporations Act* and the rotation provisions in this Rule, a *director's* term of office:
- (a) starts at the end of the AGM at which the *director's* election is announced; and
 - (b) ends at the end of the third AGM after the AGM at which the *director's* election is announced.

Corporations Act

- (3) If the number of *directors* that *members* appoint is more than a third of the number of *elected directors* determined by the *board* under Rule 13.1(1)(a):
- (a) the term of office for the third of the *elected directors* that receives the most votes at the election, ends at the end of the third AGM after the AGM at which the *directors'* election is announced; and
 - (b) the term of office for the remainder ends at the end of earlier AGMs where less than a third of the *elected directors* are due to retire at those earlier AGMs.

Directors with less votes retire at earlier AGMs than those with more votes.

- (4) For purposes of Subrule (2):
- (a) if the number of *elected directors* is not divisible by 3 — round fractions up to the nearest whole number in determining how many *directors* there are in a third or in two thirds of the *elected directors*; and
 - (b) if 2 or more *directors* have the same number of votes — the order of retirement amongst them is determined by lot.

13.6 Automatic Vacation of Office

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

- (a) dies;
- (b) ceases to be eligible to be a *director* under Rule 13.2(1);
- (c) is absent from 3 consecutive ordinary meetings of the *board* without leave;

- (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*;
- (e) having been elected as an employee *director* ceases to be an employee of the *credit union*.
- (f) is disqualified or prevented by law from holding office or continuing as a *director*; or
- (g) is the subject of a direction under Section 23 of the Banking Act 1959 (Cth).

Corporations Act Commentary

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

13.7 Resignation

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

13.8 Alternate Directors

- (1) In this Rule, unless the context requires otherwise:

alternate means a person that a *director* appoints as his or her alternate *director* under Subrule (2), but only in the person's capacity as the alternate *director*.

appointor means the *director* who appoints an *alternate* under Subrule (2)
- (2) A person is eligible to be an *alternate* for a *director* if the person:
 - (a) is eligible to be a *director* under Rule 13.2;
 - (b) is not a *director*; and
 - (c) is not an alternate for another *director*.
- (3) A *director* (but not an *alternate*) may give the *credit union* a notice appointing a person eligible under Subrule (2) to be his or her *alternate*. The notice must set out:
 - (a) the name of the person to be appointed as *alternate*;
 - (b) the term of the *alternate's* appointment (or that the appointment is for an indefinite term);

- (c) whether or not the *alternate* can sign circulating resolutions instead of the *appointor*.

The notice of appointment only takes effect if the *board* approves the *alternate's* appointment.

- (4) The *alternate* is not the *appointor's* agent, but a *director* of the *credit union*. The *alternate* has all the duties, powers and rights of the *appointor* as a *director*. Except to the extent that this Rule provides otherwise, all references to *directors* in this Constitution include references to the *alternate*.

- (5) An alternate *director* is entitled to notice of *Directors* meetings.

Note: See Rule 15.1 in relation to notice of *board* meetings.

- (6) The *alternate* may only be present at meetings of *directors* at which the *appointor* is absent. The *alternate*:

- (a) may be present and may vote on a matter even though the *appointor* has a *material personal interest* in the matter; and
- (b) does not breach his or her duties to the *credit union* by reason of any matter considered or voted on at a meeting at which the *alternate* was absent because the *appointor* was present.

Note: See Rule 15.2 in relation to quorum at a *board* meeting. See Rule 15.4 in relation to voting on resolutions at *board* meetings. See Rule 16.2 in relation to *directors* not being present or voting on matters in relation to which they have a *material personal interest*.

- (7) The reference to '*directors*' in Rule 15.5 refers to:

- (a) if the *appointor* notifies the *credit union* that the *alternate* can sign circulating resolutions instead of the *appointor* — the *alternate* and other *directors* but not the *appointor*;
- (b) otherwise — the *appointor* and other *directors* but not the *alternate*.

- (8) The *credit union* must not provide remuneration to the *alternate* (in his or her capacity as *alternate*) except out of remuneration that it has allocated to the *appointor*. The *alternate* has no right to remuneration against the *credit union*. This does not affect any right to remuneration that the *alternate* may have against the *appointor*.

Note: See Rule 17.1 in relation to remuneration of *directors*.

- (9) The *alternate's* office automatically becomes vacant if:

- (a) the *appointor* revokes the *alternate's* appointment; or
- (b) the *appointor's* office as a *director* becomes vacant (except where the *appointor's* term as a *director* ends at the end of an AGM under Rule 13.5 and the *members* re-elect the *appointor* as a *director* at that AGM).

The *alternate's* office may also become vacant in the circumstances set out in Rule 13.6 and Rule 13.7.

13.9 Employee Directors

The *members* may elect one employee of the *credit union* otherwise eligible under Rule 13.2 to be a *director* of the *credit union*. Only the *board* may nominate an employee for election.

DIVISION 14 — DIRECTORS' POWERS

14.1 Powers and Duties of the Board

The *board*:

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

14.2 Negotiable Instruments

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

14.3 Delegation

Subject to the *fit and proper policy*

- (1) The *board* may delegate any of its powers to any committee or any other person or persons, subject to Rule 3.2. The *board* may permit the delegate to sub-delegate any powers delegated to them.

<p>Corporations Act Commentary</p> <p>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.</p>

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

DIVISION 15 — DIRECTORS' MEETINGS

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.

15.1 Calling and Conduct of Board Meetings

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

15.2 Quorum of Board

- (1) The quorum for a *board* meeting is a number not less than one half the number of *directors* or such other number as the *board* determines and the quorum must be present at all times during the meeting.
- (2) If, at any time, the number of *directors* is less than the quorum:
 - (a) the *board* may meet only for the purpose of filling any casual vacancies or for calling a *general meeting* of *members*; and
 - (b) the *board* may conduct business by circulating resolution under Rule 15.5.

15.3 Chair of Board

- (1) The *board* may appoint a *director* to chair its meetings. The *board* may determine the period for which the *director* is to be the chair. The *board* may remove the chair from the position of chair 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).

15.4 Passing of Directors' Resolutions

- (1) A resolution of the *board* must be passed by a majority of the votes cast by *directors* entitled to vote on the resolution.
- (2) The chair has a casting vote in addition to his or her deliberative vote.

15.5 Circulating Resolutions

- (1) The *board* may pass a resolution without a *board* meeting if a majority of the *directors* entitled to vote on the resolution:
 - (a) sign a document containing a statement that they are in favour of the resolution set out in the document; or
 - (b) approve the resolution by such other means as determined by the *board* from time to time.
- (2) Different *directors* may approve a resolution by different means or by signing different copies of a document, so long as the wording of the resolution approved is identical in each case.
- (3) The resolution is passed when a majority of the *directors* have signed or approved the resolution.

15.6 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 does not have a casting vote in addition to his or her deliberative vote.

DIVISION 16 — CONFLICTS OF INTEREST

Corporations Act Commentary

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

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

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

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

- (1) This Rule applies if a *director* with a *material personal interest* in relation to a matter:
 - (a) complies with the requirements of the *Corporations Act* in relation to disclosure of the nature and extent of the interest and its relation to the *credit unions* affairs; but
 - (b) must not be present and vote on the matter under the *Corporations Act*.

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.

16.3 Execution of Instruments

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

- (a) whether or not the *director* has complied with the requirements of the *Corporations Act* in relation to disclosure of the nature and extent of the interest and its relation to the *credit unions* 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*.

DIVISION 17 — REMUNERATION, INDEMNITY AND INSURANCE

17.1 Remuneration of Directors

- (1) Subject to Subrule (4), the annual remuneration of *directors* may not exceed the aggregate amount determined by the *general meeting*.
- (2) 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*.
- (3) The *directors'* remuneration accrues daily from the day that the *general meeting* approves the remuneration to the day that the *general meeting* next determines the *directors'* remuneration.
- (4) Subrules (1) to (3) do not apply in relation to *directors* appointed by the *board* under Rule 13.1(2), who may be paid such remuneration as determined by the *board* as amounts separate from the aggregate remuneration approved by *members* under Subrule (1).

17.2 Travelling Expenses and Insurance

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

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

17.3 Indemnities for Officers and Former Officers

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 Rule ***indemnified person*** means an officer or agent, or former officer or agent, of the ***credit union***.
- (2) To the extent that the *Corporations Act* permits:
 - (a) the ***credit union*** must indemnify an ***indemnified person*** against any liability that the ***indemnified person*** incurs in conducting the ***credit union's*** business or exercising the ***credit union's*** powers as an officer or agent of the ***credit union***; and
 - (b) the ***credit union*** may indemnify, agree to indemnify or enter into (and pay premiums on) a contract of insurance in relation to an ***indemnified person*** or any other person.
- (3) The indemnity in paragraph (2)(a) applies in relation to an ***indemnified person*** for all incidents occurring during the period that person is an officer or agent of the ***credit union***, even though a claim is made against the ***indemnified person*** after they have ceased to be an officer or agent of the ***credit union***.

DIVISION 18 — ADMINISTRATION

18.1 Documents

The *board* may authorise:

- (a) 2 *directors*; or
- (b) a *director* and a *secretary*,

to execute a document of a class specified in the resolution.

18.2 Secretary

Corporations Act Commentary

Under s 204A(2), a credit union must have at least 1 secretary and at least 1 secretary 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 Rule 18.3, the *board* may determine a *secretary's* terms of appointment, powers, duties and remuneration. At any time, the *board* may vary or revoke a determination, or an appointment, whatever the terms of the appointment.

The terms of appointment must be consistent with the *fit and proper policy*.

18.3 Resignation of Secretary

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

APPENDIX 1 — SHARES

DIVISION 1 — MEMBER SHARES

A1-1 Subscription Price

The *subscription price* for a *member share* is \$nil.

A1-2 Rights, Obligations and Restrictions Attaching to Member Shares

- (1) The following rights attach to each *member share*:
 - (a) the right to vote on the terms set out in clause A1-3;
 - (b) the right to participate in dividends on the terms set out in clause A1-4;
 - (c) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A1-5; and
 - (d) the right to redeem the *member shares* on the terms set out in clause A1-6.
- (2) The obligation to pay any unpaid *subscription price* on the terms set out in clause A3-7 attaches to each *member share*.
- (3) The restriction on transfer of *member shares* in clause A1-8 attaches to each *member share*.
- (4) The *credit union* may issue more *member shares* at any time. The issue of more *member shares* does not vary the rights attached to *member shares* that the *credit union* has already issued.

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

A1-3 Voting Rights

- (1) Holders of *member shares* may participate and vote:
 - (a) at a *members'* meeting;
 - (b) at a meeting of the class of holders of *member shares*; and
 - (c) in a ballot to appoint *directors* by election.
- (2) At a *members'* meeting or a meeting of the class of holders of *member shares*:
 - (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.
- (3) A *member* who is a minor has no vote.

A1-4 Dividend Entitlements

- (1) A holder of a *member share* has a right to participate in any dividend that the *credit union* pays only if the *general meeting* approves the payment of the dividend on *member shares*.
- (2) A *general meeting* may only approve a dividend at a rate that does not exceed 50% of the *credit union's* after tax profit for the financial year to which the dividend relates.
- (3) The entitlements of holders of *member shares* to dividends are subject to any preferred entitlements to dividends that holders of any other class of shares may have.
- (4) Each *member share* carries a right to participate in dividends equally with every other *member share*.

A1-5 Distribution on Winding-Up

- (1) 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*.
- (2) Each *member share* carries a right to participate in surplus assets equally with every other *member share*.
- (3) 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*.
- (4) The entitlements of holders of *member shares* to payment on winding-up are subject to any preferred entitlements to payment on winding-up that holders of any other class of shares may have.

A1-6 Redemption of Member Shares

- (1) The *credit union* may redeem a *member share* only if the following conditions are satisfied:
 - (a) either:
 - (i) the *member* has given the *credit union* notice requesting termination of the *member's* membership of the *credit union* under Rule 4.2;
 - (ii) the *board* has resolved to terminate the *member's* membership of

- the *credit union* under Rule 4.3; or
- (iii) the *board* has determined that the *member's deposit* accounts with the *credit union* are dormant under Rule 4.4;
- (b) the *board* reasonably believes that, immediately after redeeming the *member share*, the *credit union* will not be in breach of any *prudential standards*; and
 - (c) the *credit union* can redeem the *member share* out of:
 - (i) the profits of the *credit union*; or
 - (ii) the proceeds of a new issue of shares made for the purpose of the redemption.
- (2) On redemption, the *credit union* must pay the *member* an amount equal to the *subscription price* for the *member share* when the *member* subscribed for the *member share* less any amount unpaid on the *member share*. However, the *credit union* does not have to pay a *member* anything on redeeming the *member's member share* if, at the time of the redemption:
- (a) the *credit union* is in breach of any *prudential standard* dealing with capital adequacy;
 - (b) *APRA* has given the *credit union* a direction not to pay *members* anything on redeeming their *member shares* and has not yet revoked the direction; or
 - (c) an administrator that *APRA* has appointed controls the *credit union's* business.

In these situations, the *member* has no claim against the *credit union* for payment.

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

A1-7 Payment for Member Shares by Minors

- (1) This clause applies to a *member* who was a minor and only paid 20% of the subscription price for a *member share* applicable at the time when he or she became a *member*.
- (2) While a *member* remains a minor, except when the *credit union* is being wound up, the *credit union* must not:
 - (a) call for payment of the unpaid amount in respect of the minor's *member share*;

- (b) credit any dividend to the unpaid amount in respect of the minor's *member share*; or
 - (c) otherwise set off against the unpaid amount any amounts owing by the *credit union* to the minor.
- (3) After reaching the age of 18, the *member* must pay the remaining 80% of the *subscription price* for the *member share* applicable as at the time he or she became a *member*. Any time after the *member* reaches the age of 18, the *board* may:
- (a) call for payment of all or part of the unpaid amount in respect of the *member share*; or
 - (b) debit any of the *member's* deposit accounts with the *member's* consent.
- (4) After reaching the age of 18, the *member* may not exercise any of the rights attaching to his or her *member share* until the *member* pays the amount of the unpaid *subscription price*.

Note: In relation to calls, see Rule 6.1, Rule 6.2 and Rule 6.3.

A1-8 Transfer of Member Shares

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

APPENDIX 2 — STANDING ORDERS

A2-1 Time Limits for Speakers

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

A2-2 Amendment

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

A2-3 Speakers

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

A2-4 Motions to be in Writing

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

A2-5 Closure of Debate

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

APPENDIX 3 — ELECTION OF DIRECTORS

DIVISION 1 – GENERAL PROCEDURES

A3-1 Election

- (1) An election of *directors* is held by secret ballot to which the provisions of this Division apply.

A3-2 Nominations

- (1) The *board* must give *members* a notice calling for *members* to nominate candidates not less than 56 days before the AGM. The *board* may give this notice, in addition to any of the methods allowed in Subrule 1.5, by advertisement:
- (a) at the *credit union's* offices; or
 - (b) in newspapers.
- (2) The date nominations close:
- (a) is determined by the *board*;
 - (b) must be no earlier than 21 days after the notice is given under paragraph (1); and
 - (c) must be specified in the notice given under paragraph (1).
- (3) To nominate a candidate, 2 *members* must give the *credit union* a notice of nomination before nominations close. The notice of nomination must:
- (a) declare that the candidate is eligible to be a *director* under Rule 13.2;
 - (b) state the candidate's age; and
 - (c) be signed by the nominating *members* and the candidate.
- (4) A retiring *director* may stand for re-election without nomination but must be eligible under Rule 13.2.

A3-3 Declaration by Candidate

A candidate must furnish to the returning officer together with the nomination a declaration in such form as the *board* may require

- (a) as to the eligibility of the candidate for election under Rule 13.2; and
- (b) as to whether the candidate:
 - (i) has any interest in a contract or a 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 the *director's* duties or interests as a *director* of the *credit union*.

A3-4 Fit & Proper Assessment

A candidate, including a retiring *director* standing for re-election, is not eligible to stand for election unless and until the candidate has been assessed by the *board*, or its delegate, as being of appropriate fitness and propriety to be and act as a *director* by reference to the *fit and proper policy*.

A3-5 Rejection of Nomination

- (1) The returning officer must scrutinise nominations immediately upon receipt and reject a nomination where it appears to the returning officer that the candidate is not eligible under Rule 13.2.
- (2) The returning officer must reject a nomination where the candidate fails to furnish a declaration complying with clause A3-3.
- (3) Upon rejecting a nomination, the returning officer is to notify immediately the candidate and the *board*.

A3-6 Proceeding with Election

- (1) If the number of candidates is equal to or less than the number of positions to be filled:
 - (a) the *general meeting* may appoint each candidate as a *director* by passing a separate resolution at the AGM;
 - (b) the election process otherwise set out in this Appendix is discontinued; and
 - (c) the *credit union* must give each *member* to whom notice of the Annual General Meeting is to be given a notice that:
 - (i) states that the election process has been discontinued;
 - (ii) sets out the name of each candidate; and
 - (iii) states that the *general meeting* will vote on the appointment of each candidate as a *director* by a separate ordinary resolution at the AGM.

A3-7 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 candidate.
- (2) The *secretary* must prepare and give the returning officer a roll of *members*.

A3-8 Conduct of Ballot

- (1) Voting in the election of *directors* will be conducted by ballot according to:
 - (a) if the *board* has approved *voting procedures* to apply to the election – those *voting procedures*;
 - (b) otherwise – the ballot at AGM procedures set out in Division 3 of this Appendix.

A3-9 Procedures After Close of the Ballot

- (1) As soon as practicable after the ballot closes, the returning officer must ensure that the ballots are dealt with as follows:
 - (a) supervise the scrutinising of the ballots and reject informal ballots;
 - (b) count the votes;
 - (c) sign a declaration of the ballot as to the:
 - (i) names of the candidates appointed as *directors*;
 - (ii) votes cast for each candidate; and
 - (iii) number of votes rejected as informal; and
 - (d) deliver the declaration to the *secretary*.
- (2) The *secretary* must announce the results of the ballot at the AGM.
- (3) If a *member* gives the *credit union* a written request, the *credit union* must make available to any *member* a copy of the returning officer's declaration of the ballot.
- (4) The returning officer must within 7 days of the AGM furnish to the chair of the *board* any declaration provided by a candidate pursuant to clause A3-3 who is elected to the *board* and the returning officer shall destroy all declarations provided by unsuccessful candidates pursuant to clause A3-3.

A3-10 Voting System

- (1) The candidates with the highest number of votes in accordance with the number of vacancies are appointed as *directors*.
- (2) If 2 or more candidates have the same number of votes, the candidate appointed as a *director* is determined by lot.

A3-11 Irregularity in the Conduct of an Election

- (1) The candidates that the returning officer declares to have been appointed are appointed unless the *secretary* receives an objection to the ballot within 7 days of the AGM.

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

DIVISION 2 – VOTING PROCEDURES

A3-12 Voting Procedures

- (1) The *board* may approve *voting procedures* to apply to the election of *directors*. The *board's* approval may be standing approval.
- (2) To avoid any doubt, the *voting procedures* may allow for *members* to cast votes in the ballot by electronic means.
- (3) In determining the *voting procedures*, the *board* must take reasonable steps to address the following matters:
 - (a) each *member* entitled to vote should have a reasonable opportunity to participate in the ballot;
 - (b) precautions to ensure that each *member* may only vote once in the ballot;
 - (c) procedures enabling the returning officer to detect fraud or impropriety in the voting process;
 - (d) procedures to protect the anonymity of the voter;
 - (e) instructions for voting must be legible and clearly expressed so as to accurately inform *members* how to complete and cast a vote;
 - (f) to the extent applicable – provisions for issuing a duplicate ballot when the original has been lost or spoiled;
 - (g) rules to apply to determine if a ballot is informal;
 - (h) procedures for receiving, checking, scrutinising and counting votes cast;
 - (i) the conduct, duties and responsibilities of the returning officer;
 - (j) the conduct, duties and responsibilities of scrutineers; and
 - (k) the retention and destruction of documents and records relating to the ballot after the election.
- (4) The *credit union* must provide a copy of the *voting procedures*:
 - (a) to each candidate;

- (b) to a *member* on request.

A3-13 Application of Voting Procedures

- (1) If *voting procedures* apply to the election of *directors*, then:
 - (a) the ballot opens on a day determined by the *board* that, other than for a ballot conducted at the AGM, is at least 21 days before the AGM;
 - (b) the ballot paper, or other method under the *voting procedures* by which a *member* may cast a vote in the ballot, must list all the candidates in an order determined by the returning officer by lot;
 - (c) a *member* may only cast a vote in the ballot in accordance with the *voting procedures*;
 - (d) the ballot closes on a day and time determined by the *board* that, other than for a ballot conducted at the AGM, is on a date at least:
 - (i) 14 days after the ballot opens; and
 - (ii) 7 days before the AGM.

DIVISION 3 – BALLOT AT AGM

A3-14 Application of Division

- (1) This Division 3 only applies to the election of *directors* if the *board* has not approved *voting procedures*.

A3-15 Appointment of Scrutineer

- (1) A candidate may appoint a scrutineer and the *board* may appoint a maximum of three scrutineers, none of whom is a candidate.
- (2) The duties and responsibilities of scrutineers are:
 - (a) to observe the sorting, counting and recording of ballot papers;
 - (b) to ensure that the votes of unrejected ballot papers are correctly credited to the appropriate candidates; and
 - (c) to raise any query with the returning officer regarding any of the ballot papers.

A3-16 Ballot Papers

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

- (3) The returning officer must ensure some authenticating mark appears on each ballot paper before issuing them to the *members*.
- (4) On issuing each ballot paper, the returning officer must mark the *member's* name off the roll of *members*.

A3-17 Conduct of Ballot

- (1) The returning officer must conduct the ballot at the AGM.
- (2) The returning officer must provide secured ballot boxes. The ballot boxes must remain secured until the closure of the ballot.

A3-18 Closure of the Ballot

The ballot closes at the time the returning officer specifies.

A3-19 Dealing with Ballot Papers

- (1) A ballot paper is informal if:
 - (a) it is not authenticated by the returning officer;
 - (b) it has no vote indicated on it; or
 - (c) it does not indicate the *member's* preference for a candidate.
- (2) The returning officer must destroy the ballot papers three months after the declaration of the ballot.