GOULBURN MURRAY CREDIT UNION
CO-OPERATIVE LIMITED

ACN 087 651 509

CONSTITUTION

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Preamble

The ***credit union*** is a public company limited by shares organised on the basis of the following Principles of Mutuality:

Principles of Mutuality

Membership and Member Shares

How to become a member

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

How many member shares a credit union may issue a person

2. Subject to the exception in Principle 3, a credit union may only issue one member share to any person.
3. 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.

Voting

4. 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

5. A member share may confer a right to participate in the credit union's profits through payment of dividends.
6. A member share must confer a right to participate in surplus when the credit union is wound up.
7. Any participation in profit or surplus must be on equitable terms.

Redemption and Transfer

8. A member share must confer on the member a right to redeem the member share on request, subject only to:
   (a) compliance with prudential standards or prudential regulations; and
   (b) any period of notice set out in the credit union's constitution.
9. Subject to the exceptions in Principle 10, member shares may not be transferred.
10. A trustee for an unincorporated association may transfer the member share that the trustee holds on trust for the unincorporated association.

Mutual Capital Instruments (MCIs)

11. Other than member shares, the only shares that credit union may issue are shares that, at the time of issue, are either:
    (a) MCIs (short for mutual capital instruments) as defined in the *Corporations Act 2001 (Cth)* as in force at 30 November 2020; or
    (b) MCIs (short for mutual capital instruments) or such other term that replaces it, as defined in or under the *Corporations Act 2001 (Cth)* as at the date of issue.
12. The credit union may also issue securities (other than shares) on terms that they are convertible to shares that, at either:
    (a) the time of issue of the original securities; or
    (b) the time of conversion to the shares,

    would meet the conditions in either paragraph (a) or (b) of Principle 11 above. This does not limit the credit union's ability to issue securities that are not so convertible.

Accumulation of Securities

13. 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.

Directors

14. Only a member of a credit union may be a director of the credit union.

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

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 delivered to the ***credit union*** by such means as approved by the ***board***
director	means a director for the time being of the ***credit union***
elected director	means a ***director***: (a) appointed by ***shareholders*** under Rule 13.3; or (b) appointed by the ***board*** to fill a casual vacancy under Rule 13.5
financial accommodation	means: (a) an advance; (b) money paid for, on behalf of or at the request of a person (other than by drawing on the person's ***deposit*** account with the ***credit union***); (c) a forbearance to require payment of money owing on any account; and (d) a transaction that, in substance, effects a loan or is regarded by the parties to the transaction as a loan, that the ***credit union*** provides or enters in the ordinary course of its banking business
fit and proper policy	means the policy adopted by the board in relation to the fitness and propriety of directors
general meeting	means a general meeting of ***members*** and of ***MCI holders*** eligible to vote in general meeting
material personal interest	has the same meaning as in Part 2D.1 of the *Corporations Act*
MCI	means a means a share as described in Appendix 2 Division 2
MCI holder	means a person whose name the ***credit union*** has entered for the time being as a holder of one or more ***MCIs*** in the Register of Members it keeps under the *Corporations Act*
member	means a person whose name the ***credit union*** has entered for the time being as a holder of a ***member share*** in the Register of Members it keeps under the *Corporations Act*
member share	means a share as described in Appendix 2 Division 1.
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.
secretary	means a secretary for the time being of the ***credit union***
shareholder	means a ***member*** or an ***MCI holder***

subscription price	means: (a) the amount payable by a person on subscription for a ***member share*** or ***MCI***, or (b) for an ***MCI*** created by conversion from another security, the amount determined in accordance with Appendix 2 Division 2 clause A2-9(3)

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 shareholder — at the shareholder's address appearing on the Register of Members from time-to-time or at any alternative address nominated by the shareholder, or at any fax number or electronic address provided by the shareholder.

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:

Delivery Method		Time Person Receives Notice
1	**Hand delivering the notice personally**	The other person receives the notice: (i) if hand delivered before 5:00 pm on a business day — on that business day (ii) if hand delivered after 5:00 pm on a business day — on the next business day (iii) if hand delivered on a day other than a business day — on the next business day
2	**Sending the notice by pre-paid post**	The other person receives the notice on the third business day after posting unless it is actually delivered earlier
3	**Sending the notice by facsimile transmission**	The other person receives the notice: (i) if sent before 5:00 pm on a business day — on that business day (ii) if sent after 5:00 pm on a business day — on the next business day (iii) if sent on a day other than a business day — on the next business day This rule does not apply where the person sending the facsimile has evidence that the transmission was unsuccessful
4	**Sending the notice by electronic means**	The other person receives the notice: (i) if sent before 5:00 pm on a business day — on that business day (ii) if sent after 5:00 pm on a business day — on the next business day (iii) if sent on a day other than a business day — on the next business day 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

(5) The credit union may also send a notice or other document to a member by:

(a) making the notice or other document available for the member to access electronically; and

(b) sending the member sufficient information, via any of the delivery methods set out in column 2 of the table in Subrule (4), to allow the member to access the notice or other document electronically,

in which case the member receives the notice or other document at the later of:

(c) the time the credit union makes the notice or other document available for the member to access electronically; or

(d) the time the member receives the information under paragraph (b), as determined by column 3 of the table in Subrule (4) for the relevant delivery method.

(6) If a person sends a shareholder a notice in accordance with this Rule, any person to whom that shareholder transfers or transmits a share is taken to receive the notice when the first person sent the shareholder the notice.

1.6 MCI Mutual Entity

The credit union is intended to be an MCI mutual entity for the purposes of the *Corporations Act*.

Division 2 — Objects and 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.

The *Corporations Act* allows the Constitution to set out the credit union's objects and to expressly limit the credit union's exercise of its powers: see s 125. The statement of objects is optional.

2.1 Objects

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

2.2 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 the person applies for a 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 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

A member may request termination of membership but only if the member has repaid all financial accommodation and discharged all other obligations to the credit union.

4.3 Termination by the Board

(1) The credit union may, by board resolution or under the board's delegated authority, redeem a member's member share 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) On redeeming the member share, the credit union may pay the amount payable on redemption of the member share to the member by:

(a) sending a cheque to the member's address as set out in the Register of Members;

(b) crediting any of the member's accounts with the credit union; or

(c) such other means as agreed to by the member.

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, or under the board's delegated authority, 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 intention to act 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 taking such action.

(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 only shares the credit union may issue are:

(a) member shares; and

(b) MCIs.

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.

5.4 Issue of Securities Convertible to MCIs

For the avoidance of doubt, the credit union may issue securities that may be converted to MCIs.

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 shareholder holding a share on which the credit union has made a call a notice setting out how much, when and how the shareholder must make the payment. The credit union must give the notice at least 14 days before the time the shareholder must pay the call.

(3) The credit union may revoke or postpone a call on a share by board resolution. The credit union must give each shareholder holding a share for which the credit union has revoked or postponed a call notice as soon as practicable after the board resolution.

(4) In any proceeding to recover unpaid instalments, a shareholder 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 shareholder'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 shareholder a notice in accordance with Subrule (2).

(5) At any time, the credit union may accept from a shareholder 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 shareholder 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 shareholder.

(2) The shareholder 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 shareholder 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 shareholder a default notice:

(a) setting out:

(i) how much is due; and

(ii) when the shareholder must pay the amount due; and

(b) stating that, if the shareholder does not pay the amount due by that date, the shareholder will forfeit the share.

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

6.3 Forfeiture and Surrender

(1) If a shareholder 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 shareholder may always comply with the default notice at any time before forfeiture occurs.

(2) The credit union may give the shareholder 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 shareholder 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 shareholder 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 shareholder 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 shareholder holds; and

(b) the proceeds of sale of every partly paid share that the shareholder holds; and

(c) dividends payable on every partly-paid share that the shareholder holds,

for all amounts, whether presently due or not:

(d) payable in relation to the share; or

(e) that the shareholder or the shareholder'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 shareholder must pay the amount due; and

(b) stating that, if the shareholder 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 shareholder the sale notice. In the absence of any manifest error, the sale notice is conclusive evidence of the amount that the shareholder must pay the credit union as at the date the credit union issues the sale notice.

(4) If a shareholder 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 shareholder whose shares have been sold remains liable to pay the credit union all amounts that the shareholder or the shareholder'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 shareholders 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 1071H.

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 1070D.

8.1 Share Certificates

(1) This Rule does not apply in relation to member shares.

(2) If the credit union is required by the *Corporations Act* to issue a share certificate to a shareholder, the shareholder may require the credit union to issue to the shareholder without charge 1 certificate for each class of shares in the credit union that the shareholder holds.

Division 9 — Transfer of Shares

9.1 Form of Share Transfer
A shareholder wishing to transfer the shareholder'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 shareholder 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 with it: see s 1071E.

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 shareholder's shares that a shareholder 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 shareholder 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.

9.6 Transfer of MCIs through a Licensed CS Facility

This Division 9 does not apply to a transfer of an MCI effected through a licensed CS facility (as defined in the *Corporations Act*) to the extent provided in the terms of issue of the MCI or, where relevant, of the security that converted to the MCI.

Division 10 — Transmission of Shares

10.1 Transmission of Shares on Death

(1) On the death of a shareholder, the credit union may recognise either the personal representative of the deceased shareholder or another person who appears to the board to be entitled to the deceased shareholder's estate as being entitled to the deceased shareholder'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 shareholder's shares, the personal representative may elect to:

(a) be registered as the holder of the shares; or

(b) in relation to a member share, 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 1072C.

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

10.3 Transmission of Shares on Mental Incapacity

If a person entitled to shares because of a shareholder'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 shareholder's shares:

(a) the person may require the credit union to register the person as holder of the shareholder'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 shareholder.

Division 11 — Holding Shareholders' Meetings

Corporations Act Commentary

Holding a members' meeting
A members' meeting may be held
- at one or more physical venues; or
- at one or more physical venues and using virtual meeting technology; or
- using virtual meeting technology only, if this is required or permitted by the Constitution expressly: see s 249R.

The credit union must give the members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting. A members' meeting must be held at a reasonable time, the main physical venue (if any) must be reasonable, and any virtual meeting technology used must be reasonable and allow members to ask questions and make comments orally and in writing: 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 entitled to vote at the meeting and to each director (section 249J). The credit union may limit notice to only those members who have elected to receive notices of members' meetings (see conditions in Corporations Regulations Part 12.4).
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 may be given personally, by post or electronically (section 249J). Notice may also be made available electronically, subject to sending sufficient information in physical or electronic form to allow access to it (section 249J). See also Subrules 1.5(4) & (5).

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 date, time and place for the meeting if it is to be held in only one location;
  - the date and time for the meeting at each location and the main location if it is to be held in 2 or more locations; and
  - sufficient information to allow members to participate in the meeting if it is to be held by virtual meeting technology;
- 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;
  - preparation and content of the auditor's report;
  - accounting policies adopted by the credit union in relation to the preparation of the financial statements; and

– independence of the auditor in relation to the conduct of the audit: see 250T.

11.1 Calling Meetings of Shareholders

Corporations Act Commentary

Members' right to call a general meeting
A general meeting must be held if 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 meeting of shareholders, including, without limitation:

(a) a general meeting;

(b) a meeting of shareholders holding a particular class of shares.

11.2 Adjourning Meetings of Shareholders

(1) The chair of a shareholders' 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 shareholders' meeting if the adjournment is for 1 month or more, to each shareholder to whom notice of the meeting was given.

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

11.3 Proceedings at Shareholders' Meetings

(1) The quorum for a shareholders' meeting is:

(a) 10 shareholders who are entitled to attend and vote at the meeting, present in person (including via virtual meeting technology); or

(b) if less than 20 shareholders are eligible to attend and vote at a shareholder's meeting — 50% of the shareholders eligible to attend and vote at the shareholder's meeting, present in person (including via virtual meeting technology).

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

(2) If a quorum is not present within 30 minutes after the time for the shareholders' 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 shareholders' 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 shareholders at the meeting who are eligible to vote must elect an individual present to chair the meeting.

(5) The Standing Orders in Appendix 3 apply to the conduct of debate at shareholders' meetings.

11.4 Holding a Meeting of Shareholders

The credit union may hold a meeting of shareholders:

(a) at one or more physical venues;

(b) at one or more physical venues and using virtual meeting technology; or

(c) using virtual meeting technology only.

11.5 Use of Technology

(1) Subject to the *Corporations Act*, the credit union may hold a meeting of shareholders using any virtual meeting technology that gives the shareholders entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting.

(2) The board may determine if, and to what extent, a proxy or other representative of a shareholder entitled to attend and vote at the meeting can attend a meeting of shareholders using virtual meeting technology.

(3) A person who attends a meeting of shareholders, whether at a physical venue or by using virtual meeting technology, is present in person at the meeting.

(4) If, before or during a meeting of shareholders, any technical difficulty occurs where one (1) or more shareholders entitled to attend and vote at the meeting may not be able to participate, the chair may:

(a) adjourn the meeting until the difficulty is remedied; or

(b) where a quorum remains present and able to participate, subject to the Corporations Act, continue the meeting.

11.6 Cancelling, Postponing or Changing Meeting of Shareholders

(1) Subject to the *Corporations Act*, the board may, in relation to any meeting of shareholders that has been called, do any or all of the following:

(a) cancel the meeting;

(b) postpone the meeting to a later date and/or time;

(c) change whether the meeting is held:

(i) at one or more physical venues;

(ii) at one or more physical venues and using virtual meeting technology; or

(iii) using virtual meeting technology only;

(d) change any physical venue for the meeting;

(e) change the virtual meeting technology used for the meeting.

(2) Notice of the cancellation or postponement of, or change to, the meeting of shareholders must be given at least 72 hours before the original time and date of the meeting:

(a) to such persons as the law requires; and

(b) by such means as the law and the Constitution permits,

for notice of the meeting of shareholders.

(3) The accidental omission to give notice under Subrule (2) to, or the non-receipt of any such notice by, any person entitled to notice does not invalidate the cancellation or postponement of, or change to, the meeting or any resolution passed at the postponed or changed meeting.

Division 12 — Voting at Shareholders' Meetings

12.1 Voting

(1) A resolution put to the vote at a shareholders' 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 shareholders' 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 shareholders' 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 shareholders' 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 shareholder that appoints a body corporate representative must give the credit union:

(a) if the shareholder 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 shareholder's meeting at which the representative may exercise the shareholder's rights.

(2) In addition to the rights and powers a shareholder's representative may exercise under the Corporations Act, the representative may exercise the shareholder'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 shareholder'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 shareholder appoints the chair as the shareholder'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 shareholder dies; or

(b) the shareholder is mentally incapacitated;

(c) the shareholder revokes the proxy's appointment;

(d) the shareholder revokes the authority under which the proxy was appointed by a third party; or

(e) the shareholder transfers the share in respect of which the shareholder 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 shareholders' meeting or adjourned shareholders' 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 shareholders entitled to attend and vote at a shareholders' meeting 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 shareholder has the same effect as if the shareholder had cast the vote in person at the meeting.

Division 13 — Directors — Appointment & Vacation of Office

13.1 Number of Directors

(1) Subject to Subrule (2), the credit union may have:

(a) the number of elected directors as determined by the board from time to time.;

(b) no more than two directors appointed by the board under Rule 13.4 on terms determined by the board.

(2) The majority of directors must be elected 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.
>
> APRA's Prudential Standard CPS 510 Governance made under the Banking Act requires that the board of an ADI must have a minimum of 5 directors at all times.

13.2 Eligibility to be a Director

(1) Subject to subrules (2) and (3) an individual is eligible to be a director if the person:

(a) is a member;

(b) has not had a personal representative or trustee appointed to administer the person's estate or property because of their mental incapacity;

(c) is not disqualified or prevented by law from being a director;

(d) provides all information and consents the board reasonably requests 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; and

(e) is of appropriate fitness and propriety to be and act as a director by reference to the fit and proper policy.

(2) A person is not eligible to be appointed director under Rule 13.3 if the person:

(a) is an employee of the credit union; or

(b) was an employee of the credit union at any time in the 3 years immediately preceding the date nominations close under Appendix 4 Clause A4-2(2),

unless the board has determined that this rule does not apply in relation to the person.

(3) A person is not eligible to be appointed director under Rule 13.3 if the person:

(a) has already been appointed director under Rule 13.3 three (3) or more times; or

(b) has been a director for 10 years or more in aggregate, irrespective of the rule or rules under which the director had previously been appointed,

unless, and to the extent that, the board has determined that this rule does not apply in relation to the person. For the avoidance of doubt, it does not matter whether or not the elected terms or years in office were consecutive or continuous.

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 206GAB or the Court's leave under s 206G.

Banking Act Commentary

Under s19 of the Banking Act it is an offence for a person to be a director of the credit union if the person is a disqualified person within the meaning of s20 of that Act

Section 20 provides that a person is disqualified from being a director of the credit union if:

(a) The person has been convicted of an offence against or arising out of:
  (i) the Banking Act 1959 (Cth);
  (ii) the Financial Sector (Collection of Data) Act 2001 (Cth);
  (iii) the Financial Accountability Regime Act 2023 (Cth); or
  (iv) the Corporations Act 2001 (Cth), the Corporations Act that was previously in force, or any law of a foreign country that corresponds to that Act or to that Corporations Act;

(b) the person has been convicted of an offence against or arising out of a law in force in Australia, or the law of a foreign country, where the offence related or relates to dishonest conduct, or to conduct relating to a company that carries on business in the financial sector;

(c) the person has been or becomes bankrupt;

(d) the person has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors;

(e) the person has compounded with his or her creditors;

(f) the Federal Court of Australian has disqualified the person under section 21 of the Banking Act 1959 (Cth); or

(g) The person has been disqualified under the law of a foreign country from managing, or taking part in the management of, an entity that carries on the business of banking or insurance or otherwise deals in financial matters.

Section 22(1) provides that the Federal Court of Australia may vary or revoke a person's disqualification on an application by the disqualified person or APRA. If the Court makes an order that the person is not a disqualified person, then the person is not disqualified.

13.3 Appointment by Shareholders — Election

(1) The shareholders eligible to vote in the election of directors may appoint a person to be a director by election held under the provisions of Appendix 4.

13.4 Appointment by Board

(1) The board has a discretion to appoint up to two persons as a director and may determine the term of the appointment, subject to a maximum term of 3 years.

(2) The board may only appoint a person who is eligible to be a director under Rule 13.2(1).

13.5 Appointment by Board — Casual Vacancies

(1) The board may appoint a person to be a director:

(a) if the office of an elected director becomes vacant other than because the 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(1).

(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 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.

13.6 Term of Office

(1) This Rule applies to directors who are elected by shareholders.

(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.

(3) If the number of directors that shareholders 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 number of elected directors determined under Rule 13.1(1)(a) 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 such earlier AGMs where less than a third of the number of elected directors determined under Rule 13.1(1)(a) are due to retire at those earlier AGMs.

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

(4) For the purposes of Subrule (3):

(a) if the number of directors on the board 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 board; and

(b) if 2 or more directors have the same number of votes — the order of retirement amongst them is determined by lot.

13.7 Automatic Vacation of Office

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

(a) dies;

(b) ceases to be eligible to be a director under paragraph (a), (b) or (c) of 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) is disqualified or prevented by law from holding office or continuing as a director; or

(f) 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.

13.8 Resignation

(1) A director may resign by giving the credit union notice of the director's resignation.

(2) The director's office becomes vacant:

(a) if the notice of resignation specifies a date of resignation — on the date of resignation; or

(b) otherwise — on the date the credit union receives the notice of resignation.

13.9 Fit and Proper Policy

(1) The board must adopt a fit and proper policy.

(2) The fit and proper policy may include, but is not limited to, skills and competencies requirements as part of the assessment of fitness and propriety.

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

(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.

> **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, 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.

A directors' meeting may be held:
- at one or more physical venues; or
- at one or more physical venues an using virtual meeting technology; or
- using virtual meeting technology only.

If technology is used to call or hold a directors' meeting, the technology must be reasonable.

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 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; 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 either:

(a) sign a document containing a statement that they are in favour of the resolution set out in the document; or

(b) provide the credit union with written approval of a resolution in such form and by such method as approved by the board from time to time, which may include by electronic means.

(2) The **directors** may:

(a) sign separate copies of a document;

(b) provide written approval in a form or by a method that differs from that provided by other directors,

so long as the wording of the resolution signed or approved is identical.

(3) The resolution is passed when a majority of directors have signed or given approval.

15.6 Committees of Directors

(1) The board may establish one or more committees consisting of such number of directors and other persons 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 interest does not have to be disclosed: see s 191
- ASIC approves the director being present: see s 195(3); or
- the other directors approve the director being present having passed a resolution that:
  - identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the credit union; and
  - states that those directors are satisfied that the interest should not disqualify the director from voting or being present: see s 195(2).

(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) Directors, other than directors appointed by the board under Rule 13.4, may in aggregate be paid such annual remuneration as approved by shareholders in 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) A director appointed by the board under Rule 13.4 may be paid such remuneration as determined by the board.

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 shareholders' 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 order under ss 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE;
- 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 Seal

(1) The board is to provide for the safe custody of the seal.

(2) The seal is to be used only by the authority of the directors.

(3) The board may authorise:

(a) 2 directors; or

(b) a director and a secretary,

to witness the affixing of the seal on 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 206GAB 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.

18.3 Resignation of Secretary

(1) A secretary may resign by giving the credit union notice of the secretary's resignation.

(2) The secretary's office becomes vacant:

(a) if the notice of resignation specifies a date of resignation — on the date of resignation; or

(b) otherwise — on the date the credit union receives the notice of resignation.

Appendix 1 — Objects

The credit union has the following objects:

(a) to raise funds by subscription, deposit or otherwise, as authorised by the Corporations Act and Banking Act 1959 (Cth);

(b) to apply the funds in providing financial accommodation to members, subject to the Corporations Act and Banking Act 1959 (Cth);

(c) to encourage savings amongst members;

(d) to promote co-operative enterprise;

(e) to provide programs and services to members to assist them to meet their financial, economic and social needs;

(f) to promote, encourage and bring about human and social development among individual members and within the larger community within which members work and reside; and

(g) to further the interests of members and the communities within which they work and live through co-operation with:

(i) other credit unions and co-operatives; and

(ii) associations of credit unions and co-operatives,

locally and internationally.

Appendix 2 — Shares

Division 1 – Member Shares

A2-1 Subscription Price

The subscription price for a member share is $nil.

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

(1) The following rights attach to each member share:

(a) the right to vote on the terms set out in clause A2-3;

(b) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A2-5; and

(c) the right to redeem the member shares on the terms set out in clause A2-6.

(2) The following restrictions are attached to each member share:

(a) the restriction on the payment of dividends in clause A2-4; and

(b) the restriction on transfer of member shares in clause A2-7.

(3) The credit union may issue more member shares at any time. The issue of more member shares does not vary the rights attached to member shares that the credit union has already issued.

A2-3 Voting Rights

(1) Subject to clause A2-3(5) holders of member shares may participate and vote:

(a) at a general meeting;

(b) at a meeting of the class of holders of member shares; and

(c) in a ballot to appoint directors by election.

(2) Subject to clause A2-3 (4) & (5) at a general 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.

(4) Except as provided in Rule 12.4(2) (Body Corporate Representatives) and Rule 12.5 (Proxies) a member may exercise only one vote at a members' meeting or a meeting of the class of holders of member shares or on an election of directors regardless of the fact that the member may hold more than one membership.

(5) A holder of member shares is not entitled to vote:

(a) on a resolution considered at a meeting unless the member has held a member share continuously for at least 21 days as at, and including, the day that the meeting commences;

(b) in a ballot for the election of directors unless the member has held a member share continuously for at least 21 days as at, and including, the day the ballot closes.

A2-4 Dividend Entitlements

No dividend is payable in respect of any member share.

A2-5 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) and any payments holders of MCIs are entitled to — to any surplus assets of the credit union.

(2) Each member has an entitlement to participate in the surplus assets of the credit union equally, regardless of the number of member shares the member holds.

(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.

A2-6 Redemption of Member Shares

(1) The credit union may redeem a member share only if the following conditions are satisfied either:

(a) the member has given the credit union notice requesting termination of the member's membership of the credit union under Rule 4.2;

(b) the board has resolved to terminate the member's membership of the credit union under Rule 4.3; or

(c) the board or its delegate has determined that the member's deposit accounts with the credit union are dormant under Rule 4.4;

(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.

(3) On redemption, the member shares are cancelled.

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

A2-7 Transfer of Member Shares

(1) Subject to Subclause (2), a member may not transfer their member share.

(2) A trustee for an unincorporated association may transfer the member share that they hold as trustee for the unincorporated association to another person who is to act as trustee for the unincorporated association.

Division 2 — MCIs

A2-8 Terms of Issue

(1) Subject to any conditions in this Constitution, including this Division 2, the credit union may issue MCIs on such terms of issue, including the rights and obligations attaching to the MCIs, as determined by the board from time to time. The terms of issue may include, without limitation:

(a) subscription price;

(b) voting rights;

(c) entitlement to dividends

(d) entitlement to share in surplus assets and profits in the winding-up of the credit union.

(2) Subject to any conditions in this Constitution, the credit union may issue different classes of MCIs:

(a) that may carry rights and obligations that differ from those carried by other classes of MCIs;

(b) with entitlements that may be preferred, equal, or deferred to entitlements carried by other classes of MCIs or member shares.

(3) The credit union may issue more MCIs at any time. The issue of more MCIs does not vary the rights attached to MCIs or member shares that the credit union has already issued except to the extent expressly provided for in the terms of issue of the already issued shares or as required by the *Corporations Act*.

A2-9 Issue of MCIs

(1) An MCI may only be issued as a fully paid share.

(2) MCIs are issued by the credit union for a subscription price as determined from time to time by the board.

(3) MCIs may also be created by conversion from other securities issued by the credit union, in accordance with the terms of issue of the converting securities. The subscription price for an MCI created by conversion is:

(a) as determined by the terms of issue of the converting security; or

(b) if not determined by the terms of issue of the converting security, the nominal dollar value of the converting security immediately before the conversion.

A2-10 Voting Rights

(1) Subject to subclause (2), an MCI may be issued on terms that give the holder a right to vote:

(a) in general meetings of the credit union;

(b) in the ballot to appoint directors by election.

(2) An MCI holder with:

(a) a right to vote in general meetings, cannot cast more than 1 vote on any resolution in general meeting;

(b) a right to vote in the ballot to appoint directors by election, cannot cast more than 1 ballot in the election,

irrespective of the number of MCIs held. An MCI holder who is also a member cannot cast a vote or ballot as an MCI holder in addition to a vote as a member.

(3) In a meeting of MCI holders, or of MCI holders holding a particular class of MCIs, the right to vote of each relevant MCI holder is:

(a) as determined by the terms of issue of the relevant MCIs; or

(b) if not determined by the terms of issue of the relevant MCIs, in a vote by poll, 1 vote for each relevant MCI held by the MCI holder.

A2-11 Dividends

Any dividends in respect of an MCI are non-cumulative.

A2-12 Distribution on Winding-Up

(1) Subject to the terms of issue of the MCI, in a winding-up of the credit union an MCI holder is:

(a) entitled to payment of the subscription price of the MCI;

(b) not otherwise entitled to share in surplus assets and profits.

(2) Subject to the terms of issue of the MCI, the right each MCI carries to payment under paragraph (1) ranks behind and after payment of the subscription price on member shares but before members are otherwise entitled to share in surplus assets.

(3) Despite paragraph (2), classes of MCIs may be issued on terms that the right to payment under paragraph (1) ranks ahead, behind, or equal and proportionate to, the right to payment of subscription price in a winding-up of the credit union held by:

(a) member shares;

(b) other MCIs.

(4) Each MCI in a class of MCIs carries a right to payment under paragraph (1) that is:

(a) equal and proportionate with every other MCI in that class; and

(b) subject to any preferred entitlements to payment under paragraph (1) that holders of any other class of MCIs may have pursuant to paragraph (3).

A2-13 Variation of Rights

The rights attaching to an MCI can be varied or cancelled only by special resolution of the credit union and either:

(a) by special resolution passed at a meeting of MCI holders holding MCIs in the same class; or

(b) with the written consent of MCI holders holding MCIs in the same class with at least 75% of the votes in that class.

Appendix 3 — Standing Orders

A3-1 Time Limits for Speakers

(1) The mover of a motion may speak for no more than 5 minutes.

(2) Subsequent speakers may speak for no more than 5 minutes.

(3) The mover of the motion may reply for no more than 5 minutes.

(4) The meeting is free to extend the time a speaker may speak.

A3-2 Amendment

(1) 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.

A3-3 Speakers

(1) The mover of an original motion has a right of reply.

(2) The mover of an amendment does not have a right of reply.

(3) Otherwise, a shareholder may speak only once on the same question except to raise a point of order or, with the consent of the chair of the meeting, to give an explanation.

A3-4 Motions to be in Writing

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

A3-5 Closure of Debate

(1) Debate on a motion or an amendment may be brought to a close by a resolution ‘that the question be now put’.

(2) The motion ‘that the question be now put’ must be put to the meeting without debate.

Appendix 4 — Election of Directors

Division 1 – General Procedures

A4-1 Election

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

A4-2 Nominations

(1) The board must give members a notice calling for nominations not less than 52 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) on the credit union's website;

(b) at the credit union's offices; or

(c) in newspapers.

(2) Nominations close 35 days before the AGM.

(3) In order to be nominated a member ("the nominee") must:

(a) be eligible under Rule 13.2;

(b) other than a retiring director standing for re-election, be nominated by two members;

(c) consent to the nomination and to an assessment under the fit and proper policy in the terms required by the credit union; and

(d) give the returning officer a notice of nomination and a declaration complying with clause A4-3 before nominations close.

A4-3 Declaration

A nominee 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 nominee for election under Rule 13.2;

(b) that the nominee is not disqualified or prevented by law from being a director and agrees to provide the credit union with all information and consents reasonably requested to determine if the nominee is disqualified or prevented by law from being a director;

(c) as to whether the nominee:-

(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 a director's duties or interests as a director of the credit union;

(d) that the nominee agrees to comply with the fit and proper policy, board charter and any codes of practice and procedures for directors approved by the board from time to time; and

(e) stating their age.

A4-4 Rejection of Nomination

(1) The returning officer must scrutinise nominations immediately upon receipt and reject a nomination where it appears to the returning officer that the nominee is not eligible under Rule 13.2.

(2) The returning officer must reject a nomination where the nominee fails to furnish a declaration complying with clause A4-3.

(3) The returning officer must cause nominations not rejected pursuant to clauses A4-4(1) or (2) to be assessed in accordance with the fit and proper policy.

(4) The returning officer must reject a nomination if the assessment referred to in clause A4-4(3) results in a report that the nominee:

(a) was unavailable to be interviewed in accordance with the fit and proper policy;

(b) failed to provide all information and documentation reasonably requested to determine if the nominee is of appropriate fitness and propriety to be and act as a director for the coming term by reference to the fit and proper policy; or

(c) did not demonstrate appropriate fitness and propriety to be and act as a director for the coming term by reference to the fit and proper policy.

(5) Upon rejecting a nomination, the returning officer is to notify immediately the nominee and the board.

(6) Any nominee not rejected by the returning officer in accordance with this clause A4-4 becomes a candidate.

A4-5 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 include the following information in or with the notice of the Annual General Meeting :

(i) a statement that the election process has been discontinued;

(ii) the name of each candidate; and

(iii) a statement that the general meeting will vote on the appointment of each candidate as a director by a separate ordinary resolution at the AGM.

A4-6 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 candidate.

(2) The secretary must prepare and give the returning officer a roll of shareholders eligible to vote in the election of directors.

A4-7 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.

A4-8 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, or other shareholder eligible to vote in the election of directors, gives the credit union a written request, the credit union must make available to that shareholder 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 chairperson any declaration provided by a candidate pursuant to clause A4-3 who is elected to the board and the returning officer shall destroy all declarations provided by unsuccessful candidates pursuant to clause A4-3.

A4-9 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.

A4-10 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 secretary's notifying the AGM of the result of the ballot.

(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 – Board Approved Voting Procedures

A4-11 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 shareholders entitled to vote in the election 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 shareholder entitled to vote should have a reasonable opportunity to participate in the ballot;

(b) precautions to ensure that each shareholders entitled to vote in the election 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 shareholders entitled to vote in the election 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 or other shareholder entitled to vote in the election on request.

A4-12 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 shareholders entitled to vote in the election may cast a vote in the ballot, must list all the candidates in an order determined by the returning officer by lot;

(c) a shareholder entitled to vote in the election 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;

(e) the ballots are to be checked, scrutinised, counted and dealt with in accordance with the voting procedures.

Division 3 – Ballot at AGM Procedures

A4-13 Application of Division

This Division 3 only applies to the election of directors if the board has not approved voting procedures to apply to the election.

A4-14 Appointment of Scrutineer

(2) A candidate may appoint a scrutineer and the board may appoint a maximum of three scrutineers, none of whom is a candidate.

(3) The duties and responsibilities of scrutineers are:

(a) to observe the sorting, counting and recording of ballot papers;

(b) to ensure that the votes of unrejected ballot papers are correctly credited to the appropriate candidates; and

(c) to raise any query with the returning officer regarding any of the ballot papers.

A4-15 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 shareholders entitled to vote in the election.

(4) On issuing each ballot paper, the returning officer must mark the shareholder's name off the roll of shareholders entitled to vote in the election.

A4-16 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.

A4-17 Closure of the Ballot

The ballot closes at the time the returning officer specifies.

A4-18 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 shareholder's preference for a candidate.

(2) The returning officer must destroy the ballot papers thirty days after the declaration of the ballot.

Appendix 5 — Demutualisation Approval Procedure Rules

Division 1 — Introduction

A5–1 When the Demutualisation Approval Procedure Rules Apply

(1) This Appendix applies in the following situations:

(1)	**Modification or Repeal of Constitution**	the ***credit union*** proposes to modify or repeal this Constitution where the effect of the modification or repeal is: (a) to vary any of: (i) the terms on which it issues shares; or (ii) the rights and restrictions attaching to its shares, so that they are inconsistent with those set out in the ***Principles of Mutuality***; (b) to enable the ***credit union*** to issue shares where: (i) the terms on which it issues the shares; or (ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the ***Principles of Mutuality*** (whether or not any shares are so issued); (c) to vary any of the rights, obligations or restrictions attaching to membership so that they are inconsistent with those set out in the ***Principles of Mutuality***; (d) to enable the ***credit union*** to admit members where the rights, obligations or restrictions attaching to membership are inconsistent with those set out in the ***Principles of Mutuality*** (whether or not any members are so admitted) (e) that the ***credit union's*** Constitution is otherwise inconsistent with the ***Principles of Mutuality***.
(2)	**Issue of Shares or Admission of Members**	the ***credit union*** (whether acting through its ***board***, its ***members*** or otherwise) proposes: (a) to issue shares where: (i) the terms on which it issues the shares; or (ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the ***Principles of Mutuality***; (b) to issue ***securities*** which confer the right or obligation to subscribe for shares (whether on conversion of the ***securities*** or exercise of any option) where: (i) the terms on which it issues the shares; or (ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the ***Principles of Mutuality***; or (c) to admit members with rights, obligations or restrictions attaching to membership inconsistent with those set out in the ***Principles of Mutuality***.
(3)	**Restructure**	the ***credit union*** (whether acting through its ***board***, its ***members*** or otherwise) proposes to conduct a reduction of capital, scheme of arrangement, deed of arrangement, transfer of business, or any other form of corporate restructure, where after completion of the restructure: (a) the ***credit union*** no longer complies with the ***Principles of Mutuality***; (b) one person, other than a ***mutual*** holds more than 90% of the shares in the ***credit union*** other than shares referred to in Principle 11 or Principle 12 of the ***Principles of Mutuality***; (c) a group of ***associates*** or a group of related bodies corporate, other than a group all of the members of which are ***mutuals***, between them hold more than 90% of the shares in the ***credit union*** other than shares referred to in Principle 11 or Principle 12 of the ***Principles of Mutuality***; (d) a person other than a ***mutual*** has a legal or equitable interest in more than 20% of the ***credit union's*** gross assets, based on the latest report that the ***credit union*** has given the Australian Prudential Regulation authority as at the time of the transfer;

		(e) a group of ***associates*** or a group of related bodies corporate, other than a group all of the members of which are ***mutuals***, between them have a legal or equitable interest in more than 20% of the ***credit union's*** gross assets, based on the latest report that the ***credit union*** has given the Australian Prudential Regulation authority as at the time of the transfer; or (f) the successor to the ***credit union's*** business is not a ***mutual***.
(4)	**Modification or Repeal of this Appendix**	the ***credit union*** proposes to modify or repeal: (a) any of the Clauses in this Appendix; (b) any of the ***Principles of Mutuality***; or this Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the Clauses in this Appendix.

(2) This Appendix does not apply to proposed modifications or repeals set out in item (4) of the Table in Subclause A5–1(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 Clause A5–5 to Clause A5–8; 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 1 change, and 1 or more of the changes is within the scope of item (4) of the Table in Subclause A5–1(1) but not excluded by this Clause; or

(g) a proposed modification or repeal where some other Rule in this Constitution applies this Appendix to the modification or repeal.

(3) This Appendix ceases to have effect at the end of the ***credit union's*** ~~2026~~ 2029 Annual General Meeting. This Appendix does not apply to any proposed repeal of this Subclause, nor to any proposed modification of this Subclause to the extent that the modification is to set a later date for when this Appendix ceases to have effect.

A5–2 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 (other than the ***credit union*** or a related body corporate of the ***credit union***) 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) the primary person or a person of a kind referred to in paragraphs (a), (b), (c), (d) or (e) has ***control***;

(ii) 2 or more persons who are each either the primary person or 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) the primary person or 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 ***securities***;

(ii) 2 or more persons who are each either the primary person or of a kind referred to in paragraphs (a), (b), (c), (d), (e) 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:

(i) trusts;

(ii) relevant agreements; and

(iii) practices,

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

entity means any:

(a) incorporated or unincorporated body;

(b) trust or partnership; or

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

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

mutual means a person who:

(a) is authorised to engage in banking business in Australia under the *Banking Act 1959* (Cth); and

(b) either:

(i) has ***APRA's*** consent to use either the words 'credit union', 'credit society' or 'credit co-operative'; or

(ii) satisfies the criteria for having a mutual structure as set out in the Australian Securities & Investments Commission's Regulatory Guide RG 147 Mutuality—Financial institutions as published at the time, or such other guide or policy that replaces it.

Principles of Mutuality refers to Principles 1 to 12 and 14 of the Principles of Mutuality in the Preamble to this Constitution to the extent that any of those Principles are not inconsistent with ASIC Regulatory Guide 147: Mutuality – Financial Institutions

proposed transaction means any of the modifications, repeals, issues, admissions, restructures or other transactions referred to in Subclause A5–1(1)

securities has the same meaning as in the *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*.

A5–3 Demutualisation Approval Procedure

(1) If this Appendix applies, the ***credit union*** must comply with the procedure set out in Divisions 2 and 3 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 Subclause A5–1(1);

(b) issuing the ***securities*** or admitting the members as set out in item (2) of the Table in Subclause A5–1(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 Subclause A5–1(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 Subclause A5–1(1):

(a) the resolution is of no effect until the procedure set out in Divisions 2 and 3 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 Clause A5–5.

(3) The procedures in this Appendix apply in addition to any requirements specified in the *Corporations Act* or 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 Subclause A5-3(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 associated with disclosure and conduct of the postal ballot they incur.

A5–4 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 Divisions 2 and 3; and

(b) if the ***credit union*** has only one class of members:

(i) not less than 25% of the members who are entitle to vote have voted at the postal ballot conducted under Division 3; 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 who entitled to vote have voted at the postal ballot conducted under Division 3; and

(ii) not less than 75% of the members who have voted in each class approved of the proposed transaction.

(2) ***Members*** who are minors are not entitled to vote in the postal ballot conducted under Division 3.

Division 2 — Disclosure

A5–5 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 Clause A5–14:

(a) a disclosure statement as described in Clause A5–6;

(b) a director's statement from each director as described in Clause A5–7; and

(c) an ***independent expert's*** report, commissioned by the ***credit union***, as described in Clause A5–8.

A5–6 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; and

(iii) changes to benefits, products and services;

(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 balance sheet put before members at the last AGM;

(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 Subclause A5–1, 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 Subclause A5–1(1), then the disclosure statement must disclose the matters set out in Subclause A5–6(1) and Subclause A5–6(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 Subclause A5–1(1) of which the person is aware (to the extent that the person is aware of the matters relating to those transactions).

A5–7 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 pay, 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***.

A5–8 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***;

and giving 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 1 ***independent expert's*** report, all of the reports must be sent to each member.

Division 3 — Postal Ballot

A5–9 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 1 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 Division 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.

A5–10 Roll

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 who are entitled to vote and the number of shares each member holds; and

(b) if the shares are divided into different classes — the members who are entitled hold shares in each class and the number of shares of each class each member holds.

A5–11 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 jurisdictions 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.

A5–12 Postponement of Closing Date

(1) The returning officer may postpone (for not more than 7 days on any 1 occasion) the date for the close of the ballot by notice published in a newspaper circulating generally throughout all jurisdictions in which the ***credit union*** has members.

(2) The returning officer may exercise the power conferred by this Clause more than once in respect of a ballot.

A5–13 Printing of Ballot Papers

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

A5–14 Postal Voting Procedures

(1) Postal voting will be conducted according to procedure 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, scrutinising and counting ballot papers are efficient; and

(f) the conduct and functions of scrutineers.

(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

A5–15 Distribution of Ballot Papers

Not less than 28 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 that bears the initials of the returning officer or a deputy returning officer;

(b) any other documents as required by the postal voting procedure.

A5–16 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 spoilt, 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.

A5–17 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 Clause; 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.

A5–18 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.

A5–19 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.

A5–20 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 are entitled to vote 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 are entitled to vote who voted in the postal ballot; and

(ii) the number and percentage of votes in each class in favour of the proposed transaction.

Schedule of Amendments to Constitution

Date	Version	Adoption/Amendment
14 December 2000	1.0	Adopted at a Special General Meeting
12 November 2003	2.0	Amended at Annual General Meeting
02 June 2004	3.0	Banking Act commentary added to box below rule 13.2 (resolved at Board meeting 19/05/04)
15 November 2006	3.1	Amended at Annual General Meeting (fit & proper)
17 November 2010	3.2	Amended at Annual General Meeting (Preamble & Demutualisation Approval Procedure Rule)
21 November 2013	3.30	Amended at AGM (setting director remuneration, excluding former employees from election as director, circulating board resolutions, delegating membership opening and updating references) Amended at SGM (amendments to Demutualisation Approval Procedure Rules)
17 November 2016	3.31	Amended at AGM (Demutualisation Approval Procedure Rules)
22 November 2018	3.32	Amended at AGM (remove transitional arrangements, remove need for written membership applications, allow direct voting at member meetings, allow direct voting for elections, set a cut off period for new members voting at AGM)
20 November 2019	3.33	Amended at AGM (Demutualisation Approval Procedure Rules)
30 November 2020	3.34	Amended at AGM (Mutual Capital Instruments, tenure, remote attendance, dormancy)
23 November 2021	3.35	Amended at AGM ($nil subscription shares, terminating memberships, fit and proper)
22 November 2023	3.36	Amended at AGM (reinstatement of DARP rule, make documents available electronically, allow purely virtual meetings, Board power vary conduct, postpone or cancel meetings)
27 November 2024	3.37	Amended at AGM (Setting number of Directors, Limit term of Directors, for nominations on website, clarify elections and nominations)

Commentary

Amendments to the Constitution must be reported to;
- APRA in accordance with the Banking Act 1959(s10)
- ASIC in accordance with Corporations Act s136(5)