

***NOVA MUTUAL LIMITED***

***ABN 40 087 650 440***

# **Constitution**

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# Preamble

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

## Principles of Mutuality

### Customers need not be Members

1. A mutual may provide products and services to members and to customers who are not members.

### Membership and Member Shares

#### *How to become a member*

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

#### *How many member shares a mutual may issue a person*

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

#### *Consideration paid for membership shares*

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

#### *Voting*

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

#### *Dividends and Surplus*

9. A member share may confer a right to participate in the mutual's profits through payment of dividends.
10. A member share must confer a right to participate in surplus when the mutual is wound up.
11. Any participation in profit or surplus must be on equitable terms.

#### *Redemption and Transfer*

12. A member share must confer on the member a right to redeem the member share on request, subject only to any period of notice set out in the mutual's constitution.
13. Subject to the exceptions in Principle 14, member shares may not be transferred.
14. A trustee for an unincorporated association may transfer the member share that the trustee holds on trust for the unincorporated association.

### Additional Shares

*Definition*

15. All shares issued by a mutual other than member shares are additional shares.

*Issue of additional shares only to members*

16. A mutual may only issue additional shares to a person who has been a member of the mutual continuously for the past 6 months.

*Voting*

17. Subject to the exceptions in Principle 18, an additional share must not confer the right to vote.

18. Additional shares may confer the right to vote, at meetings of the holders of additional shares, on questions affecting the continuing existence of the mutual.

*Dividends and Surplus*

19. An additional share may confer the right to participate in the mutual's profits through payment of dividends.

20. An additional share may confer a right to participate in surplus when the mutual is wound up but only to the extent of:

- (a) repayment of capital paid on the additional shares; and
- (b) payment of arrears of cumulative dividends.

21. The right to participate in profits and surplus conferred by additional shares may be preferred, equal or deferred to the rights conferred by the member shares.

*Redemption and Transfer*

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

23. The holder of additional shares may only transfer additional shares to a person who has been a member of the mutual continuously for the past 6 months.

**Accumulation of Securities**

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

**Directors**

25. Only a member of a mutual may be a director of the mutual.

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

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## Division 1. — Introductory Matters

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### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

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

**candidate** means the person nominated to be a candidate for election as a **director** in accordance with Rule A4-2(3) 'Nominations' of Appendix 4

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

**director** means a director for the time being of the **mutual**

**elected director** means a **director**:

- (a) appointed by **members** under Rule 11.3; or
- (b) appointed by the **board** to fill a casual vacancy under Rule 11.4

**financial accommodation** means:

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

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

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

**material personal interest** has the same meaning as in Part 2D.1 of the *Corporations Act 2001*

**member** means a person whose name the **mutual** has entered for the time being in the Register of Members it keeps under the *Corporations Act 2001*

**member share** means a share as described in Appendix 2 Part A

**mutual** means the company described in this Constitution

**secretary** means a secretary for the time being of the **mutual**

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

## 1.2 Interpretation

- (1) In this Constitution, unless the context requires otherwise:
  - (a) the singular includes the plural and vice versa;
  - (b) where an expression is defined in this Constitution, any other grammatical form of the expression has a corresponding meaning;
  - (c) words and expressions defined in the *Corporations Act 2001* have the same meaning in this Constitution;
  - (d) headings are for purposes of convenience only and do not affect the interpretation of this Constitution;
  - (e) a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation;
  - (f) a reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument; and
  - (g) a reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body:
    - (i) that replaces it; or
    - (ii) to which substantially all the powers and functions relevant to this Constitution are transferred.
- (2) The notes to this Constitution are for purposes of convenience only and do not affect the interpretation of this Constitution. The notes do not form part of this Constitution and may be removed or modified without the **mutual** complying with the *Corporations Act 2001* 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 **mutual's** registered office.

## 1.4 Replaceable Rules do not Apply

The replaceable rules in the *Corporations Act 2001* do not apply.

## 1.5 Notices

- (1) This Rule applies to all notices and documents that the *Corporations Act 2001* or this Constitution requires a party to this Constitution to send to another party to this Constitution.



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

- (2) In this Rule, **business day** means a day that is not:
- (a) a Saturday or Sunday; or
  - (b) a public holiday or bank holiday in the place where the notice is received.
- (3) A person sending a notice must do so in writing and must address it to the recipient at the following respective addresses:
- (a) if to the **mutual** — at its registered office or such other address as the **mutual** specifies to **members** from time-to-time; and
  - (b) if to a **member** — at the **member's** address appearing on the Register of Members from time-to-time.

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

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		<p>(iii) if sent on a day other than a <b>business day</b> — on the next <b>business day</b></p> <p>This rule does not apply where the person sending the notice by electronic means has evidence that the notice did not reach the other person's electronic address</p>
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- (5) If a person sends a **member** a notice in accordance with this Rule, any person to whom that **member** transfers or transmits a **member share** is taken to receive the notice when the first person sent the **member** the notice.

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## Division 2. — Objects & Limit on Powers

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### Corporations Act 2001 Commentary

The *Corporations Act 2001* provides that the mutual has the legal capacity and powers of an individual and of a body corporate: see s 124.

The *Corporations Act 2001* allows the Constitution to set out the mutual's objects and to expressly limit the mutual's exercise of its powers: see s 125. The statement of objects is optional. However, the limit on power in Rule 2.2 is a requirement of the Principles of Mutuality.

### 2.1 Objects

The *mutual* has the objects set out in Appendix 1.

### 2.2 Customers must be Members

The *mutual* may provide products and services to *members* and customers.

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## Division 3. — Membership

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### 3.1 Admission to Membership

**Corporations Act 2001 Commentary**

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

- (1) Subject to any other Rule allowing admission of *members*, the *mutual* may admit a person as a *member* only if:
- (a) the person makes a written application in a form the *mutual* requires;
  - (b) the person applies for a *member share*;
  - (c) the person pays in cash the *subscription price* for the *member share*; and

**Note:** The *mutual* may also admit a person as a *member* by registering a transfer or transmission of a *member share* to the person under Rule 7.3, Rule 8.1, Rule 8.2 or Rule 8.3.

- (2) The *board* has an absolute discretion in exercising the *mutual's* power to admit *members* without any obligation to give a reason for not admitting a person as a *member*.
- (3) When the *mutual* admits a person as a *member*, the *mutual* must:
- (a) issue the *member share* to the person;
  - (b) enter the person's particulars in the Register of Members as required by the *Corporations Act 2001*; and
  - (c) give the person notice that it has admitted the person as a *member*.

### 3.2 Delegation of Power to Admit Members

The *board* may delegate its power to admit *members* to officers of the *mutual*. The delegation must not include authority:

- (a) to reject an application, such applications being forwarded to the *board* for consideration; or
- (b) to further delegate the power to admit *members*.

### 3.3 Joint Members

- (1) The **mutual** may admit 2 or more persons eligible for admission under Subrule 3.1(1) as a joint **member** of the **mutual**.
- (2) The persons constituting the joint **member** may determine the order in which their names appear in the Register of Members. If the persons constituting the joint **member** do not do so, the **mutual** may determine the order in which their names appear in the Register of Members.
- (3) The person named first in the Register of Members is the primary joint **member**. The **mutual** may duly send any notice, certificate or other document to the joint **member** by sending it to the primary joint **member**. Only the primary joint **member** is entitled to vote on behalf of the joint **member**.
- (4) At any time, the joint **member** may give the **mutual** a notice requiring the **mutual** 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 **mutual** must change the Register of Members as soon as practicable after receiving the notice.
- (5) Any person constituting a joint **member** may give an effective receipt for any dividend, distribution on winding-up or return of capital in relation to the joint **member's** shares.
- (6) The 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.
- (7) In this Constitution, the joint **member** is taken to be a person separate to the persons constituting the joint **member**.

#### Corporations Act 2001 Commentary

The *Corporations Act 2001* recognises registration of joint members of a mutual. The joint members:

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

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## Division 4. — Termination of Membership

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

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

- (a) the *mutual* redeems the *member's member share* under Rule 4.2, Rule 4.3 or Rule 4.4;
- (b) the *mutual* forfeits the *member's member share* under Subrule 6.3(2);
- (c) the *member* surrenders the *member's member share* under Subrule 6.3(5);
- (d) if the *member* is an individual — the *member*:
  - (i) dies;
  - (ii) becomes a bankrupt and the *mutual* registers the *member's* trustee in bankruptcy as the holder of the *member's member share* under Rule 8.2; or
  - (iii) becomes mentally incapable and the *mutual* registers the *member's* trustee or guardian as the holder of the *member's member share* under Rule 8.3;
- (e) if the *member* is a body corporate — the *member* is deregistered or dissolved; or
- (f) if the *member* is a trustee for an unincorporated association — the *mutual* registers the transfer of the *member's member share* to another person who is to act as trustee for the unincorporated association;

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

### 4.2 Member's Request for Termination

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

### 4.3 Termination by the Board

- (1) The *mutual* may redeem a *member's member share* by *board* resolution if:
  - (a) the *member* fails to discharge the *member's* obligations to the *mutual*;
  - (b) the *member* is guilty of conduct that the *board* reasonably considers to be detrimental to the *mutual*; or

- (c) the **member** obtains membership by misrepresentation or mistake.
- (2) The **mutual** must give notice of the proposed resolution under Subrule (1) to the **member** at least 14 days before considering the proposed resolution.
- (3) At the time the **board** considers the proposed resolution, the **member** is entitled:
  - (a) to be present with or without the **member's** legal representative; and
  - (b) to be heard, either in person or through the **member's** legal representative.
- (4) On redeeming the **member share**, the **mutual** may pay the amount payable on redemption of the **member share** to the **member** by either:
  - (a) sending a cheque to the **member's** address as set out in the Register of Members; or
  - (b) crediting any of the **member's** accounts with the **mutual**,

at the time the **member share** is redeemed.

#### 4.4 Termination Where Member is Inactive

- (1) This Rule does not apply to a retirement savings account to the extent that the *Retirement Savings Account Act 1997* (Cth) provides otherwise.
- (2) The **mutual** may:
  - (a) determine that the **member's deposit** accounts are dormant; and
  - (b) redeem the **member's member share**,if the **member** has not initiated any transactions in relation to any products and services (including **deposit** accounts) made available by the **mutual** through its agency relationship with any banking partner in the 12-month period before the date of the resolution.
- (3) The **mutual** must send notice of the proposed resolution under Subrule (2) to the **member** at the **member's** last known address as shown on the Register of Members at least 28 days before considering the proposed resolution.
- (4) On redemption of the **member share**, the **mutual** must pay the amount payable on redemption of the **member share** into the **member's** account.
- (5) If the **mutual** redeems a person's **member share** under this Rule, the person may require the **mutual** to reinstate the person's **deposit** accounts at any time before the **mutual** pays the money in the **deposit** account in accordance with the relevant unclaimed money legislation. If the person requires the **mutual** to reinstate the person's **deposit** accounts:
  - (a) the **mutual** must reinstate the person's **deposit** accounts as soon as practicable; and
  - (b) if the **mutual** has redeemed the **member's member share** — the **mutual** must issue a **member share** to the person and may debit the **member's deposit** account for the subscription amount.

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## Division 5. — Issue of Shares

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### 5.1 Classes of Shares

The *mutual* may only issue *member shares*.

### 5.2 Board Power to Issue Shares

The *board* may exercise the *mutual's* power to issue shares to the exclusion of the *general meeting*.

### 5.3 Restrictions on Issue of Member Shares

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

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



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## Division 6. — Calls, Forfeiture and Liens

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### 6.1 Payment of Calls on Shares

**Corporations Act 2001 Commentary**

The *Corporations Act 2001* states that a member holding partly paid shares must pay calls on them in accordance with the terms of issue. This Rule sets out the process for the board to make a call for payment on partly paid shares: see s 254M.

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

### 6.2 Effect of Failure to Pay Unpaid Amounts

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

- (a) the amount due on the share; and
- (b) all costs and expenses that the **mutual** 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 **mutual** may waive all or part of the expenses payable under this Subrule by **board** resolution.

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

The date for payment must be at least 14 days after the date on which the **mutual** 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 **mutual** as at the date the **mutual** issues the default notice.

### 6.3 Forfeiture and Surrender

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

### 6.4 Liens

- (1) The **mutual** may at any time exempt a share wholly or in part from this Rule by **board** resolution.

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

The date for payment must be at least 14 days after the date on which the **mutual** 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 **mutual** as at the date the **mutual** issues the sale notice.

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

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

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

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## Division 7. — Transfer of Shares

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### 7.1 Form of Share Transfer

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

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

**Note:** Rule 7.3(1) prevents the **mutual** registering share transfers in some situations, even though the share transfer complies with the requirements set out in this Rule.

### 7.2 Ownership of Share Transfer

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

### 7.3 Registration of Share Transfer

- (1) The **mutual** must not register a share transfer if:
  - (a) the terms of issue for the shares prohibit the transfer of the shares to the transferee;
  - (b) the share transfer is not in the form set out in Rule 7.1: or
  - (c) if the transfer of shares is dutiable — the share transfer is not duly stamped.
- (2) The **mutual** may refuse to register a share transfer unless:
  - (a) the shares are fully-paid;
  - (b) the **mutual** does not have a lien on the shares;
  - (c) the transferor has executed the share transfer;
  - (d) the transferee has executed the share transfer;
  - (e) a certificate for the shares accompanies the share transfer;
  - (f) the **board** has all information that it reasonably requires to establish the right of the transferor to transfer the shares; and

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

**Corporations Act 2001 Commentary**

If a mutual 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 mutual's registered office: see s 1093.

#### **7.4 Powers of Attorney**

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

#### **7.5 Suspension of Registration**

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

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## Division 8. — Transmission of Shares

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### 8.1 Transmission of Shares on Death

- (1) On the death of a **member**, the **mutual** may recognise either the personal representative of the deceased **member** or another person who appears to the **board** to be entitled to the deceased **member's** estate as being entitled to the deceased **member's** interest in the **member's member share**.
- (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 member share**, the personal representative may elect to:
  - (a) be registered as the holder of the **member share**; or
  - (b) apply to terminate the membership.

### 8.2 Transmission of Shares on Bankruptcy

**Corporations Act 2001 Commentary**

The *Corporations Act 2001* sets out the rights of the trustee of the bankrupt's estate in relation to shares held by the bankrupt member, whether or not the trustee has become registered as holder of the shares.

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

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

### 8.3 Transmission of Shares on Mental Incapacity

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

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

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## Division 9. — Holding Members' Meetings

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### Corporations Act 2001 Commentary

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

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

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

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

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

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

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

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

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

#### **Content of notice**

A notice convening a members' meeting must

- set out the place, date and time of the meeting and the technology to be used to conduct the meeting if it is to be held in 2 or more places;
- state the general nature of the meeting's business;
- state the terms of any special resolution and the fact that it is proposed as a special resolution;
- in relation to proxies:
  - that the member has a right to appoint a proxy;
  - whether or not the proxy needs to be a member of the mutual; 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 mutual 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 mutual 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 mutual: 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.

**9.1 Calling Meetings of Members****Corporations Act 2001 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.

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

**9.2 Adjourning Meetings of Members**

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

**9.3 Proceedings at Members' Meetings**

- (1) The quorum for a **members'** meeting is 10 **members** present in person.



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

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

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

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

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

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## Division 10. — Voting at Members' Meetings

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### 10.1 Voting

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

### 10.2 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.

### 10.3 Voting on a Poll

#### Corporations Act 2001 Commentary

Section 250L allows the following to demand a poll:

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

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

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

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

## 10.4 Body Corporate Representatives

### Corporations Act 2001 Commentary

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

- (1) A **member** that appoints a body corporate representative must give the **mutual**:
  - (a) if the **member** appointed the representative by **board** resolution — a certified copy of the **board** resolution appointing the representative; and
  - (b) otherwise — a copy of the instrument appointing the representative,as practicable after appointing the representative, and in any event before any **member's** meeting at which the representative may exercise the **member's** rights.
- (2) In addition to the rights and powers a **member's** representative may exercise under the *Corporations Act 2001*, the representative may exercise the **member's** right to vote in a ballot to appoint **directors** by election.

## 10.5 Proxies

### Corporations Act 2001 Commentary

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

- (1) The **board** may determine the form of proxy document from time-to-time.
- (2) An appointment of a proxy is not invalid merely because it does not contain all the information required for a valid proxy appointment, so long as it contains:
  - (a) the **member's** name; and
  - (b) the proxy's name or the name of the office that the proxy holds.
- (3) A proxy does not have a right to vote on a show of hands.
- (4) If a **member** appoints the chair as the **member's** proxy and directs the chair to vote either in favour of or against the resolution, the chair must demand a poll on the resolution.
- (5) Unless the **mutual** receives written notice of the matter before the meeting at which a proxy votes starts or resumes, the proxy's vote at that meeting will be valid if, before the proxy votes:
  - (a) the appointing **member** dies; or
  - (b) the **member** is mentally incapacitated;
  - (c) the **member** revokes the proxy's appointment;

- (d) the **member** revokes the authority under which the proxy was appointed by a third party;  
or
- (e) the **member** transfers the share in respect of which the **member** or a third party appointed the proxy.

## 10.6 Objections

An objection to the qualification of a voter:

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

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## Division 11. — Directors — Appointment & Vacation of Office

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### 11.1 Number of Directors

- (1) The number of ***elected directors*** is 4 or such other number as determined by the ***board***, subject to a maximum of 9.
- (2) The ***board*** may appoint up to 3 ***directors*** in addition to ***elected directors***. The ***board*** may only appoint as ***director***:
  - (a) the Chief Executive Officer of the ***mutual*** – in which case the term of office ends when the person ceases to be Chief Executive Officer, or such earlier date as determined by the ***board*** prior to the person's appointment as ***director***;
  - (b) a person who is not an employee of the ***mutual*** – in which case the term of office ends 3 years after appointment, or such earlier date as determined by the ***board*** prior to the person's appointment as ***director***.
- (3) The majority of ***directors*** must be ***elected directors***.

### 11.2 Eligibility to be a Director

- (1) An individual is eligible to be an ***elected director*** if the person:
  - (a) is a ***member***; and
  - (b) has not had a personal representative or trustee appointed to administer the person's estate or property because of their mental incapacity; and
  - (c) has not been disqualified by law from being or acting as a ***director***.

#### Corporations Act 2001 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.

### 11.3 Appointment by Members — Election

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

### 11.4 Appointment by Board — Casual Vacancies

- (1) The **board** may appoint a person to be an **elected director**:
  - (a) if an **elected director's** office becomes vacant other than because the **elected director's** term of office has ended; or
  - (b) if, for any other reason, the number of **elected directors** is less than the number determined under Rule 11.1(1).

The **board** may only appoint a person who is eligible to be a **director** under Rule 11.2(1).

- (2) The term of office for an **elected director** appointed to fill a vacancy in paragraph 11.4(a) ends:
  - (a) if the **general meeting** approves the appointment before the end of the next AGM after the **elected director's** appointment — at the end of the term of office of the **elected director** whose office has become vacant; and
  - (b) otherwise — at the end of the next AGM after the **elected director's** appointment.
- (3) The term of office for an **elected director** appointed to fill a vacancy in paragraph 11.4(b) ends at the end of the next AGM after the **elected director's** appointment.

## 11.5 Term of Office

- (1) Subject to the *Corporations Act 2001* and the rotation provisions in this Rule, a **director's** term of office:
  - (a) starts at the end of the AGM at which the **director's** election is announced; and
  - (b) ends at the end of the third AGM after the AGM at which the **director's** election is announced.
- (2) If the number of **directors** that **members** appoint at an election is more than a third of the total number of **directors** on the **board**:
  - (a) the term of office for the third of the **board** that receives the most votes at the election ends at the end of the third AGM after the AGM at which the **directors'** election is announced; and
  - (b) the term of office for the remainder ends at the end of earlier AGMs where less than a third of the **board** is due to retire at those earlier AGMs.

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

- (3) For purposes of Rule 11.5(2)):
  - (a) if the number of **directors** on the **board** is not divisible by 3 — round fractions up to the nearest whole number in determining how many **directors** there are in a third or in two thirds of the **board**
  - (b) if 2 or more **directors** have the same number of votes — the order of retirement amongst them is determined by lot.

## 11.6 Automatic Vacation of Office

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

- (a) dies;
- (b) is absent from 3 consecutive ordinary meetings of the **board** without leave;
- (c) is 3 months in arrears in relation to money due to the **mutual** and has failed to make arrangements for payment satisfactory to the **mutual**;
- (d) ceases to be a **member**;
- (e) has a personal representative or trustee appointed to administer the **director's** estate or property because of their mental incapacity;
- (f) is disqualified from acting as a **director** under Part 2D. 6 of the Corporations Act;
- (g) seriously breaches **directors'** duties owed to the **mutual**;
- (h) breaches any of the **mutual's** rules for matters in which the **director** has a **material personal interest**;
- (i) makes any serious or repeated disclosure of confidential information of the **mutual**; and
- (j) makes any other serious or repeated breach of the **mutual's** published corporate governance principles.

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

### Corporations Act 2001 Commentary

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

## 11.7 Resignation

A **director** may resign by giving the **mutual** notice of the **director's** resignation.

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

- (a) if the notice of resignation specifies a date of resignation — on the date of resignation; or
- (b) otherwise — on the date the **mutual** receives the notice of resignation.

## 11.8 Alternate Directors

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

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

- (b) appointor means the **director** who appoints an alternate under Subrule (2).
- (2) A person is eligible to be an alternate for a **director** if the person:
- (a) is eligible to be a **director** under Rule 11.2(1);
  - (b) is not a **director**, and
  - (c) is not an **alternate** for another **director**.
- (3) A **director** (but not an alternate) may give the **mutual** a notice appointing a person eligible under Subrule (2) to be his or her **alternate**. The notice must set out:
- (a) the name of the person to be appointed as **alternate**;
  - (b) the term of the **alternate's** appointment (or that the appointment is for an indefinite term);
  - (c) whether or not the **appointor** requires the **mutual** to give notices of **board** meetings to the **alternate**;
  - (d) whether or not the **alternate** can sign circulating resolutions instead of the **appointor**.

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

- (4) The **alternate** is not the **appointor's** agent, but a **director** of the **mutual**. The **alternate** has all the duties, powers and rights of the **appointor** as a **director**. Except to the extent that this Rule provides otherwise, all references to **directors** in this Constitution include references to the **alternate**.
- (5) The **mutual** only has to give notice of **board** meetings to the **alternate** if the **appointor** has given the **mutual** a notice requiring it to do so.

**Note:** See Rule 13.1 in relation to notice of **board** meetings.

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

**Note:** See Rule 13.2 in relation to quorum at a **board** meeting. See Rule 13.4 in relation to voting on resolutions at **board** meetings. See Rule 14.1 in relation to **directors** not being present or voting on matters in relation to which they have a **material personal interest**.

- (7) The reference to 'all of the **directors**' in Rule 13.5 refers to:
- (a) if the **appointor** notifies the **mutual** that the **alternate** can sign circulating resolutions instead of the **appointor** — the **alternate** and other **directors** but not the **appointor**;



- (b) otherwise — the **appointor** and other **directors** but not the **alternate**.
- (8) The **mutual** must not provide remuneration to the **alternate** (in his or her capacity as **alternate**) except out of remuneration that it has allocated to the **appointor**. The **alternate** has no right to remuneration against the **mutual**. This does not affect any right to remuneration that the **alternate** may have against the **appointor**.

**Note:** See Rule 15.1 in relation to remuneration of **directors**.

- (9) The **alternate's** office automatically becomes vacant if:
  - (a) the **appointor** revokes the **alternate's** appointment; or
  - (b) the **appointor's** office as a **director** becomes vacant (except where the **appointor's** term as a **director** ends at the end of an AGM under Rule 11.6 and the **members** re-elect the **appointor** as a **director** at that AGM).

The **alternate's** office may also become vacant in the circumstances set out in Rule 11.6 and Rule 11.7.

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## Division 12. — Directors' Powers

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### 12.1 Powers and Duties of the Board

The **board**:

- (a) manages the **mutual's** business; and
- (b) may exercise all the powers of the **mutual** except any powers that the Corporations Act 2001 or this Constitution expressly allocates to the **general meeting**.

### 12.2 Negotiable Instruments

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

### 12.3 Delegation

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

<b>Corporations Act 2001 Commentary</b>
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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.
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- (2) The **board** must establish policies for the guidance of delegates in the exercise of any powers so delegated.
- (3) Without limiting its powers, the **board** may appoint a person to be the **mutual's** attorney for purposes, with powers (being the **board's** powers), for the period and on terms the **board** determines. In particular, the power of attorney may:
  - (a) include terms protecting persons dealing with the attorney, as the **board** determines; and
  - (b) authorise the attorney to delegate any or all of the attorney's powers.

### 12.4 Restriction on powers of the board

In spite of rule 12.1 the **board** may only authorise the **mutual** to transfer the whole or substantially the whole of the **mutual's** business where the transaction:

- (1) is in the ordinary course of the **mutual's** business; or
- (2) has prior approval of a special resolution of **members**, or if the requirement in Appendix 5 applies to the transaction, the **mutual** has complied with the Demutualisation Approval Procedure specified in Appendix 5.

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## Division 13. — Directors' Meetings

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### Corporations Act 2001 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.

#### 13.1 Calling and Conduct of Board Meetings

- (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**.
- (2) The **board** may meet, adjourn and otherwise regulate its meetings as it thinks fit.

#### 13.2 Quorum of Board

- (1) The quorum for a **board** meeting is a number not less than one half the total number of **directors** or such other number as the **board** determines and the quorum must be present at all times during the meeting.
- (2) If, at any time, the number of **directors** is less than the quorum:
  - (a) the **board** may meet only for the purpose of filling any casual vacancies or for calling a **general meeting of members**; and
  - (b) the **board** may conduct business by circulating resolution under Rule 13.5.

#### 13.3 Chair of Board

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

#### 13.4 Passing of Directors' Resolutions

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

### 13.5 Circulating Resolutions

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

### 13.6 Committees of Directors

- (1) The **board** may establish one or more committees consisting of such number of **directors** as the **board** thinks fit.
- (2) The **members** of a committee may appoint one of their number as chair of their meetings.
- (3) Subject to any restrictions that the **board** imposes, a committee may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (4) Questions arising at a meeting of a committee are to be determined by a majority of votes of those present and voting.
- (5) The chair does not have a casting vote in addition to his or her deliberative vote.

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## Division 14. — Conflicts of Interest

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**Corporations Act 2001 Commentary**

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

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

- (1) This Rule applies if:
  - (a) a **director** has an interest or duty in relation to a matter that is not a **material personal interest**; or
  - (b) if a **director** with a **material personal interest** in relation to the **mutual's** affairs:
    - (i) complies with the requirements of the *Corporations Act 2001* in relation to disclosure of the nature and extent of the interest and its relation to the **mutual's** affairs before acting in a matter that relates to the interest; and
    - (ii) may be present and vote on the matter under the *Corporations Act 2001*.
- (2) The **director** is not in breach of his or her duties to the **mutual** merely because he or she acts in matters that relate to the **director's** interest.
- (3) The **director** may vote on matters that relate to the **director's** interest.
- (4) In relation to any transactions that relate to the **director's** interest:
  - (a) the transactions may proceed;
  - (b) the **mutual** cannot avoid the transactions merely because of the **director's** interest; and
  - (c) the **director** may retain benefits under the transactions despite the **director's** interest.

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

- (1) This Rule applies if a **director** with a **material personal interest** in relation to a matter:
  - (a) complies with the requirements of the *Corporations Act 2001* in relation to disclosure of the nature and extent of the interest and its relation to the **mutual's** affairs; but
  - (b) must not be present and vote on the matter under the *Corporations Act 2001*.

**Corporations Act 2001 Commentary**

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

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

unless:

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

- (2) The **director** is not in breach of duty to the **mutual** merely because he or she does not act in relation to the matter.
- (3) The **board** may vote on matters that relate to the **director's** interest in the **director's** absence.
- (4) In relation to any transactions that relate to the **director's** interest:
  - (a) the transactions may proceed;
  - (b) the **mutual** cannot avoid the transactions merely because of the **director's** interest; and
  - (c) the **director** may retain benefits under the transactions despite the **director's** interest.

### 14.3 Execution of Instruments

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

- (a) whether or not the **director** has complied with the requirements of the Corporations Act 2001 in relation to disclosure of the nature and extent of the interest and its relation to the **mutuals** affairs; and
- (b) whether or not the **director** may be present and vote in relation to the execution of the instrument under the Corporations Act 2001.

## Division 15. — Remuneration, Indemnity and Insurance

### 15.1 Remuneration of Directors

- (1) In any financial year for the *mutual*, the *directors'* remuneration may not exceed the aggregate amount that the *general meeting* determines by resolution.
- (2) The *board* may determine the allocation of the aggregate amount of remuneration among the *directors*. If the *board* does not determine the allocation, the aggregate amount of remuneration must be allocated equally among the *directors*.
- (3) The *directors'* remuneration accrues daily from the day that the *general meeting* approves the remuneration to the day that the *general meeting* next determines the *directors'* remuneration.

### 15.2 Travelling Expenses and Insurance

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

- (a) the *director's* travelling and other expenses that they properly incur:
  - (i) in attending *board* meetings or any meetings of committees of *directors*; and
  - (ii) in attending any *members'* meetings; and
  - (iii) otherwise in connection with the *mutual's* business; and
- (b) subject to the Corporations Act 2001, insurance premiums for a contract that insures the *director* against liabilities that the *director* incurs as an officer of the *mutual*.

### 15.3 Indemnities for Officers and Former Officers

#### Corporations Act 2001 Commentary

Section 199A restricts the mutual 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 mutual or a related body corporate;
- liability for pecuniary penalty orders under s 1317G or compensation orders under s 1317H;
- liabilities arising out of conduct involving a lack of good faith;
- liability for costs or expenses that the officer incurs:
  - in defending proceedings where the person is found liable (on the grounds described above);
  - in defending criminal proceedings where the person is found guilty;
  - in defending proceedings brought by ASIC or a liquidator for a court order if the grounds for the court order are established;
  - in connection with proceedings for relief under the *Corporations Act 2001* where the court denies relief.

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

- (1) In this Rule **indemnified person** means an officer or agent, or former officer or agent, of the **mutual**.
- (2) To the extent that the *Corporations Act 2001* permits:
  - (a) the **mutual** must indemnify an **indemnified person** against any liability that the **indemnified person** incurs in conducting the **mutual's** business or exercising the **mutual's** powers as an officer or agent of the **mutual**; and
  - (b) the **mutual** may indemnify, agree to indemnify or enter into (and pay premiums on) a contract of insurance in relation to an **indemnified person** or any other person.
- (3) The indemnity in this Rule applies in relation to an **indemnified person** for all incidents occurring during the period that person is an officer or agent of the **mutual**, even though a claim is made against the **indemnified person** after they have ceased to be an officer or agent of the **mutual**.



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## Division 16. — Administration

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### 16.1 Seal

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

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

### 16.2 Secretary

#### Corporations Act 2001 Commentary

Under s 204A(2), a mutual 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.

### 16.3 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. Resignation of Secretary

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

## Appendix 1 — Objects

The *mutual* has the following objects:

- (a) to encourage savings amongst *members*;
- (b) to promote co-operative enterprise;
- (c) to provide programs and services to *members* to assist them to meet their financial, economic and social needs;
- (d) to promote, encourage and bring about human and social development among individual *members* and within the larger community within which *members* work and reside; and
- (e) to further the interests of *members* and the communities within which they work and live through co-operation with:
  - (i) other *mutuals* and co-operatives; and
  - (ii) associations of *mutuals* and co-operatives, locally and internationally.

# Appendix 2 — Shares

## Division 1 — Member Shares

### A2-1 Subscription Price

The *subscription price* for a *member share* is \$2.00

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

- (1) The following rights attach to each *member share*:
  - (a) the right to vote on the terms set out in clause A2-3;
  - (b) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A2-4; and
  - (c) the right to redeem the *member shares* on the terms set out in clause A2-5.
- (2) The restriction on transfer of *member shares* in clause A2-6 attaches to each *member share*.
- (3) The *mutual* 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 *mutual* has already issued.

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

### A2-3 Voting Rights

- (1) Holders of *member shares* may participate and vote:
  - (a) at a *members'* meeting;
  - (b) in a ballot to appoint *directors* by election.
- (2) At a *members'* meeting: whether on a poll or a show of hands:
  - (a) each holder of *member shares* has 1 vote regardless of the number of shares held;
  - (b) no vote; and
  - (c) despite (a) a representative of a body corporate *member* can vote both as a *member* and as a representative of the body corporate.

### A2-4 Distribution on Winding-Up

- (1) On a winding-up of the *mutual* the holder of a *member share* is entitled:

- (a) to payment of the **subscription price** for the **member share** when the **member** subscribed for the **member share**; and
  - (b) if any assets remain after the payments in paragraph (a) — to any surplus assets of the **mutual**.
- (2) Each **member share** carries a right to participate in surplus assets equally with every other **member share**.
- (3) The **mutual** may offset against the amount payable under this clause:
  - (a) any amount unpaid on the **member share**; and
  - (b) any other amount payable by the **member** to the **mutual**.

#### A2-5 Redemption of Member Shares

- (1) The **mutual** may redeem a **member share** only if the following conditions are satisfied:
  - (a) either:
    - (i) the **member** has given the **mutual** notice requesting termination of the **member's** membership of the **mutual** under Rule 4.2;
    - (ii) the **board** has resolved to terminate the **member's** membership of the **mutual** under Rule 4.3; or
    - (iii) the **board** has determined that the **member's deposit** accounts with the **mutual** are dormant under Rule 4.4;
  - (b) the **mutual** can redeem the **member share** out of:
    - (i) the profits of the **mutual**; or
    - (ii) the proceeds of a new issue of shares made for the purpose of the redemption.
- (2) On redemption, the **mutual** 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 2001* Part 2J.1.

#### A2-6 Transfer of Member Shares

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

## Appendix 3 — Standing Orders

### A3-1 Time Limits for Speakers

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

### A3-2 Amendment

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

### A3-3 Speakers

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

### A3-4 Motions to be in Writing

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

### A3-5 Closure of Debate

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

## Appendix 4 — Election of Directors

### A4-1 Election

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

Steps in Election Procedure	Time
Call for nominations (see clause <b>A4-2(1)</b> )	At least 84 days before AGM
Nominations close (see clause <b>A4-2(1)(b)</b> )	21 days after call for nominations
Returning officer must send ballot papers to <b>members</b> (see clause <b>A4-8</b> )	At least 21 days before AGM
Closure of the ballot (see clause <b>A4-9</b> )	At least 14 days after ballot papers sent
Announcement of <b>directors</b> (see clause <b>A4-10(5)</b> )	AGM

### A4-2 Nominations

- (1) At least 84 days before the AGM, the **board** must give **members** a notice:
  - (a) calling for **members** to nominate **candidates**; and
  - (b) specifying the date nominations close, which must be at least 21 days after the date of this notice.

The **board** may give this notice, in addition to any of the methods allowed in Rule 1.5, by advertisement:

- (c) at the **mutual's** offices; or
  - (d) in newspapers.
- (2) Two **members** together have the right to nominate a **candidate**. To nominate a **candidate**, the 2 **members** must give the **mutual** a notice of nomination before nominations close. The notice of nomination must:
    - (a) declare that the **candidate** is eligible to be a **director** under Rule 11.2(1);
    - (b) declare that the **candidate** is at least 18; and
    - (c) be signed by the nominating **members** and the **candidate**.
  - (3) The **candidate** must:

- (a) provide the **mutual** with all information and consents the **mutual** reasonably requests to determine if the **candidate** is disqualified by law from acting as a **director**;
- (i) If a **candidate** does not give to the **mutual** all of the information referred to in Rules 4 (a) i (1) and (2) at least 42 days before the AGM the **candidate** immediately withdraws their candidature for the election as a **director** unless the **mutual** agrees to extend the time for receiving the information
- (ii) Each **candidate** must, if required by the **mutual**, submit to interview by the **mutual** . The interview can be conducted in such manner as the **mutual** determines

A **director** who retires in accordance with Rule 11.6 may stand for re-election without nomination (and then will be a **candidate**) provided the **director** is eligible for election under Rule 11.2(1)

#### **A4-3 Proceeding with Election**

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

#### **A4-4 Appointment of Returning Officers**

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

#### **A4-5 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.

**A4-6 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 that each ballot paper satisfies any requirements in the postal voting procedures approved by the **board** in accordance with clause A4-7, including any requirement for an authenticating mark, before sending them to the **members**.

**A4-7 Postal Voting Procedures**

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

**A4-8 Postal Vote**

- (1) The returning officer must send to each **member** at least 21 days before the AGM:
  - (a) a ballot paper;
  - (b) an unsealed envelope called the "Outer Envelope" addressed to the returning officer, the reverse of which bears the following:

..... Name of Member
-------------------------



.....  
Signature of member or corporate member's representative

- (c) a smaller plain envelope called the "Inner Envelope" in which the **member** must enclose the completed ballot papers.
  - (d) a notice specifying the date the ballot closes as determined by the **board** in accordance with clause A4-2; and
  - (e) any other documents as required by the postal voting procedure.
- (2) The returning officer must send ballot papers by mail or prepaid post to each **member** at the address shown in the Register of Members for the purposes of giving notices.
- (3) A **member** exercising a right to vote must:
- (a) first complete the ballot papers in accordance with the postal voting procedures;
  - (b) secondly, place the ballot papers in the Inner Envelope and,
  - (c) thirdly, place the Inner Envelope in the Outer Envelope, complete the Outer Envelope and return it by post to the returning officer
- (4) A **member** must ensure that the returning officer receives the **member's** ballot papers by 5.00pm on the day fixed for the closing of the ballot.
- (5) Any ballot paper that the returning officer receives after the ballot closes is informal.
- (6) A **member** who does not receive the **member's** ballot papers or who spoils them must give the returning officer a declaration to that effect. The returning officer must then send duplicate ballot papers to that **member**.

#### **A4-9 Closure of the Ballot**

The ballot closes on the date determined by the **board**, which must be at least 14 days after the date ballot papers are sent to **members** in accordance with clause A4-8 and must be before the AGM

#### **A4-10 Procedures After Close of the Ballot**

- (1) As soon as practicable after the ballot closes, the returning officer must check, scrutinise and deal with the ballots in accordance with the postal voting procedures.
- (2) The returning officer must count the votes.
- (3) The returning officer must:
  - (a) 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
  - (b) deliver the declaration to the **secretary**.
- (4) A ballot paper is informal if:
  - (c) it is not authenticated as required by the postal voting procedures;
  - (d) it has no vote indicated on it; or
  - (e) it does not indicate the **member's** preference for a **candidate**.
- (5) The **secretary** must announce the results of the ballot at the next AGM.
- (6) If a **member** gives the **mutual** a written request, the **mutual** must make available to any **member** a copy of the returning officer's declaration of the ballot.
- (7) The returning officer must destroy the ballot papers three months after the declaration of the ballot.

#### **A4-11 Voting System**

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

#### **A4-12 Irregularity in the Conduct of an Election**

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

# Appendix 5 — Demutualisation Approval Procedure Rules

## Division 1 — Introduction

### A5-1 When the Demutualisation Approval Procedure Rules Apply

(1) This Appendix applies in the following situations:

(1)	<b>Modification or Repeal of Constitution</b>	<p>the <i>mutual</i> proposes to modify or repeal this Constitution where the effect of the modification or repeal is:</p> <p>(a) to vary any of:</p> <p>(i) the terms on which it issues shares; or</p> <p>(ii) the rights and restrictions attaching to its shares, so that they are inconsistent with those set out in the <i>Principles of Mutuality</i>;</p> <p>(b) to enable the <i>mutual</i> to issue shares where:</p> <p>(i) the terms on which it issues the shares; or</p> <p>(ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the <i>Principles of Mutuality</i> (whether or not any shares are so issued);</p> <p>(c) to vary any of the rights, obligations or restrictions attaching to membership so that they are inconsistent with those set out in the <i>Principles of Mutuality</i>;</p> <p>(d) to enable the <i>mutual</i> to admit <i>members</i> where the rights, obligations or restrictions attaching to membership are inconsistent with those set out in the <i>Principles of Mutuality</i> (whether or not any <i>members</i> are so admitted)</p> <p>(e) that the <i>mutual's</i> Constitution is otherwise inconsistent with the <i>Principles of Mutuality</i>.</p>
(2)	<b>Issue of Shares or Admission of Members</b>	<p>the <i>mutual</i> (whether acting through its <i>board</i>, its <i>members</i> or otherwise) proposes:</p> <p>(a) to issue shares where:</p> <p>(i) the terms on which it issues the shares; or</p> <p>(ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the <i>Principles of Mutuality</i>;</p> <p>(b) to issue <i>securities</i> which confer the right or obligation to subscribe for shares (whether on conversion of the <i>securities</i> or exercise of any option) where:</p> <p>(i) the terms on which it issues the shares; or</p> <p>(ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the <i>Principles of Mutuality</i>; or</p> <p>(c) to admit <i>members</i> with rights, obligations or restrictions attaching to membership inconsistent with those set out in the <i>Principles of Mutuality</i>.</p>
(3)	<b>Restructure</b>	<p>the <i>mutual</i> (whether acting through its <i>board</i>, its <i>members</i> or otherwise) proposes to conduct a reduction of capital, scheme of arrangement, deed of arrangement, transfer of business, or any other form of corporate restructure, where after completion of the restructure:</p> <p>(a) the <i>mutual</i> no longer complies with the <i>Principles of Mutuality</i>;</p> <p>(b) one person, other than a person entitled to use either the words '<i>mutual</i>' 'credit union', 'credit society' or 'credit co-operative' in their name, holds more than 90% of the shares in the <i>mutual</i> other than shares fitting the</p>

		<p>(c) description of 'additional shares' in the <b>Principles of Mutuality</b>; a group of <b>associates</b>, other than a group all of the <b>members</b> of which are entitled to use either the words '<b>mutual</b>', 'credit union', 'credit society' or 'credit co-operative' in their name, between them hold more than 90% of the shares in the <b>mutual</b> other than shares fitting the description of 'additional shares' in the <b>Principles of Mutuality</b>;</p> <p>(d) a person not entitled to use either the words '<b>mutual</b>', 'credit union', 'credit society' or 'credit co-operative' in their name has a legal or equitable interest in more than 20% of the <b>mutual's</b> gross assets, based on the first report that the <b>mutual</b> has given the Australian Securities and Investments Commission authority after the time of the transfer and if no report to that authority is required, then on the first report that the <b>mutual</b> has given the Australian Securities and Investments Commission after the time of transfer;</p> <p>(e) a group of <b>associates</b>, other than a group all of the <b>members</b> of which are entitled to use either the words '<b>mutual</b>', 'credit union', 'credit society' or 'credit co-operative' in their name, between them have a legal or equitable interest in more than 20% of the <b>mutual's</b> gross assets, based on the first report that the <b>mutual</b> has given the Australian Prudential Regulation authority after the time of the transfer and if no report to that authority is required, then on the first report that the <b>mutual</b> has given the Australian Securities and Investments Commission after the time of transfer; or</p> <p>(f) the successor to the <b>mutual's</b> business is an organisation that does not comply with the <b>Principles of Mutuality</b> specified in the Preamble and as a consequence of the restructure, the successor or a related entity to the successor receives a legal or equitable interest in, access to or the benefit of the whole or substantially the whole of the <b>members'</b> funds comprising the <b>mutual's</b> reserves or capital, based on the latest report that the <b>mutual</b> has given the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission prior to the time of the transfer.</p>
(4)	<b>Modification or Repeal of this Appendix</b>	<p>the <b>mutual</b> proposes to modify or repeal:</p> <p>(a) any of the Clauses in this Appendix;</p> <p>(b) any of the <b>Principles of Mutuality</b>; or</p> <p>(c) this Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the Clauses in this Appendix.</p>

(2) This Appendix does not apply to proposed modifications or repeals set out in item (4) of the Table in Subclause A5-1(1) that:

- (a) increase the range of **proposed transactions** (including any changes to this Appendix so that it applies to the increased range of **proposed transactions**);
- (b) impose, modify or repeal additional restrictions on the conduct of **proposed transactions** other than those set out in this Appendix;
- (c) impose, modify or repeal additional obligations that must be complied with in relation to **proposed transactions** other than those set out in this Appendix;
- (d) require disclosure of additional types of information other than those set out in Clause A5-5 to Clause A5-8; or
- (e) modify or repeal any requirement specified in this Constitution, apart from this Appendix or the **Principles of Mutuality**, in relation to a **proposed transaction**.

However, this Appendix does apply to:

- (f) a proposed modification or repeal that makes more than 1 change, and 1 or more of the changes is within the scope of item (4) of the Table in Subclause A5-1(1) but not excluded by this Clause; or
- (g) a proposed modification or repeal where some other Rule in this Constitution applies this Appendix to the modification or repeal.

- (3) This Appendix, other than Subclause A5-1(4), ceases to have effect immediately upon the following conditions both being met:
- (a) the Australian Securities and Investments Commission publishes a written notice that this Appendix ceases to have effect in relation to the **mutual**; and
  - (b) the Australian Securities and Investments Commission delivers a copy of the written notice to the **mutual**.

This Subclause is subject to any terms and conditions in the written notice.

- (4) If this Appendix ceases to have effect by reason of Subclause A5-1(3), it will again come into effect by **board** resolution upon the Australian Securities and Investments Commission doing any of the following:
- (a) withdrawing the written notice referred to in Subclause A5-1(3)(a);
  - (b) making an order or exemption that permits the **mutual** to adopt or recommence the operation of this Appendix or provisions to the effect of this Appendix; or
  - (c) otherwise permitting the **mutual** to recommence the operation of this Appendix.

## A5-2 Definitions

- (1) In this Appendix:

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

- (a) a spouse or de facto spouse of the primary person;
- (b) a parent, son or daughter of the primary person, spouse or de facto spouse;
- (c) a person who is a partner of the primary person;
- (d) a person who is a **director** of a body of which the primary person is a **director**;
- (e) a person who is a trustee of a trust in relation to which a person or entity of a kind referred to in paragraphs (a), (b), (c), (d), (f) or (g) benefits or is capable of benefiting;
- (f) any **entity**, other than the **mutual**, over which:
  - (i) a person of a kind referred to in paragraphs (a), (b), (c), (d) or (e) has **control**;
  - (ii) 2 or more persons of a kind referred to in paragraphs (a), (b), (c), (d) or (e) together have **control**;
- (g) any **entity**, other than the **mutual**, in which:
  - (i) a person of a kind referred to in paragraphs (a), (b), (c), (d), (e) or (f) is beneficially entitled to more than 20% of any class of **securities**;
  - (ii) 2 or more persons of a kind referred to in paragraphs (a), (b), (c), (d) or (f) together are beneficially entitled to more than 20% of any class of **securities**

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

- (a) whether direct or indirect;
- (b) whether or not enforceable; and
- (c) whether presently exercisable by means of, in breach of or by revocation of any combination of the following:
  - (i) trusts;
  - (ii) relevant agreements; and
  - (iii) practices,

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

**entity** means any:

- (a) incorporated or unincorporated body;
- (b) trust or partnership; or

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

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

**Principles of Mutuality** refers to Principles 4 to 25 and 27 of the **Principles of Mutuality** in the Preamble to this Constitution to the extent that any of those Principles are not inconsistent with ASIC Policy Statement 147: **Mutuality – Financial Institutions**

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

**securities** has the same meaning as in the *Corporations Act 2001* from time to time, but also includes options

- (2) Unless the context requires otherwise, terms that are not expressly defined in this Constitution, but that are defined in the *Corporations Act 2001* from time to time, have the same meaning as in the *Corporations Act 2001*.

### A5-3 Demutualisation Approval Procedure

- (1) If this Appendix applies, the **mutual** must comply with the procedure set out in Divisions 2 and 3 before:
- (a) convening a meeting of **members** to vote on the proposed modification or repeal of the Constitution set out in items (1) and (4) of the Table in Subclause A5-1(1);
  - (b) issuing the **securities** or admitting the **members** as set out in item (2) of the Table in Subclause A5-1(1); or
  - (c) either convening, or, where relevant, applying for a court or other order to convene, one or more meetings (whichever is the earlier) to vote on the proposed restructuring or to appoint an administrator as set out in item (3) of the Table in Subclause A5-1(1).
- (2) If a meeting of **members** approves a proposed modification of the Constitution set out in items (1) and (4) of the Table in Subclause A5-1(1):
- (a) the resolution is of no effect until the procedure set out in Divisions 2 and 3 is complied with; and
  - (b) the **mutual** must send each **member** a notice that the resolution has been passed in breach of this Appendix, together with the other documents required to be sent in Clause A5-5.
- (3) The procedures in this Appendix apply in addition to any requirements specified in the *Corporations Act 2001* or this Constitution in relation to the **proposed transaction**.
- (4) If the **proposed transaction** is proposed by:
- (a) the **board** — the **mutual** bears all costs associated with disclosure and conduct of the postal ballot;
  - (b) a **member** or a group of **members** — the **member** or group of **members** must pay all costs associated with disclosure, including printing and postage.
- The **board** is not required to assist any **member** or group of **members** proposing the **proposed transaction** unless they give the **mutual** an indemnity in a form satisfactory to the **board**.
- (5) If Subclause A5-3(4)(b) applies, **members** in **general meeting** may resolve that:

- (a) the **mutual** pay all costs associated with disclosure and conduct of the postal ballot;
- (b) the **mutual** reimburse the **members** proposing the **proposed transaction** for the costs associated with disclosure and conduct of the postal ballot they incur.

#### A5-4 Approval of Demutualisation

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

### Division 2 — Disclosure

#### A5-5 Disclosure Documents Sent With Ballot Paper

The **mutual** must send the following documents with the ballot paper that it must send each **member** under Clause A5-14:

- (a) a disclosure statement as described in Clause A5-6;
- (b) a **director's** statement from each **director** as described in Clause A5-7; and
- (c) an **independent expert's** report, commissioned by the **mutual**, as described in Clause A5-8.

#### A5-6 Disclosure Statement

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

- (iii) any retirement or superannuation benefits;
  - (iv) any compensation for loss of office;
  - (v) any concessional loans or other favourable or non-arms length transactions;
  - (g) implications of the **proposed transaction** in relation to:
    - (i) the continuation of the **mutual's** business;
    - (ii) any major changes to be made to the **mutual's** business; and
    - (iii) changes to benefits, products and services;
    - (iv) the future employment of the present employees of the **mutual**;
  - (h) whether the **mutual's** financial position has changed materially since the last balance sheet put before **members** at the last AGM;
  - (i) the availability and consequences of other alternatives; and
  - (j) any other information that the **members** and their professional advisers would reasonably require to make an informed assessment whether to approve the **proposed transaction**.
- (2) If the **proposed transaction** involves the allocation of **securities** (whether by the **mutual** or some other entity) the disclosure statement must adequately set out or explain the following (if relevant):
- (a) who will and will not be allocated **securities**;
  - (b) the rights and obligations attaching to the **securities** being allocated, including voting rights and rights to participate in the reserves and profits;
  - (c) the class and approximate number of **securities** being allocated;
  - (d) the allocation formula for the **securities** (including the implications of any undersubscription or oversubscription of **securities** offered), including, without limitation:
    - (i) the manner in which the allocation formula will apply as between **members**; and
    - (ii) the basis on which the allocation formula has been determined;
  - (e) rights to **securities** are allocated — whether the rights are renounceable or non-renounceable;
  - (f) the consideration payable for the **securities**, including, if the **securities** are partly paid, any call dates and amounts payable on calls;
  - (g) if the allocation of **securities** is underwritten:
    - (i) the name of the underwriters;
    - (ii) the amount of the underwriting fee or commission payable;
    - (iii) details of clauses in the underwriting agreement that may affect the underwriter's rights and obligations under the underwriting agreement;
  - (h) whether the **securities** will be listed on a securities exchange or exempt market; and
  - (i) the implications of allocation of **securities** for the structure of the **mutual**.
- (3) If the **proposed transaction** involves the modification or repeal, as set out in item (4) of the Table in Subclause A5–1, and the person proposing the modification or repeal is aware of any proposal to conduct any of the transactions set out in items (1) to (3) of the Table in Subclause A5–1(1), then the disclosure statement must disclose the matters set out in Subclause A5–6(1) and Subclause A5–6(2) in relation to:
- (a) the proposed modification or repeal; and
  - (b) each proposed transaction set out in items (1) to (3) of the Table in Subclause A5–1(1) of which the person is aware (to the extent that the person is aware of the matters relating to those transactions).

#### A5–7 Director's Statement

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

- (a) a statement:
  - (i) recommending that the **proposed transaction** be approved or not approved, and giving reasons for the recommendation; or
  - (ii) giving reasons why a recommendation is not made;



- (b) a statement whether the **director** proposes to approve or not approve the **proposed transaction**;
- (c) a statement confirming that neither the **director** nor any **associate** of the **director** will receive any pay, other valuable consideration or any other benefit in connection with the **proposed transaction** other than as disclosed in the disclosure statement; and
- (d) particulars of any agreement between the **director** and any other person in connection with, or conditional upon, the outcome of the **proposed transaction**.

#### A5-8 Independent Expert's Report

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

### Division 3 — Postal Ballot

#### A5-9 Appointment of Returning Officer

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

#### A5-10 Roll

As soon as practicable after the **board** appoints the returning officer for the postal ballot, the **secretary** must give the returning officer a roll showing, as at the time the roll is given:

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

#### A5-11 Notice of Proposed Postal Ballot

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

#### A5-12 Postponement of Closing Date

- (1) The returning officer may postpone (for not more than 7 days on any 1 occasion) the date for the close of the ballot by notice published in a newspaper circulating generally throughout all jurisdictions in which the **mutual** has **members**.
- (2) The returning officer may exercise the power conferred by this Clause more than once in respect of a ballot.

#### A5-13 Printing of Ballot Papers

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

#### A5-14 Postal Voting Procedures

- (1) Postal voting will be conducted according to procedure specified by the returning officer as approved by the **board**.
- (2) In approving postal voting procedures the **board** must have regard to these matters:
  - (a) the extent to which the procedures are efficient in enabling the returning officer to detect any fraud or impropriety in the voting process;
  - (b) the extent to which the procedures protect the anonymity of the voter;
  - (c) instructions for voting are legible and clearly expressed so as to accurately inform **members** how to complete and lodge a ballot paper;
  - (d) provisions for issuing a duplicate ballot paper when the original has been lost or spoiled;
  - (e) the extent to which procedures for receiving, checking, scrutinising and counting ballot papers are efficient; and
  - (f) the conduct and functions of scrutineers appointed by **candidates**.

- (3) The **board** must cause the postal voting procedures, as approved, to be displayed at the **mutual's** registered office and every branch office from the day before ballot papers are sent to **members** until the day after closure of the ballot.
- (4) A **member** is entitled to a copy of the postal voting procedures, on request

#### **A5-15 Distribution of Ballot Papers**

Not less than 28 days before the closing date for the ballot, the returning officer must cause to be sent to each **member** on the roll, at the address specified in respect of the **member** in the roll:

- (a) a ballot paper that bears the initials of the returning officer or a deputy returning officer;
- (b) any other documents as required by the postal voting procedure.

#### **A5-16 Replacement of Ballot Papers**

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

#### **A5-17 Voting**

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

#### **A5-18 Appointment of Scrutineers**

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

#### **A5-19 Scrutiny**

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

#### **A5-20 Counting of Votes**

- (1) The returning officer must then proceed to count the votes.

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- (2) The returning officer may make use of electronic data processing equipment in the counting of votes.
- (3) On completing the count, the returning officer must make out a return to the **mutual** certifying:
- (a) the **mutual** has only one class of **members**:
    - (i) the number and percentage of **members** who voted in the postal ballot; and
    - (ii) the number and percentage of votes in favour of the **proposed transaction**; and
  - (b) if the **mutual** has more than one class of **members**:
    - (i) the number and percentage of **members** in each class who voted in the postal ballot; and
    - (ii) the number and percentage of votes in each class in favour of the **proposed transaction**.