

# CUA

BANKING | INSURANCE

**Credit Union Australia Limited**

A.C.N. 087 650 959

# Constitution

The notes/commentary throughout 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.

**EFFECTIVE 13 NOVEMBER 2019**

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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

### Customers Must be Members

1. The credit union may accept deposits from, or grant financial accommodation to:
  - (a) members; and
  - (b) any person or class of persons as provided for in the credit union's constitution or a resolution of the board from time to time.

### Membership and Member Shares

#### *How to become a member*

2. A person can become a member by being issued a member share.

#### *Voting*

3. Subject to the exception in Principle 4, a member share must confer the right to 1 vote, and only 1 vote, at meetings of the credit union's members. If a holder of a member share is also a holder of an MCI, he or she has no more than one vote at such meetings, regardless of the applicable terms of issue of the MCI.
4. The credit union may establish and amend membership and qualification criteria covering the right to exercise a vote attaching to a member share, applicable to any person or class of persons as determined by the board from time to time in its absolute discretion.

#### *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. If the company is wound up, the only people who are allowed to share in any undistributed surplus are current members, a like institution or a charity and, subject to this Constitution and the terms of issue of the MCIs, MCI holders.
7. The company is intended to be an MCI mutual entity as defined in the Corporations Act. If there are any MCI holders, they may only receive dividends and participate in surplus assets in that capacity to the extent permitted by this Constitution, the Corporations Act, the prudential standards and the terms of issue of the MCIs.
8. If there are any holders of additional shares, they must not participate in, or accrue rights to surpluses in that capacity except by receiving dividends, which cannot exceed a fixed percentage (determined by the board) of the credit union's annual profit after tax in the relevant year, and payable only out of that year's profit.
9. Any participation in profit or surplus must be on equitable terms.

### Directors

10. 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.

# Constitution

## Division 1. — Introductory Matters

### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

**additional share** means a share as described in **Appendix 1 Division 2**

**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**

**candidate** means a person whom the **board** determines to be a candidate under Appendix 3 Clause A3-2(5)

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

**credit union** means Credit Union Australia Limited

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

**direct vote** means a vote at a **general meeting** 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**

**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, affects a loan or is regarded by the parties to the transaction as a loan,

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

**general meeting** means a general meeting of the **members** and any **voting MCI holders**

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

**MCI** means a share as described in **Appendix 1 Division 3**

**MCI holder** means a person who is the holder of an **MCI** and whose name the **credit union** has entered for the time being in the **Register of Members** it keeps under the **Corporations Act**

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

**member share** means a share as described in **Appendix 1 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 (after consulting with APRA) may recommend the making of prudential regulations under *Banking Act 1959* (Cth) s 11A.  
Regulation 12 and Schedule 1 of the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999* (Cth) specify the APRA transitional prudential standards that apply to credit unions.

**Register of Members** means the Register of Members the **credit union** keeps under the **Corporations Act**

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

**subscription price** means:

- (a) in relation to a **member share**, the amount payable by a person on subscription for a **member share**;
- (b) in relation to an **additional share**, the amount payable by a person on subscription for an **additional share**; and
- (c) in relation to an **MCI**, the amount payable by a person on subscription for an **MCI** or, if the **MCI** was created on conversion of a capital instrument in accordance with **prudential standards**, the nominal dollar value of that capital instrument prior to conversion into the **MCI**

**voting MCI holder** means an **MCI holder** who has one vote at a **general meeting** either because such **MCI holder** is also the holder of a **member share** or because the **MCI holder** has been granted one vote under the terms of issue of the **MCIs** held

**voting qualification criteria** of a **member** at a relevant date means:

- (a) the **member** holds a **deposit** account with the **credit union** which has a maturity term of not less than one month as at the relevant date, or has held such an account within the period of 90 days immediately preceding the relevant date; or
- (b) the **member** holds a **deposit** account with the **credit union** which is a transaction account (a classification determined by the **credit union** from time to time), which has not been inactive for three years or more; or
- (c) the **member** has been provided **financial accommodation** from the **credit union** which has not been repaid at the relevant date and the **board** has not made a resolution in relation to the **member** under Sub-rule 4.3.1.1 or 4.3.1.2

## 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;
  - (h) a reference to "in writing" is a reference to any mode of representing or reproducing words in the English language in tangible and permanently visible form, including facsimile and email transmissions and other electronic means;
  - (i) a reference to "this Constitution" in an Appendix includes a reference to the Appendices to this Constitution;
  - (j) a reference to an "Appendix" means an Appendix to this Constitution and includes all amendments or replacements of the Appendix; and



- (k) a reference to a "Rule", "Subrule", "clause", "subclause" or "paragraph" means a Rule, Subrule, clause, subclause or paragraph (as the case may be) of this Constitution.
- (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 (as defined in the **Corporations Act**) (this includes **members** and any **MCI holders**), 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;
  - (b) if to a **member** — in any manner permitted by the **Corporations Act**;
  - (c) if to an **MCI holder** — in any manner permitted by the **Corporations Act** and any relevant terms of issue of the **MCIs**; and
  - (d) if to a **director** — at the **director's** address appearing in the records of the **secretary**.

**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:

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

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

## 1.6 Intention to be an MCI mutual entity

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

## Division 2. — Limit on Powers

### Corporations Act Commentary

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

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. However, the limit on power in Rule 2.1 reflects the Principles of Mutuality.

### 2.1 Customers Must be Members

The **credit union** may only accept **deposits** from, or provide **financial accommodation** to, its **members**. However, this Rule does not apply to the following persons who are not **members**:

- (a) bodies that do not have the power to acquire, or that the law prohibits from acquiring, the **credit union's** shares;
- (b) **ADIs**; or
- (c) any person or class of persons as determined by the **board** from time to time in its absolute discretion provided any **financial accommodation** is on arm's length terms.

## Division 3. — Membership

### 3.1 Admission to Membership

3.1.1 Subject to any other Rule allowing admission of **members**, the **credit union** may admit a person as a **member** only if:

3.1.1.1 the application is made in writing and conforms with the form and content requirements of the **credit union** or is made in such manner as the **credit union** approves;

3.1.1.2 the person applies for a **member share**;

3.1.1.3 if the person is not a minor — the person either agrees to pay or pays the **subscription price** for the **member share**; and

3.1.1.4 if the person is a minor — the person either:

3.1.1.4.1 agrees to pay the **subscription price** for the **member share** applicable as at the time he or she became a **member** upon reaching the age of 18; or

3.1.1.4.2 pays the **subscription price** for the **member share**.

**Note:** The **credit union** may also admit a person as a **member** by registering a transfer or transmission of a **member share** to the person under Rule 9.3 (see also Appendix A1-9), Rule 10.1, Rule 10.2 or Rule 10.3.

3.1.2 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**.

3.1.3 When the **credit union** admits a person as a **member** under Subrule 3.1.1, the **credit union** must:

3.1.3.2 issue the **member share** to the person;

3.1.3.3 enter the person's particulars in the **Register of Members** as required by the **Corporations Act**; and

3.1.3.4 give the person notice that it has admitted the person as a **member**.

### 3.2 Delegation of Power to Admit Members

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

### 3.3 Joint Members

#### Corporations Act Commentary

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

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

- 3.3.1 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**.
- 3.3.1 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**.
- 3.3.2 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.
- 3.3.3 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.
- 3.3.4 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.
- 3.3.5 The **credit union** may accept **deposits** from, or provide **financial accommodation** to, the joint member or to any person constituting the joint member.
- 3.3.6 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.
- 3.3.8 In this constitution, the joint member is taken to be a person separate to the persons constituting the joint member.
- 3.3.9 A request from an existing **member** holding a **member share** to join another person/s to his/her membership is to be regarded by the **credit union** as a request by that existing **member** for the redemption of his/her **member share** and an application by the existing member and those other persons for joint membership. Redemption by the **credit union** and approval of the application for joint membership may only be affected by the **credit union** simultaneously. Any monies payable by the **credit union** on redemption may be applied towards the **subscription price** (if any) by the applicants for joint membership.

### 3.4 Repayment of subscription price

If an existing **member** holds a **member share** with a **subscription price** greater than nil, a request by the **member** to repay the **subscription price** of the **member's member share**

without termination of membership is to be regarded by the **credit union** as a request by that **member** for the redemption of his/her **member share** and an application by the **member** for a new **member share** with a **subscription price** of nil consideration. Redemption by the **credit union** and approval of the application for the new **member share** may only be affected by the **credit union** simultaneously and as soon as practicable after receiving the request. However, the **credit union** may defer redeeming the **member's member share** until the **board** is satisfied that:

- 3.4.1 immediately after redeeming the **member share**, the **credit union** will not be in breach of any **prudential standard**;
- 3.4.2 the **credit union's** capital base is adequate for purposes of **APRA's** supervision of capital adequacy;
- 3.4.3 if **APRA** has restricted the **credit union** redeeming **member shares** (whether by direction or otherwise) – the restriction no longer applies; and
- 3.4.4 the **credit union** has sufficient profits to pay the amount payable on redemption of the **member share**.

The existing **member** is, notwithstanding redemption and issue of the **member shares**, to be regarded as having continuity of membership in the **Register of Members** from the date of original issue of the redeemed **member share**. Any monies payable by the **credit union** on the redemption of the **member share** may be paid to the **member** in any manner permitted by Subrule 4.3.2.

## Division 4. — Termination of Membership

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

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

- 4.1.1 the *credit union* redeems the *member's member share* under Rule 4.2, Rule 4.3 or Rule 4.4 (but for the avoidance of doubt this does not include Rule 3.4);
- 4.1.2 the *credit union* forfeits the *member's member share* under Subrule 6.3.1;
- 4.1.3 the *member* surrenders the *member's member share* under Subrule 6.3.5;
- 4.1.4 if the *member* is an individual — the *member*:
  - 4.1.4.1 dies;
  - 4.1.4.2 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
  - 4.1.4.3 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;
- 4.1.4 if the *member* is a body corporate — the *member* is deregistered or dissolved; or
- 4.1.5 if the *member* is a trustee for an unincorporated association and holds a *member share* in that capacity — the *credit union* registers the transfer of the *member's member share* to another person who is to act as trustee for the unincorporated association.

**Note:** Rule 2 restricts the *credit union* from accepting further *deposits* from, or providing further *financial accommodation* to, persons who cease to be *members*.

### 4.2 Member's Request for Termination

- 4.2.1 A *member* may request termination of membership but only upon withdrawing all *deposits* and repaying all *financial accommodation*.
- 4.2.2 If a *member* makes a request under Rule 4.2.1, the *credit union* must redeem the *member's member share* as soon as practicable after receiving the request. However, the *credit union* may defer redeeming the *member's member share* until the *board* is satisfied that:
  - 4.2.2.1 the *member* has withdrawn all *deposits* and repaid all *financial accommodation*;
  - 4.2.2.2 immediately after redeeming the *member share*, the *credit union* will not be in breach of any *prudential standard*;
  - 4.2.2.3 the *credit union's* capital base is adequate for purposes of *APRA's*

supervision of capital adequacy;

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

### 4.3 Termination by the Board

- 4.3.1 The **credit union** may redeem a **member's member share** by **board** resolution if:
  - 4.3.1.1 the **member** fails to discharge the **member's** obligations to the **credit union**;
  - 4.3.1.2 the **member** is guilty of conduct that the **board** reasonably considers to be detrimental to the **credit union**; or
  - 4.3.1.3 the **member** obtains membership by misrepresentation or mistake.
- 4.3.2 On redeeming the **member share**, the **credit union** may pay the amount payable on redemption of the **member share** to the **member** by either:
  - 4.3.2.1 paying the amount in reduction of any monies owing by the **member** to the **credit union**;
  - 4.3.2.2 sending a cheque to the **member's** address as set out in the **Register of Members**; or
  - 4.3.2.3 crediting any of the **member's deposit** accounts with the **credit union**,  
at the time the **member share** is redeemed.

### 4.4 Termination Where Accounts Dormant

- 4.4.1 This Rule does not apply to a retirement savings account to the extent that the **Retirement Savings Account Act 1997 (Cth)** provides otherwise.
- 4.4.2 The credit union may:
  - 4.4.2.1 determine that the **member's deposit** accounts are dormant; and
  - 4.4.2.2 redeem the **member's member share**,by board resolution if the **member** has not initiated any transactions in relation to any **deposit** account in the 12 month period before the date of the resolution.
- 4.4.3 The **credit union** must send notice of the resolution under Subrule 4.4.2.1 to the **member** at the **member's** last known address as shown on the **Register of Members** within 28 days of the determination unless the credit union knows the member is no longer at that address.



- 4.4.4 On redemption of the **member share**, the **credit union** must pay the amount payable on redemption of the **member share** into the **member's deposit** account.
- 4.4.5 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:
- 4.4.5.1 the **credit union** must reinstate the person's **deposit** accounts as soon as practicable; and
- 4.4.5.2 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 price**.

**Banking Legislation Commentary**

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

## Division 5. — Issue of Shares

### 5.1 Classes of Shares

The *credit union* may issue *member shares*, *additional shares* and *MCI*s.

### 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

5.3.1 The *credit union* must not issue:

5.3.1.1 options to subscribe for *member shares*;

5.3.1.2 securities that may be converted to *member shares*; or

5.3.1.3 securities with pre-emptive rights to *member shares*.

5.3.2 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:

5.3.2.1 1 *member share* to the trustee in the trustee's own right; and

5.3.2.2 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 *Corporations Act Commentary* at Rule 3.3.

## Division 6. — Calls, Forfeiture and Liens

### 6.1 Payment of Calls on Shares

#### Corporations Act Commentary

The *Corporations Act* states that a member holding partly paid shares must pay calls on them in accordance with the terms of issue. This Rule sets out the process for the board to make a call for payment on partly paid shares: see s 254M(1).

- 6.1.1 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:
- 6.1.1.1 any restrictions in the terms of issue for the share; and
  - 6.1.1.2 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.
- 6.1.2 The **credit union** may call for payment of any amount of the unpaid **subscription price** for a share by **board** resolution. The **credit union** must give a **member** holding a share on which the **credit union** has made a call a notice setting out how much, when and how the **member** must make the payment. The **credit union** must give the notice at least 14 days before the time the **member** must pay the call.
- 6.1.3 The **credit union** may revoke or postpone a call on a share by **board** resolution. The **credit union** must give each **member** holding a share for which the **credit union** has revoked or postponed a call notice as soon as practicable after the **board** resolution.
- 6.1.4 In any proceeding to recover unpaid instalments, a **member** is conclusively presumed to be liable for a call if:
- 6.1.4.1 the **credit union's** minutes record the **board** resolution calling for payment of the amount of the call;
  - 6.1.4.2 the **member's** name appeared in the **Register of Members** as holder of the share on the date of the **board** resolution; and
  - 6.1.4.3 the **credit union** gave the **member** a notice in accordance with Subrule 6.1.2.
- 6.1.5 At any time, the **credit union** may accept from a **member** prepayment of any amount of the unpaid **subscription price** on a share.

### 6.2 Effect of Failure to Pay Unpaid Amounts

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

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

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

6.2.3 At any time while the amount payable under Subrule 6.2.2 remains unpaid in respect of a share, the **credit union** may give the **member** a default notice:

- 6.2.3.1 setting out:
  - 6.2.3.1.1 how much is due; and
  - 6.2.3.1.2 when the **member** must pay the amount due; and
- 6.2.3.2 stating that, if the **member** does not pay the amount due by that date, the **member** will forfeit the share.

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

### 6.3 Forfeiture and Surrender

- 6.3.1 If a **member** does not comply with the default notice issued under Rule 6.2.3, the **credit union** may forfeit any share to which the default notice relates by **board** resolution. However, the **member** may always comply with the default notice at any time before forfeiture occurs.
- 6.3.2 The **credit union** may give the **member** a notice of forfeiture. In the absence of a manifest error, the notice is conclusive evidence of the facts stated in the notice against all persons claiming to be entitled to the share.
- 6.3.3 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.
- 6.3.4 The transferee's title is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the shares
- 6.3.5 A **member** may surrender any share to which a default notice relates. The **credit union** may deal with surrendered shares in the same way as it deals with forfeited shares.
- 6.3.6 A **member** whose shares have been forfeited remains liable to pay the **credit union** the amounts due:
  - 6.3.6.1 less any amount that the **credit union** must pay the **member** on redemption of the shares; and

6.3.6.2 less any amount that the **credit union** receives on sale or disposal of the forfeited shares.

## 6.4 Liens

6.4.1 The **credit union** may at any time exempt a share wholly or in part from this Rule by **board** resolution.

6.4.2 The **credit union** has a first and paramount lien on:

6.4.2.1 every partly-paid share that a **member** holds; and

6.4.2.2 the proceeds of sale of every partly paid share that the **member** holds; and

6.4.2.3 dividends and other amounts of whatever nature payable on every share that the **member** holds,

for all amounts, whether presently due or not:

6.4.2.4 payable in relation to the share; or

6.4.2.5 that the **member** or the **member's** estate otherwise owes to the **credit union**.

6.4.3 If an amount secured by a lien in Subrule 6.4.2 is presently due, the **credit union** may give the holder of the share a sale notice:

6.4.3.1 setting out:

6.4.3.1.1 how much is due; and

6.4.3.1.2 when the **member** must pay the amount due; and

6.4.3.2 stating that, if the **member** does not pay this amount by that date, the **credit union** may sell the share.

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

6.4.4 If a **member** does not pay the amount due by the date stated in the sale notice under Subrule 6.4.3, the **credit union** may sell the shares on the terms and in the manner that the **board** determines. The **credit union** may:

6.4.4.1 execute a share transfer to give effect to a sale of the shares; and

6.4.4.2 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.

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

## Division 7. — Dividends

### Corporations Act Commentary

Section 254T(1) provides that a dividend can only be paid where:

- (i) The credit union's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend;
- (ii) the payment of the dividend is fair and reasonable to the members; and
- (iii) the payment of the dividend does not materially prejudice the credit union's ability to pay its creditors.

Section 254WA(2) provides that, without limiting section 254T, an MCI mutual entity must not pay a dividend unless the payment of the dividend is fair and reasonable to the entity's members as a whole.

### 7.1 Payment of Dividends

7.1.1 The **board** may determine that the **credit union** pay a dividend on shares to which a right to participate in dividends attaches and subject to the terms of issue of the shares may determine:

- 7.1.1.1 the amount of the dividend;
- 7.1.1.2 the time for payment of the dividend; and
- 7.1.1.3 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.

7.1.2 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 7.1.1 is effective only if the **general meeting** approves the dividend before the time for payment of the dividend. The **general meeting** may not vary the **board's** determination.

### Corporations Act Commentary

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

### 7.2 Differential Dividends

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

- 7.2.1 in amount; and
- 7.2.2 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.

#### 7.4 Prudential requirement for Dividends

A dividend must not, if declared and paid, place or potentially place the *credit union* in breach of an applicable *prudential standard*.



## Division 8. — Share Certificates

### Corporations Act Commentary

Part 7.11 provides for matters relating to the title of shares. Credit unions do not have to comply with section 1070B (Numbering of shares) or section 1071H (Duties of companies with respect to issue of certificates) with respect to member shares: see *Corporations Regulations 2001 (Cth)* reg 12.8.08. However, these provisions are relevant to other classes of shares.

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

8.1.1 This Rule does not apply in relation to **member shares**.

8.1.2 A **member** may require the **credit union** to issue to the **member** without charge 1 certificate for each class of **additional shares** in the **credit union** that the **member** holds.

8.1.3 If the **credit union** is required by the **Corporations Act** to issue a share certificate to an **MCI holder** in respect of **MCIs**, the **MCI holder** may require the **credit union** to issue to the **MCI holder** without charge 1 certificate for each class of **MCIs** in the **credit union** that the **MCI holder** holds, unless the terms of issue of the **MCIs** otherwise provide.

## Division 9. — Transfer of Shares

### 9.1 Form of Share Transfer

A **member** or **MCI holder** wishing to transfer the shares must use a share transfer that complies with the following requirements:

9.1.1 the share transfer relates to 1 class of shares only;

9.1.2 the share transfer is in writing; and

9.1.3 the share transfer is:

9.1.3.1 in a form that the **board** approves; or

9.1.3.2 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. See also Clause A1-9.

### 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

9.3.1 The **credit union** must not register a share transfer if:

9.3.1.1 the terms of issue for the shares prohibit the transfer of the shares to the transferee;

9.3.1.2 the share transfer is not in the form set out in Rule 9.1: or

9.3.1.3 if the transfer of shares is dutiable — the share transfer is not duly stamped.

9.3.2 The **credit union** may refuse to register a share transfer unless:

9.3.2.1 the shares are fully-paid;

9.3.2.2 the **credit union** does not have a lien on the shares;

9.3.2.3 the transferor has executed the share transfer;

9.3.2.4 the transferee has executed the share transfer;

9.3.2.5 a certificate for the shares accompanies the share transfer;

9.3.2.6 the **board** has all information that it reasonably requires to establish the right of the transferor to transfer the shares; and

9.3.2.7 the **board** has all information that it reasonably requires to establish that the transferee agrees to be a **member** or **MCI holder** of the **credit union**.

9.3.3 The transferor of shares remains the holder of those shares until the **credit union** enters the transferee's name as holder of those shares in the **Register of Members**.

#### Corporations Act Commentary

If a credit union refuses to register a transfer of shares, it must give the transferee notice of the refusal within 2 months of the date the share transfer was lodged at the credit union's registered office: see s 1071E.

## 9.4 Powers of Attorney

9.4.1 The **credit union** may assume that a power of attorney authorising the attorney to transfer some or all of the **member's** or **MCI holder's** shares that a **member** or **MCI holder** appears to have granted:

9.4.1.1 is a valid and effective grant of the power it appears to grant; and

9.4.1.2 continues in full force and effect.

9.4.2 The **credit union** may rely on the power of attorney until it receives a notice informing it that:

9.4.2.1 the power of attorney has been revoked; or

9.4.2.2 the **member** or **MCI holder** 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 Subject to the **Corporations Act**, the provisions of this Division 9 do 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 applicable to the **MCI**.

## Division 10. — Transmission of Shares

### 10.1 Transmission of Shares on Death

10.1.1 On the death of a **member** or **MCI holder**, the **credit union** may recognise either the personal representative of the deceased **member** or **MCI holder** or another person who appears to the **board** to be entitled to the deceased **member's** or **MCI holder's** estate as being entitled to the deceased **member's** or **MCI holder's** interest in the shares.

10.1.2 If the personal representative gives the **board** the information it reasonably requires to establish an entitlement to be registered as holder of the **member's** or **MCI holder's** shares, the personal representative may elect to:

10.1.2.1 be registered as the holder of the shares; or

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

### 10.3 Transmission of Shares on Mental Incapacity

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

10.3.1 the person may require the **credit union** to register the person as holder of the **member's** or **MCI holder's** shares; and

10.3.2 whether or not registered as the holder of the shares, the person has the same rights, obligations and restrictions as the **member** or **MCI holder**.

## Division 11. — Holding Members' Meetings

### Corporations Act Commentary

#### **Holding a members' meeting**

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

A members' meeting can be held using any technology (such as video conferencing) at 2 or more venues, provided that it gives the members as a whole a reasonable opportunity to participate in the meeting: see s 249S.

#### **Notice of members' meeting**

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

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

In the case of joint members, notice is given to the first named member in the register of members. See Subrule 3.3.2.

Notice must be given personally or by post or by fax or electronic address or other electronic means nominated by the member (section 249J). See Subrule 1.5(4) as to service by these means.

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

#### **Content of notice**

A notice convening a members' meeting must

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

#### **Auditor's right to attend**

The Auditor has a right to attend any general meeting and to speak: see s 249V.

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

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

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

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

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

### **The AGM**

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

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

- consideration of the annual financial report, directors' report and auditor's report;
- election of directors;
- appointment of auditor;
- fixing of the auditor's remuneration: see s 250R.

The chair of the AGM must:

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

## **11.1 Calling Meetings of Members**

### **Corporations Act Commentary**

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

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

11.1.1 The **board** may call a **general meeting**.

11.1.2 **Members** may call a **general meeting** in the ways provided for in the **Corporations Act**.

## **11.2 Adjourning Meetings of Members**

11.2.1 The chair of a **general meeting** at which a quorum is present:

11.2.1.1 may adjourn the meeting with the consent of the meeting by ordinary resolution; and

11.2.1.2 must adjourn the meeting if directed by ordinary resolution.

11.2.2 The **credit union** must give notice of an adjourned **general meeting** if the adjournment is for 1 month or more.

11.2.3 The only business that an adjourned **general meeting** may deal with is business unfinished at the meeting that was adjourned.

## 11.3 Proceedings at Members' Meetings

11.3.1 The quorum for a **general meeting** is:

11.3.1.1 30 **members** present in person; or

11.3.1.2 if less than 60 **members** are eligible to attend and vote at a meeting — 50% of the **members** eligible to attend and vote at the meeting,

**Note:** Subrule 11.3.1.2 may apply in relation to meetings of classes of members, where the only members eligible to attend the meeting are members of the relevant class.

11.3.2 If a quorum is not present within 30 minutes after the time for the **general 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:

11.3.2.1 if the date is not specified — the same day in the next week;

11.3.2.2 if the time is not specified — the same time; and

11.3.2.3 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 **general meeting** is dissolved.

11.3.3 The chair of a **general meeting** is:

11.3.3.1 the chair of the **board**; or

11.3.3.2 if the chair of the **board** is not present or declines to act for the meeting (or part of it) — the deputy chair of the **board**.

If neither the chair nor deputy chair of the **board** is available within 30 minutes of the appointed start of the **general meeting**, or if both decline to act, the **members** must elect an individual present to chair the meeting.

11.3.4 **General meetings** shall be conducted in accordance with the requirements set out in Appendix 2 – Conduct of **members' general meetings**.

## Division 12. — Voting at General Meetings

### 12.1 Voting

12.1.1 A resolution put to the vote at a **general meeting** must be decided on a show of hands unless a poll is demanded.

12.1.2 Before a **general meeting** votes on a resolution, the chair must inform the meeting:

12.1.2.1 how many proxy documents the **credit union** has received that validly appoint a person present at the meeting as proxy;

12.1.2.2 how many of these proxy documents direct the proxies how to vote on the resolution; and

12.1.2.3 how the proxies are directed to vote on the resolution; and

12.1.2.4 if the **board** has determined that **members** and **voting MCI holders** can vote by **direct vote** on the resolution – the number of valid direct votes cast:

12.1.2.4.1 on the resolution in total;

12.1.2.4.2 in favour of the resolution; and

12.1.2.4.3 against the resolution.

12.1.3 The **general meeting** passes an ordinary resolution only if more than half the total numbers of votes cast on the resolution are in favour of it.

12.1.4 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 (except those that the Constitution may limit such as a resolution concerning the election of a person to chair the general meeting) and that the demand may be withdrawn.



- 12.3.1 A poll cannot be demanded on any resolution concerning the election of a person to chair the **general meeting**.
- 12.3.2 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.
- 12.3.3 The **general meeting** may conduct other business even though a poll is demanded on a resolution.

## 12.4 Direct Voting

- 12.4.1 The **board** may determine:
- 12.4.1.1 that **members** and **voting MCI holders** entitled to attend and vote at a **general meeting** may cast a **direct vote**;
  - 12.4.1.2 the form, method and timing of giving a **direct vote** in order for the vote to be valid at a meeting;
  - 12.4.1.3 whether **direct votes** are counted where the vote is by show of hands.
- 12.4.2 A valid **direct vote** cast by a **member** or **voting MCI holder** has the same effect as if the **member** or **voting MCI holder** had cast the vote in person at the meeting.

## 12.5 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.

- 12.5.1 A **member** or **voting MCI holder** that appoints a body corporate representative must give the **credit union**:
- 12.5.1.1 if the **member** or **voting MCI holder** appointed the representative by board resolution — a certified copy of the board resolution appointing the representative; and
  - 12.5.1.2 otherwise — a copy of the instrument appointing the representative,
- as soon as practicable after appointing the representative, and in any event before any meeting at which the representative may exercise the **member's** or **voting MCI holder's** rights.
- 12.5.2 In addition to the rights and powers a **member's** or **voting MCI holder's** representative may exercise under the **Corporations Act**, the representative may exercise the **member's** or **voting MCI holder's** right to vote in a ballot to appoint **directors** by election.

## 12.6 Proxies

### Corporations Act Commentary

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

- 12.6.1 The **board** may determine the form of proxy document from time-to-time.
- 12.6.2 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:
- 12.6.2.1 the **member's** or **voting MCI holder's** name; and
  - 12.6.2.2 the proxy's name or the name of the office that the proxy holds.
- 12.6.3 A proxy does not have a right to vote on a show of hands.
- 12.6.4 Unless the **credit union** receives written notice of the matter before the meeting at which a proxy votes starts or resumes, the proxy's vote at that meeting will be valid if, before the proxy votes:
- 12.6.4.1 the appointing **member** or **voting MCI holder** dies; or
  - 12.6.4.2 the **member** or **voting MCI holder** is mentally incapacitated;
  - 12.6.4.3 the **member** or **voting MCI holder** revokes the proxy's appointment;
  - 12.6.4.4 the **member** or **voting MCI holder** revokes the authority under which the proxy was appointed by a third party; or
  - 12.6.4.5 the **member** or **voting MCI holder** transfers the share in respect of which the **member** or **voting MCI holder** or a third party appointed the proxy.

## 12.7 Objections

An objection to the qualification of a voter:

- 12.7.1 may only be made at the **general meeting** or adjourned **general meeting** at which the vote objected to is cast; and
- 12.7.2 must be ruled upon by the chair whose decision is final.

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

### 13.1 Number of Directors

13.1.1 The **credit union** must have a minimum of 6 **directors**, or such greater number as the **board** may determine from time to time.

#### 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.

### 13.2 Eligibility to be a Director

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

13.2.1.1 is a **member**;

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

13.2.1.3 has not been disqualified by law from being or acting as a **director**.

13.2.2 A person is only eligible to be appointed **director** under Rule 13.3 if, in addition to satisfying Rule 13.2.1:

13.2.2.1 the person:

(a) has been a **member** continuously for at least 12 months at the date of nomination; or

(b) is a **director** seeking re-appointment; and

13.2.2.2 the **board** has determined that the person is of appropriate fitness and propriety to be and act as a **director**, by reference to the **board's** Fit and Proper Policy.

13.2.3 The **board** must keep confidential the details of any determination made under Subrule 13.2.2.2, except to the extent where disclosure is required by law, for example, to APRA.

#### Corporations Act Commentary

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

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

### 13.3 Appointment by Members — Election

13.3.1 The **members** and any **voting MCI holders** may appoint a person to be a **director** by an election held under the provisions of Appendix 3.

13.3.2 Subject to the **Corporations Act** the **credit union** may at any time by resolution passed in general meeting remove any **director** from office.

### 13.4 Appointment by Board

13.4.1 The board may appoint up to 2 **directors** (in addition to any **director** appointed under Subrule 13.4.1A or 13.4.2) who stay in office for a fixed term, as may be determined by the **board**, or otherwise until:

13.4.1.1 The office automatically becomes vacant; or

13.4.1.2 The **director** resigns; or

13.4.1.3 The **director** is removed by the **members** and any **voting MCI holders**;  
or

13.4.1.4 The **director** is removed by the **board**.

13.4.1A The **board** may also appoint a person to be an executive **director** where that person is the Chief Executive Officer of the **credit union**. A person so appointed shall stay in office for a fixed term, as may be determined by the **board**, or otherwise until:

13.4.1A.1 The person ceases to be the Chief Executive Officer of the **credit union**;  
or

13.4.1A.2 The office automatically becomes vacant; or

13.4.1A.3 The **director** resigns; or

13.4.1A.4 The **director** is removed by the **members** and any **voting MCI holders**;  
or

13.4.1A.5 The **director** is removed by the **board**.

13.4.2 The **board** may also appoint a person to be a **director**:

13.4.2.1 if a **director's** office becomes vacant other than because the **director's** term of office has ended: or

13.4.2.2 if, for any other reason, the number of **directors** is less than six, or such greater number as the **board** has determined under Rule 13.1.

13.4.3 The **board** may only appoint a person under Rule 13.4 where that person is eligible to be a director under Subrule 13.2.1 and 13.2.2.2.

13.4.4 When the **board** appoints a person under Rule 13.4, it must indicate whether the appointment is effected pursuant to Subrule 13.4.1, 13.4.1A, 13.4.2.1 or 13.4.2.2.

13.4.5 The term of office for a **director** appointed to fill a vacancy in Subrule 13.4.2.1 ends at the end of the term of office of the **director** whose office has become vacant.

13.4.6 The term of office of a **director** appointed pursuant to paragraph 13.4.2.2 ends at the end of the next AGM.

## 13.5 Term of Office

13.5.1 Subject to the **Corporations Act** and unless by reason of Subrule 13.5.2 the term of office is shorter, a **director's** term of office:

- 13.5.1.1 starts at the end of the AGM at which the **director's** appointment is announced; and
- 13.5.1.2 ends at the end of the third AGM after the AGM at which the **director's** appointment is announced.

This paragraph does not apply to **directors** appointed pursuant to Rule 13.4.

13.5.2 If a ballot is held in accordance with Appendix A3-3 (2) and the number of **directors** appointed at an AGM is more than a third of the number of **directors** who are to hold office after the AGM:

- 13.5.2.1 the term of office for the third of the **board** that receives the most votes at an election held in accordance with Appendix A3-3 (2), ends at the end of the third AGM after the AGM at which the **directors'** election is announced; and
- 13.5.2.2 the term of office for the remainder ends at the end of AGMs occurring after the AGM at which the **directors'** election is announced, where less than a third of the **board** is due to retire at those AGMs.

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

13.5.3 If **directors** are declared elected under Appendix A3-3 (1) (a) and the number of **directors** appointed at the AGM is more than a third of the number of **directors** who are to hold office after the AGM:

- 13.5.3.1 the term of office for one third of the **directors** so appointed to the **board** ends at the end of the third AGM after the AGM at which the **directors'** election is announced; and
- 13.5.3.2 the term of office for the remainder ends at the end of AGMs occurring after the AGM at which the **directors'** election is announced, where less than a third of the **board** is due to retire at those AGMs.

13.5.4 For purposes of Subrule 13.5.2 and 13.5.3:

- 13.5.4.1 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
- 13.5.4.2 if **directors** have been appointed under Appendix A3-3 (1) (a) or where 2 or more **directors** have received the same number of votes at an election — the order of retirement amongst them is determined by lot.

## 13.6 Automatic Vacation of Office

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

- 13.6.1 dies;

13.6.2 ceases to be eligible to be a **director** under Rule 13.2.1;

13.6.3 is absent from 3 consecutive ordinary meetings of the **board** without leave; or

13.6.4 is 3 months in arrears in relation to money due to the **credit union** and has failed to make arrangements for payment satisfactory to the **credit union**.

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

**Corporations Act Commentary**

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

## 13.7 Resignation

13.7.1 A **director** may resign by giving the **credit union** notice of the **director's** resignation.

13.7.2 The **director's** office becomes vacant:

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

13.7.2.2 otherwise — on the date the **credit union** receives the notice of resignation.

## Division 14. — Directors' Powers

### 14.1 Powers and Duties of the Board

The **board**:

14.1.1 manages the **credit union's** business; and

14.1.2 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

14.3.1 The **board** may delegate any of its powers to any committee or any other person or persons. This right of delegation extends to any power exercisable by **board** resolution. 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.

14.3.2 The **board** must establish policies for the guidance of delegates in the exercise of any powers so delegated.

14.3.3 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:

14.3.3.1 include terms protecting persons dealing with the attorney, as the **board** determines; and

14.3.3.2 authorise the attorney to delegate any or all of the attorney's powers.

## Division 15. — Directors' Meetings

### Corporations Act Commentary

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

### 15.1 Calling and Conduct of Board Meetings

15.1.1 A **director** or the secretary (upon the authority of a **director**) may call a **board** meeting by giving reasonable notice to every other **director**.

15.1.2 The **board** may meet, adjourn and otherwise regulate its meetings as it thinks fit.

### 15.2 Quorum of Board

15.2.1 The quorum for a **board** meeting is one half the number of **directors** or such other number as the **board** determines. The quorum need only be present at the beginning of the meeting.

15.2.2 If, at any time, the number of **directors** is less than the quorum:

15.2.2.1 the **board** may meet only for the purpose of filling any casual vacancies or for calling a general meeting; and

15.2.2.2 the **board** may conduct business by circulating resolution under Rule 15.5.

### 15.3 Chair of Board

15.3.1 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.

15.3.2 The **board** may appoint a **director** as deputy chair, to act as chair in the event of the duly appointed chair not being available or declining to act for a particular meeting. The **board** may determine the period for which the **director** is to be the deputy chair. The **board** may remove the deputy chair from that position at any time.

15.3.3 The **board** must elect a **director** present to chair a meeting (or part of it) if:

15.3.3.1 a **director** has not already been appointed to chair the meeting; or

15.3.3.2 a previously appointed chair and deputy chair are not available, or decline to act, for the meeting (or part of it).

### 15.4 Passing of Directors' Resolutions

15.4.1 A resolution of the **board** must be passed by a majority of the votes cast by **directors** entitled to vote on the resolution.

15.4.2 The chair has a casting vote in addition to his or her deliberative vote.



## 15.5 Circulating Resolutions

- 15.5.1 The **board** may pass a resolution without a **board** meeting if a majority of the **directors** entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 15.5.2 Separate copies of a document may be used for signing by different **directors** if the wording of the resolution and statement is identical in each copy.
- 15.5.3 The resolution is passed when the last **director** signs.

## 15.6 Committees of Directors

- 15.6.1 The **board** may establish one or more committees consisting of such number of **directors** as the **board** thinks fit.
- 15.6.2 The members of a committee or the **board** may appoint one of the members of the committee as chair of their meetings.
- 15.6.3 Subject to any restrictions that the **board** imposes, a committee may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- 15.6.4 Questions arising at a meeting of a committee are to be determined by a majority of votes of those present and voting.
- 15.6.5 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

16.1.1 This Rule applies if:

16.1.1.1 a **director** has an interest or duty in relation to a matter that is not a **material personal interest**; or

16.1.1.2 if a **director** with a **material personal interest** in relation to the **credit union's** affairs:

16.1.1.2.1 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

16.1.1.2.2 may be present and vote on the matter under the **Corporations Act**.

16.1.2 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.

16.1.3 The **director** may vote on matters that relate to the **director's** interest.

16.1.4 In relation to any transactions that relate to the **director's** interest:

16.1.4.1 the transactions may proceed;

16.1.4.2 the **credit union** cannot avoid the transactions merely because of the **director's** interest; and

16.1.4.3 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

16.2.1 This Rule applies if a **director** with a **material personal interest** in relation to a matter:

16.2.1.1 complies with the requirements of the **Corporations Act** in relation to disclosure of the nature and extent of the interest and its relation to the **credit union's** affairs; but

16.2.1.2 must not be present and vote on the matter under the **Corporations Act**.

### Corporations Act Commentary

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

- be present while the matter is being considered at the board meeting; or
- vote on the matter,

unless:

- the other directors approve the director being present in accordance with the requirements of s 195(2);
- ASIC approves the director being present: see s 195(3); or
- the interest does not have to be disclosed: see s 191.

16.2.2 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.

16.2.3 The **board** may vote on matters that relate to the **director's** interest in the **director's** absence.

16.2.4 In relation to any transactions that relate to the **director's** interest:

16.2.4.1 the transactions may proceed;

16.2.4.2 the **credit union** cannot avoid the transactions merely because of the **director's** interest; and

16.2.4.3 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:

16.3.1 whether or not the **director** has complied with the requirements of the **Corporations Act** in relation to disclosure of the nature and extent of the interest and its relation to the **credit union's** affairs; and

16.3.2 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

The **board** may determine **directors'** remuneration in accordance with the **Corporations Act**.

### 17.2 Travelling Expenses and Insurance

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

17.2.1 the **director's** travelling and other expenses that they properly incur:

- 17.2.1.1 in attending **board** meetings or any meetings of committees of **directors**; and
- 17.2.1.2 in attending any **general meeting**; and
- 17.2.1.3 otherwise in connection with the **credit union's** business; and

17.2.2 subject to the **Corporations Act**, insurance premiums for a contract that insures the **director** against liabilities that the **director** incurs as an officer of the **credit union**.

### 17.3 Indemnities for Officers and Former Officers

#### Corporations Act Commentary

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

- liability incurred to the credit union or a related body corporate;
- liability for pecuniary penalty orders under s 1317G or compensation orders under s 961M, s 1317H, s 1317HA or s 1317HB;
- 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.

17.3.1 In this Rule **indemnified person** means an officer or former officer, of the **credit union**.

17.3.2 To the extent that the **Corporations Act** permits:

- 17.3.2.1 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
- 17.3.2.2 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.
- 17.3.3 The indemnity in Subrule 17.3.2.1 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

18.1.1 The **board** is to provide for the safe custody of the seal.

18.1.2 The seal is to be used only by the authority of the **directors**.

18.1.3 The **board** may authorise:

18.1.3.1 2 **directors**; or

18.1.3.2 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 206F or the Court's leave under s 206G.

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

### 18.3 Resignation of Secretary

18.3.1 A **secretary** may resign by giving the **credit union** notice of the **secretary's** resignation.

18.3.2 The **secretary's** office becomes vacant:

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

18.3.2.2 otherwise — on the date the **credit union** receives the notice of resignation.

# Appendix 1 — Shares

## Division 1 — Member Shares

### A1–1 Class of Shares

Each **member share** is a redeemable preference share for the purposes of clause 15(2), Schedule 4 of the **Corporations Act**.

**Note:** The provisions of the Corporations Act that apply to redeemable preference shares apply to redeemable preference shares of the **credit union** even if the shares are the only class of shares issued by the **credit union**. See clause 15(2)(a), Schedule 4.

### A1–2 Subscription Price

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

### A1–3 Rights, Obligations and Restrictions Attaching to Member Shares

- (1) The following rights attach to each **member share**:
  - (a) the right to vote on the terms set out in clause A1–4;
  - (b) the right to participate in dividends on the terms set out in clause A1–5;
  - (c) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A1–6; and
  - (d) the right to redeem the **member share** on the terms set out in clause A1–7.
- (2) The obligation to pay any unpaid **subscription price** on the terms set out in clause A1–8 attaches to each **member share**.
- (3) The restriction on transfer of **member shares** in clause A1–9 attaches to each **member share**.
- (4) The **credit union** may issue more **member shares** at any time. The issue of more **member shares** does not vary the rights attached to **member shares** that the **credit union** has already issued.

**Note:** For the holder of a **member share's** entitlement to make **deposits** with, and receive **financial accommodation** from, the **credit union**, see Rule 2 and 3.1.3

### A1–4 Voting Rights

- (1) 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) on an election of **directors**.
- (2) At a **general meeting** or a meeting of the class of holders of **member shares**:
  - (a) on a show of hands:
    - (i) each holder of **member shares** other than a minor has 1 vote; and
    - (ii) a body corporate representative who is also a **member** has 1 vote on behalf of each body corporate **member** whom he or she represents and 1 on his or her own behalf.
  - (b) on a poll:
    - (i) each holder of **member shares** other than a minor has 1 vote;
    - (ii) a body corporate representative who is also a **member** has 1 vote on behalf of each body corporate **member** whom he or she represents and 1 on his or her own behalf; and
    - (iii) a proxy who is also a **member** has 1 vote as proxy for each **member** represented and 1 on his or her own behalf.

A **member** who is a minor has no vote.

- (3) Voting rights and entitlement to receive notices of meeting are suspended if the **member** did not hold a **member share** under Rule 3.1:
  - (a) in relation to an election of **directors** - on the day before nominations for the election of **directors** close; and
  - (b) in relation to a **general meeting** or a meeting of the class of holders of **member shares** – on the day which is 7 days before notice of meeting is given.
- (4) Voting rights are suspended if the **member** did hold a **member share** but did not meet the **voting qualification criteria**:
  - (a) in relation to an election of **directors** - on the day before nominations for the election of **directors** close; and
  - (b) in relation to a **general meeting** or a meeting of the class of holders of **member shares** – on the day which is 7 days before notice of meeting is given.

#### **A1–5 Dividend Entitlements**

- (1) No dividend is payable in respect of any **member share**.

#### **A1–6 Distribution on Winding-Up**

- (1) On a winding-up of the **credit union** the holder of a **member share** is entitled to participate in any surplus assets of the **credit union**.



- (2) Subject to Rule A1–18(2), each **member share** carries a right to participate in surplus assets equally with every other **member share**.
- (3) The entitlements of holders of **member shares** to payment on winding-up are subject to any preferred entitlements to payment on winding-up that holders of any other class of shares may have.

#### **A1–7 Redemption of Member Shares**

- (1) The **credit union** may redeem a **member share** only if the following conditions are satisfied:
  - (a) either:
    - (i) the **member** has given the **credit union** notice requesting termination of the **member's** membership of the **credit union** under Rule 4.2;
    - (ii) the **board** has resolved to terminate the **member's** membership of the **credit union** under Rule 4.3; or
    - (iii) the **board** has determined that the **member's deposit** accounts with the **credit union** are dormant under Rule 4.4;
  - (b) the **board** reasonably believes that, immediately after redeeming the **member share**, the **credit union** will not be in breach of any **prudential standards**; and
  - (c) the **credit union** can redeem the **member share** out of:
    - (i) the profits of the **credit union**; or
    - (ii) the proceeds of a new issue of shares made for the purpose of the redemption.
- (2) On redemption, the **credit union** must pay the **member** an amount equal to the **subscription price** for the **member share** when the **member** subscribed for the **member share** less any amount unpaid on the **member share**.
- (3) On redemption, the **member shares** are cancelled.
- (4) This Rule does not affect the terms on which **member shares** may be cancelled under a reduction of capital or a share buy-back under **Corporations Act** Part 2J.1.

#### **A1–8 Payment for Member Shares by Minors**

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

- (b) otherwise set off against the unpaid **subscription price** any amounts owing by the **credit union** to the minor.
- (3) After reaching the age of 18, the **member** must pay the **subscription price** for the **member share** applicable as at the time he or she became a **member**. Any time after the **member** reaches the age of 18, the **board** may:
  - (a) call for payment of all or part of the unpaid amount in respect of the **member share**;
  - (b) debit any of the **member's** deposit accounts.

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

#### **A1-9 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 — Additional shares

### A1–10 Share Capital from Additional shares

- (1) Subject to compliance with the **Corporations Act** and satisfying the requirements of **APRA** in **prudential standards**, the **credit union** may raise capital by the issue of **additional shares**.
- (2) The **credit union** may issue **additional shares** of different classes which may be expressed to rank equally with, behind, or priority to other classes of **additional shares**.

### A1–11 Issue

- (1) The subscription price for an **additional share** will be determined by the **board**.
- (2) The **credit union** may offer or issue **additional shares** only to persons who satisfy any requirements under the **Corporations Act** or by **APRA** in relation to **additional shares**.
- (3) Each **additional share** must be fully paid up.

### A1–12 Rights of additional shareholders

- (1) The holder of **additional shares** has:
  - (a) subject to subclauses 1A-14(3), (4) and (5), the right to participate in any dividends declared with respect to **additional shares**;
  - (b) a right to transfer, sell or assign their **additional shares** to a person who is qualified to hold **additional shares** in the **credit union**; and
  - (c) no right to require the **additional shares** to be repaid.
- (2) Voting rights do not attach to **additional shares**.
- (3) On a winding-up of the **credit union**, **additional shares** rank in priority to **member shares** as regards to a return of capital, but confer no right to participate in the distribution of surplus assets.

### A1–13 Registration as holder of additional shares

A person becomes registered as a holder of an **additional share** upon entry by the **credit union** in its **Register of Members** of the person's particulars in relation to the **additional shares** as required by the **Corporations Act**.

#### **A1–14 Dividends on additional shares**

- (1) Subject to the remaining provisions of clause 1A-14, the **board** may, at its sole discretion declare and pay to holders of additional shares:
  - (a) one interim dividend on **additional shares** in a class of **additional shares** during each financial year; and
  - (b) a final dividend on **additional shares** in a class of **additional shares** (whether or not an interim dividend has been declared and paid) for each financial year.
- (2) The **members** in **general meeting** must approve the way the **credit union** calculates dividends on a class of **additional shares** before the **credit union** first issues **additional shares** of the class.
- (3) A dividend that can be paid to holders of **additional shares** in a class of **additional shares** must not exceed a rate of return on **additional shares**, equal to the 180 bank bill swap reference rate plus 5 per cent per annum.
- (4) A dividend that can be paid to holders of **additional shares** in a class of **additional shares** must not be cumulative.
- (5) Dividends that can be paid to holders of all classes of **additional shares** must not be more than 49% of the **credit union's** net profits after tax in any year. If there are insufficient profits in any year to pay a dividend, there is no entitlement to be paid a dividend for that year from a later year's profits.

#### **A1–15 Redemption or cancellation of additional shares**

- (1) **Additional shares** may not be redeemed by **members**.
- (2) The **credit union** may redeem **additional shares** in a class of **additional shares** at any time provided prior written approval has been given by **APRA** and the **board** and subject to the offer for early redemption being made on the same terms to all holders of the class of **additional shares** for which the offer for early redemption is made.
- (3) Upon redemption, the **credit union** must repay the **subscription price** paid in respect of the **additional shares** in a class of **additional shares** without any premium together with any other amount to which the holder may be entitled in relation to the **additional shares**. Upon redemption, the **additional shares** must be cancelled.

## Division 3 — MCIs

### A1–16 Share capital from MCIs

- (1) Subject to compliance with the **Corporations Act** and satisfying the requirements of **APRA** in **prudential standards** where applicable, the **credit union** may raise capital by issuing **MCIs** or capital instruments convertible into **MCIs**.
- (2) The **credit union** may create or issue more **MCIs** at any time. The creation or issue of more **MCIs** does not vary the rights attached to **MCIs** or any other shares that the **credit union** has already issued.

### A1–17 Issue

- (1) The **subscription price** for an **MCI**, or a capital instrument convertible to an **MCI**, will be determined by the **board**.
- (2) Each **MCI** must be issued as a fully paid up share.
- (3) Any dividends in respect of an **MCI** are non-cumulative.

### A1–18 Rights of MCI holders

- (1) The terms of issue of an **MCI** (including any terms, conditions or rights attaching to the **MCI**) will be determined by the **board** in its sole discretion, subject to the requirements of this Constitution, the requirements for **MCIs** in the **Corporations Act** and any applicable **prudential standards**.
- (2) Subject to the terms of issue of an **MCI**, an **MCI holder** is entitled to a claim on the surplus assets and profits of the **credit union** in a winding-up of the **credit union** after all senior claims, including the aggregate **subscription price** paid for any **member shares**, have been satisfied and:
  - (a) the **MCI holder's** claim ranks equally and proportionately with the claims of all other **MCI holders** and **members**; and
  - (b) the amount of the **MCI holder's** claim cannot exceed the **subscription price** of the **MCI**.
- (3) Notwithstanding anything to the contrary in this Constitution, but subject to the requirements for **MCIs** in the **Corporations Act**, the **board** may determine that the terms of issue of any **MCIs** contain such terms and conditions or attach such rights as the **board** considers necessary or desirable for those **MCIs** to be eligible for inclusion as regulatory capital under any applicable **prudential standards**.
- (4) The rights attached to **MCIs** (or a class of **MCIs**) may only be varied or cancelled by special resolution of the **credit union** and:
  - (a) by a special resolution passed at a meeting of **MCI holders** holding **MCIs** in the relevant class; or
  - (b) with the written consent of **MCI holders** of at least 75% of the issued **MCIs** of that class.

Any variation of the rights attached to **MCI**s which constitute Common Equity Tier 1 Capital (as defined by **APRA** from time to time) of the **credit union** is subject to the prior written approval of **APRA**, if the variation may affect the eligibility of such **MCI**s for inclusion as Common Equity Tier 1 Capital of the **credit union**.

#### **A1–19 Registration as holder of MCI**s

Except as provided by the rules of a licensed CS facility (as defined in the **Corporations Act**) which apply in relation to an **MCI**, a person becomes registered as the **MCI holder** of that **MCI** upon entry by the **credit union** in its **Register of Members** of the person's particulars in relation to the **MCI** as required by the **Corporations Act**.

# Appendix 2 — Conduct of general meetings

## A2-1 Conduct of the Meeting

The chair of a *general meeting*:

- (1) has charge of the general conduct of the meeting;
- (2) may, subject to the **Corporations Act** and this Constitution:
  - (a) require the adoption of any procedure which is, in the chair's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the meeting; and
  - (b) terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting

and a decision by the chair made under this Appendix 2 shall be final.

# Appendix 3 — Election of Directors

## Ballot at AGM

### A3-1 Election

- (1) Unless otherwise determined by the members at the annual general meeting, **directors** shall be elected in accordance with this Appendix.
- (2) The following table sets out the timetable for election of **directors** by **members**:

Steps in Election Procedure	Time
Call for nominations (see clause A3-2(1))	56 days before AGM (minimum)
Nominations close (see clause A3-2(2))	35 days before AGM (minimum)
Conduct of ballot and announcement of <b>directors</b> (see clause A3-7 – A3-9)	AGM

### A3-2 Nominations

- (1) The **board** must call for nominations at least 56 days before the AGM. The board may call for such nominations in such manner determined by the **board**.
- (2) Nominations close at least 35 days before the AGM on a date specified by the board when calling for nominations.
- (3) 10 **members** together have the right to nominate a person by giving the **credit union** a notice of nomination before nominations close. The notice of nomination must:
  - (a) declare that the person is eligible to be a **director** under Rule 13.2.1;
  - (b) declare that the person is at least 18; and
  - (c) be signed by the nominating **members** and the person.
- (4) The person nominated must:
  - (a) provide the **credit union** with all information and consents the **credit union** reasonably requests to determine if the person is disqualified by law from acting as a **director**;
  - (b) provide the **board** with all information and documentation that 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 **board's** Fit and Proper Policy.
- (5) If and when the **board** determines that the person nominated is of appropriate fitness and propriety to be and act as a **director**, by reference to the **board's** Fit and Proper Policy, the person becomes a **candidate**.



### **A3-3 Proceeding with Election**

- (1) If the number of **candidates** is equal to or less than the number of positions to be filled:
  - (a) each **candidate** shall be declared elected by the chair during the AGM; and
  - (b) the election process otherwise set out in A3-4 to A3-11 of this Appendix shall be discontinued.
- (2) If the number of **candidates** is greater than the number of positions to be filled a secret ballot shall be held at the AGM in accordance with the process set out in A3-4 to A3-11 of this Appendix.

### **A3-4 Appointment of Returning Officers**

- (1) The **board** must appoint a returning officer, who may appoint assistant returning officers, none of whom can be a **candidate**.
- (2) The **secretary** must prepare and give the returning officer a roll of **members**.

### **A3-5 Appointment of Scrutineer**

- (1) A **candidate** may appoint a scrutineer.
- (2) The duties and responsibilities of scrutineers are:
  - (a) to observe the sorting, counting and recording of ballot papers;
  - (b) to ensure that the votes of unrejected ballot papers are correctly credited to the appropriate **candidates**; and
  - (c) to raise any query with the returning officer regarding any of the ballot papers.

### **A3-6 Ballot Papers**

- (1) After nominations have closed, the returning officer must prepare ballot papers for the election.
- (2) The order in which the **candidates** appear on the ballot paper is to be determined by the returning officer by lot.
- (3) The returning officer must ensure some authenticating mark appears on each ballot paper before issuing them to the **members** at the general meeting.

### **A3-7 Conduct of Ballot**

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

### **A3-8 Closure of the Ballot**

The ballot closes at the time the chair specifies.

### A3-9 Procedures After Close of the Ballot

- (1) As soon as practicable after the ballot closes, the returning officer must ensure that the ballots are dealt with as follows:
  - (a) supervise the scrutinising of the ballot papers and reject informal ballot papers;
  - (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 **chair**.
- (2) A ballot paper is informal if:
  - (a) it is not authenticated by the returning officer; or
  - (b) it has no vote indicated on it or it does not indicate the **member's** preference for a **candidate**.
- (3) The **chair** must announce the results of the ballot at the AGM.
- (4) If a **member** gives the **credit union** a written request, the **credit union** must make available to any **member** a copy of the returning officer's declaration of the ballot.
- (5) The returning officer must destroy the ballot papers three months after the declaration of the ballot.

### A3-10 Voting System

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

### A3-11 Direct Votes

- (1) The **board** may determine:
  - (a) that **members** entitled to vote in the election may cast a vote in the election by **direct vote**;
  - (b) the form, method and timing of giving a **direct vote** in order for the vote to be valid and formal in the election.
- (2) If the **board** allows **direct votes** in the election:
  - (a) the order in which the **candidates** appear on the direct voting instrument must be the same as on the ballot papers;

- (b) the **board** must have procedures in place to prevent a **member** voting more than once in the election;
  - (c) the **board** must ensure that the anonymity of the voter is protected;
  - (d) the **board** must determine the role of scrutineers in relation to the **direct votes**.
- (3) If a **member** casts a **direct vote** in the election the **member** is not entitled to vote in the ballot at the AGM, whether in person or by proxy.
  - (4) A valid and formal **direct vote** cast by a **member** has the same effect as if the **member** had cast a valid and formal ballot paper in the election at the AGM.
  - (5) The returning officer must destroy any submitted direct voting instruments, or records of submitted **direct votes**, in relation to the election three months after the declaration of the ballot.