

## ***Corporations Act 2001***

### **Constitution**

of

### **Bananacoast Community Credit Union Ltd**

*ABN 50 087 649 750*

**A company limited by shares**

*This Constitution was adopted by a special resolution of the  
Company on 27 May 2002 and  
amended by special resolutions on 24 November 2003, 29 November 2004, 28 November  
2006, 24 November 2008, 23 November 2009 and 22 November 2010.*

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## **1 Issued share capital**

### **History – withdrawable shares**

- 1.1 Prior to 1 July 1999, the Company was a credit union regulated under the *Financial Institutions Code* with withdrawable shares on issue.

### **On 1 July 1999 – existing Members were issued Statutory Redeemable Preference Shares**

- 1.2 On 1 July 1999, the Company was taken to have become registered as a public company limited by shares under then *Corporations Law* (now the *Corporations Act 2001*) and:
- 1.2.1 each person who was a Member of the Company immediately before 1 July 1999, became a Member of the Company;
  - 1.2.2 all withdrawable shares of the Company on issue immediately before 1 July 1999 became redeemable preference shares of the Company (**'Statutory Redeemable Preference Shares'**); and
  - 1.2.3 any person who was a member of the Company immediately before 1 July 1999 and who did not hold any shares in the Company, was taken to have been issued with a Membership Share on 1 July 1999 (**'Membership Shares'**).

### **From 1 July 1999 – 27 November 2000 – new Members were issued Transitional Redeemable Preference Shares**

- 1.3 From 1 July 1999 until the Company changed its Constitution on 27 November 2000 to comply with the then *Corporations Law* (now the *Corporations Act 2001*), all new Members of the Company were issued shares in the Company pursuant to regulation 12.8.12 of the then *Corporations Regulations*. These shares are called **'Transitional Redeemable Preference Shares'**.

### **After 27 November 2000 - new Members were issued New Redeemable Preference Shares**

- 1.4 On 27 November 2000, the Company adopted a Constitution which complied with the then *Corporations Law* (now the *Corporations Act 2001*).
- 1.5 Accordingly, from 27 November 2000, all new Members of the Company were issued redeemable preference shares in the Company pursuant to the newly

adopted Constitution. Those shares together with any redeemable preference shares issued under **clause 2.8** of this Constitution are called '**New Redeemable Preference Shares**'.

### **Issued share capital immediately before adoption of this Constitution**

- 1.6 The issued shares of the Company as at the date of adoption of this Constitution comprises:
- 1.6.1 Statutory Redeemable Preference Shares, issued by force of law on 1 July 1999;
  - 1.6.2 Transitional Redeemable Preference Shares, issued by the Company between 1 July 1999 to 27 November 2000; and
  - 1.6.3 New Redeemable Preference Shares issued by the Company after 27 November 2000.
- 1.7 There are no Membership Shares on issue because immediately before 1 July 1999, all Members held withdrawable shares which had been issued under the previous *Financial Institutions Code*. There were no persons who were Members but who did not also hold withdrawable shares in the Company.

### **Rights and obligations attaching to Redeemable Preference Shares**

- 1.8 Statutory Redeemable Preference Shares, Transitional Redeemable Preference Shares and New Redeemable Preference Shares comprise a single class of shares being **Redeemable Preference Shares** but have been separately identified in this Constitution to reflect the statutory history and origin of the shares.
- 1.9 A Redeemable Preference Share confers on the holder those rights and obligations conferred or imposed by the *Corporations Act 2001* from time to time except that:
- 1.9.1 each share is redeemable on the same terms that a withdrawable share was withdrawable under the *Financial Institutions Code* and the Company's rules prior to 1 July 1999; and
  - 1.9.2 the holders of the share continue to have the same rights and obligations that they had or would have had by holding a withdrawable share.
- 1.10 For so long as it is permitted by law, no share certificates will be issued in respect of Redeemable Preference Shares.

## **Bonus shares**

- 1.11 In addition to the existing issued share capital of the Company, the Directors may resolve to issue Bonus Shares in accordance with this constitution and in particular **clauses 16.15 – 16.24**.

## **2 New share issues - membership requirements**

### **Eligibility**

- 2.1 Any person, including a Body Corporate or Unincorporated Association, is eligible for membership in accordance with this Constitution.

### **Number of shares which may be held**

- 2.2 Subject to **clause 2.3**, a person must not hold more than 1 Redeemable Preference Share at any time.
- 2.3 A person may hold an additional Redeemable Preference Share or Shares:
- 2.3.1 on trust for:
    - (a) any other person (including a minor); or
    - (b) an Unincorporated Association;
  - 2.3.2 in its capacity as an external administrator of a Body Corporate, including as a liquidator, receiver or administrator; or
  - 2.3.3 in any other capacity under which it is required by operation of law to hold the share for or on behalf of any other person,
- as well as holding such a share in its own right.

### **Accumulation of shares**

- 2.4 The Board must use reasonable endeavours within its powers and the law to ensure that the accumulation of securities issued by the Company is restricted so that no person or group of associated persons may exercise a significant degree of influence over the affairs of the Company.

## **Admission to membership**

- 2.5 The Directors have the power to admit a person to membership provided:
- 2.5.1 the person makes a written application in a form as required by the Directors. An application for membership may be made by completing an electronic application form, signing it (whether electronically or otherwise) and returning it to the Company.  
  
An electronic application form received by the Company will be taken to be signed electronically by a person if the application form has been verified in the manner approved by the Directors from time to time.
  - 2.5.2 the person submits evidence satisfactory to the Directors as to that person's eligibility under this Constitution;
  - 2.5.3 if the person is not a minor – the person subscribes for 1 Redeemable Preference Share at an issue price of \$10.00 per share and which are paid up to the amount required by the Directors;
  - 2.5.4 if the person is a minor – the person subscribes for 1 Redeemable Preference Share at an issue price of \$10.00 per share, partly paid to \$2.00; and
  - 2.5.5 pays any admission fee.

## **Admission to membership - delegation of power**

- 2.6 The Directors may, by resolution, delegate their power to admit Members to offices of the Company;
- 2.6.1 any delegation must not include authority to:
    - (a) reject any application for membership. Such applications must be referred to the Directors for consideration; or
    - (b) further delegate the power to admit Members.
  - 2.6.2 The delegation must be evidenced by a resolution of the Directors and a copy of that resolution must be given to each delegate.

## **Admission to membership - absolute discretion**

- 2.7 The Directors have an absolute discretion in exercising the power to admit members without an obligation to assign a reason for not admitting a person as a Member.

## **Issue of New Redeemable Preference Shares**

- 2.8 Upon the Directors admitting a person to membership, the Directors must:
- 2.8.1 issue and allot the Redeemable Preference Shares which shall carry the same rights and obligations as the Statutory Redeemable Preference Shares;
  - 2.8.2 enter particulars in the Register; and
  - 2.8.3 give the person written notification that their application for membership has been accepted.
- 2.9 Where a person admitted to membership is a minor, then on that person attaining the age of majority, that person must immediately pay any amount which is unpaid on the Member's Redeemable Preference Share issued to the person and the Company is deemed to have made a call for payment of the unpaid balance on that person attaining the age of majority. If the person does not immediately pay the unpaid balance, then the person requests, authorises and directs the Company to deduct that unpaid balance from the credit balance standing to any deposit account with the Company held by the person and to apply the amount towards payment of the unpaid balance.

## **Trusts not recognised**

- 2.10 Except as required by law or as otherwise provided by this Constitution, the Company will not recognise any person as holding a Share on trust and the Company will not recognise any equitable, contingent, future or partial interest or any other right in respect of a Share except the registered holder's absolute right of ownership.
- 2.11 Subject to this Constitution, **clause 2.10** applies even if the Company has notice of the relevant trust, interest or right.

## **Issue of other shares**

- 2.12 The Directors may issue shares:
- 2.12.1 with any preferential, deferred or special rights, privileges or conditions;
  - 2.12.2 with any restrictions in regard to dividend, voting, return of capital or otherwise;
  - 2.12.3 which are liable to be redeemed;

- 2.12.4 which are bonus shares for whose issue no consideration is payable to the Company; or
- 2.12.5 which have any combination of the characteristics described in **clauses 2.12.1 - 2.12.4** inclusive,  
  
including Redeemable Capital Preference Shares, which confer on the holder those rights and obligations set out in **Schedule 4** and Tier 1 Shares, which confer on the holder those rights and obligations set out in **Schedule 6**.

### **Class rights**

- 2.13 Subject to the *Corporations Act 2001* and the terms of issue of Shares in a particular class, the Company may vary or cancel rights attached to Shares in that class:
  - 2.13.1 by a special resolution passed at a meeting of the Members holding Shares in that class; or
  - 2.13.2 with the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of Shares in that class.
- 2.14 The issue of any new Shares ranking equally, or any conversion of existing securities to Shares ranking equally, with existing Shares is not a variation of the rights conferred on the holders of the existing Shares, unless otherwise provided by the terms of issue of the existing Shares or required by the *Corporations Act 2001*.
- 2.15 The issue of any new Shares ranking in priority, or any conversion of existing securities to Shares ranking in priority, to an existing class of preference Shares is a variation of the rights conferred on the holders of the existing preference Shares, unless the issue or conversion is expressly permitted by the terms of the existing preference Shares.

### **3 Joint holders**

- 3.1 If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants with benefits of survivorship and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.
- 3.2 Any one of the joint holders of a Share may give effectual receipts for any return of capital payable to the joint holders.

## **4 Membership Ceasing**

### **Cessation of membership**

- 4.1 A person ceases to be a Member when:
- 4.1.1 that person is expelled under **clauses 4.3 – 4.7**;
  - 4.1.2 that person's membership is cancelled under **clause 4.9**;
  - 4.1.3 that person redeems his or her Redeemable Preference Shares from the Company in accordance with **clause 5.2**;
  - 4.1.4 the capital paid in relation to that person's Redeemable Preference Shares has been appropriated by the Company under **clause 5.6**;
  - 4.1.5 that person becomes a bankrupt or, being a Body Corporate is wound up; or
  - 4.1.6 that person dies.

### **Cancellation of shares**

- 4.2 The Shares of a person who ceases to be a Member are cancelled immediately on that person ceasing to be a Member.

### **Expulsion**

- 4.3 The Directors may expel a Member on the grounds that the Member:
- 4.3.1 has failed to discharge his or her obligations to the Company;
  - 4.3.2 has been guilty of conduct detrimental to the Company; or
  - 4.3.3 has obtained membership by misrepresentation or mistake.
- 4.4 Before proceedings to consider a resolution to expel a Member, the Directors must give the Member 14 day's notice of the proposed resolution.
- 4.5 At the time the Directors consider the proposed resolution, the Member is entitled:
- 4.5.1 to be present with or without his or her legal representative; and
  - 4.5.2 to be heard, either in person or through his or her legal representative.

- 4.6 The Company must pay the expelled Member the amount paid up on that Member's Redeemable Preference Shares after satisfaction of all liabilities and obligations.
- 4.7 The expelled Member has the right of appeal (if any) in accordance with the dispute resolution procedure defined by the Board in accordance with **clauses 21.2 – 21.4**.

### **Dormancy**

- 4.8 The Company may classify a Member's deposit account as a dormant account if:
- 4.8.1 there have been no Transactions in the account for at least 1 year;
  - 4.8.2 the Company has given the Member a written notice stating that, unless the Member gives to the Company a written notice within 1 month stating that the Member wishes the account to remain open, the Company intends to close the account; and
  - 4.8.3 the Company does not receive a written notice from the Member under **clause 4.8.2**.
- 4.9 The Company may cancel that Member's shares if the Member's only account with the Company is a dormant account.
- 4.10 The Company may transfer the amount held in a dormant account to a suspense account.
- 4.11 The Company may charge a Member a fee for keeping an account for the Member in the suspense account but the fee must not be more than the lesser of:
- 4.11.1 the amount held for the person in the suspense account; or
  - 4.11.2 such amount determined by the Board from time to time.

This **clause** is subject to any law of unclaimed money.

### **Death of a Member**

- 4.12 The estate of a deceased Member:
- 4.12.1 remains liable to the Company for the amount of any unpaid financial accommodation provided by the Company to the deceased Member; and
  - 4.12.2 retains any entitlements due from the Company.

## **Bankruptcy or winding-up of a Member**

- 4.13 The rights and liabilities of Members made bankrupt or wound-up are as provided in the laws relating to bankruptcy and insolvency.

## **5 Shares**

### **Ranking of shares**

- 5.1 Subject to any terms of issue of a Share creating preferential or other rights, each Share ranks equally with all other Shares.

### **Conditions of redemption of Redeemable Preference Shares**

- 5.2 The Company must redeem a Member's Redeemable Preference Share if and only if the following conditions have been met:

- 5.2.1 the Member requests it;
- 5.2.2 the Member has repaid all outstanding financial accommodation and discharged all other obligations to the Company;
- 5.2.3 the repayment occurs out of the profits of the Company;
- 5.2.4 the redemption is permitted by APRA; and
- 5.2.5 the redemption will not result in any breach by the Company of any capital adequacy requirements of APRA.

### **Shares not transferable**

- 5.3 A Member may not transfer, sell or assign Redeemable Preference Shares but may require such Redeemable Preference Shares to be repaid in accordance with **clause 5.2**.

### **Charge on Redeemable Preference Shares or Deposit Account**

- 5.4 If the Company has informed a Member:
- 5.4.1 at the time when the Member took up his or her Redeemable Preference Shares or placed money on deposit under the former rules; and
  - 5.4.2 at least once a year after that time,

the Company may charge that Member's Redeemable Preference Shares or the credit balance of that Member's deposit account for any debt owed by the Member to the Company.

5.5 If the Company has complied with **clause 5.4**, the Company has in relation to any debt owed by that Member of the Company, a charge on:

5.5.1 the Member's Redeemable Preference Shares;

5.5.2 the credit balance of any deposit account of the Member; and

5.5.3 any interest, bonus or rebate payable to the Member.

5.6 The Company can exercise its charge by appropriating any capital paid in relation to the Member's Redeemable Preference Shares or any other money subject to the charge. If the Company appropriates the whole of the capital paid in relation to a Member's Redeemable Preference Shares or the credit balance of any deposit account of the Member, the Redeemable Preference Shares held by that person or monies in any such deposit account will be forfeited and any surplus funds must be refunded to the Member.

5.7 At the request of the Company, the Member must do all such acts, matters and things requested by the Company to perfect the Company's charge over the Member's Shares including signing separate documentation to evidence the charge and to allow it to be stamped and registered.

## **Calls**

5.8 Subject to the *Corporations Act 2001* and the terms on which partly paid Shares are issued, the Directors may make calls on the holders of the Shares for any money unpaid on them.

5.9 A call is made when the resolution of the Directors authorising it is passed.

5.10 The Directors may revoke or postpone a call before its due date for payment.

5.11 The Directors may require a call to be paid by instalments.

5.12 The Company must comply with the *Corporations Act 2001* in relation to the dispatch and content of notices to Members on whom a call is made.

5.13 A Member to whom notice of a call is given in accordance with this **clause 5** must pay to the Company the amount called in accordance with the notice.

5.14 Failure to send a notice of a call to any Member or the non-receipt of a notice by any Member does not invalidate the call.

- 5.15 Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

### **Instalments and amounts which become payable**

- 5.16 If:
- 5.16.1 the Directors require a call to be paid by instalments; or
  - 5.16.2 an amount becomes payable by the terms of issue of Shares on allotment, or at a time or in circumstances specified in the terms of issue,
- then:
- 5.16.3 every instalment or the amount payable under the terms of issue is payable as if it were a call made by the Directors and as if they had given notice of it; and
  - 5.16.4 the consequences of late payment or non-payment of an instalment or the amount payable under the terms of issue are the same as the consequences of late payment or non-payment of a call.

### **Interest and expenses**

- 5.17 If an amount called is not paid on or before the due date, the person liable to pay the amount must also pay:
- 5.17.1 interest on the amount from the due date to the time of actual payment at a rate determined by the Directors (not exceeding 20% per annum); and
  - 5.17.2 all expenses incurred by the Company as a consequence of the non-payment,
  - 5.17.3 but the Directors may waive payment of the interest and expenses in whole or in part.

### **Recovery of amounts due**

- 5.18 On the hearing of any action for the recovery of money due for any call, proof that:
- 5.18.1 the name of the person sued was, when the call was made, entered in the Register as a holder or the holder of Shares in respect of which the call was made;

5.18.2 the resolution making the call is duly recorded in the Directors' minute book; and

5.18.3 notice of the call was given to the person sued,

will be conclusive evidence of the debt.

## **Differentiation**

5.19 The Directors may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

## **Payment of calls in advance**

5.20 The Directors may accept from a Member the whole or part of the amount unpaid on a Share before the amount accepted has been called.

5.21 The Company may:

5.21.1 pay interest on any amount accepted, until the amount is payable under a call and at a rate (not exceeding 20% per annum) agreed between the Member and the Directors; and

5.21.2 subject to any contract between the Company and the Member, repay all or any of the amount accepted in excess of the amount called on the Share.

5.22 Payment of an amount in advance of a call does not entitle the paying Member to any:

5.22.1 dividend, benefit or advantage, other than the payment of interest under this **clause 5**; or

5.22.2 voting right,

to which the Member would not have been entitled if it had paid the amount when it became due.

## **Lien**

5.23 The Company has a first and paramount lien on every partly paid Share and dividends payable in respect of the Share for all money:

5.23.1 due and unpaid to the Company at a fixed time, in respect of the Share;

5.23.2 presently payable by a holder or the holder of the Share, or the holder's estate, to the Company in respect of the Share; or

- 5.23.3 which the Company is required by law to pay (and has paid) in respect of the Share.
- 5.24 The lien extends to reasonable interest and expenses incurred because the amount is not paid.
- 5.25 If any law for the time being of any country, state or place imposes or purports to impose an immediate or contingent liability on the Company to make any payment or authorises a taxing authority or Government official to require the Company to make payment in respect of Shares or dividends or other moneys accruing due to the Member who holds the Shares:
- 5.25.1 the Member or, if the Member is deceased, the Member's legal personal representative, indemnifies the Company in respect of any such payment or liability; and
- 5.25.2 subject to the *Corporations Act 2001*, the Company:
- (a) has a lien on the Shares and dividends and other moneys payable in respect of the Shares, whether the Shares are held by the Member solely or jointly with another person in respect of any payment made or liability incurred by the Company, together with reasonable expenses and interest on any payment made by the Company at a rate to be fixed by the Directors not exceeding 20% per annum from the date of payment by the Company to the date of repayment by the Member;
  - (b) may set off amounts so paid by the Company against amounts payable by the Company to the Member as dividends or otherwise; and
  - (c) may recover as a debt due from the Member or its legal personal representative the amount of all payments made by the Company together with reasonable expenses and interest at the rate and for the period referred to in **clause 5.25.2**.
- 5.26 The Company may do all things which the Directors think necessary or appropriate to enforce or protect the Company's lien.
- 5.27 Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.
- 5.28 The Directors may declare a Share to be wholly or partly exempt from a lien.

## **Lien sale**

- 5.29 If:
- 5.29.1 the Company has a lien on a Share for money presently payable;
  - 5.29.2 the Company has given the Member or the Member's executors or administrators (as the case may be) holding the Share written notice demanding payment of the money; and
  - 5.29.3 that Member fails to pay all of the money demanded,
- then 14 or more days after giving the notice, the Directors may sell the Share in any manner determined by them.

## **Forfeiture notice**

- 5.30 The Directors may at any time after a call or instalment becomes payable and remains unpaid by a Member, serve a notice on the Member requiring the Member to pay all or any of the following:
- 5.30.1 the unpaid amount;
  - 5.30.2 any interest that has accrued; and
  - 5.30.3 all expenses incurred by the Company as a consequence of the non-payment.
- 5.31 The notice under **clause 5.30** must:
- 5.31.1 specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and
  - 5.31.2 state that if a Member does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

## **Forfeiture**

- 5.32 If a Member does not comply with a notice served under **clauses 5.30** and **5.31**, then any or all of the Shares in respect of which the notice was given may be forfeited under a resolution of the Directors.
- 5.33 Unpaid dividends in respect of forfeited Shares will also be forfeited.

- 5.34 On forfeiture, Shares become the property of the Company and forfeited Shares must be:
- 5.34.1 sold, disposed of, or cancelled on terms determined by the Directors; or
  - 5.34.2 offered by public auction.
- 5.35 The Directors may, at any time before a forfeited Share is sold, disposed of or cancelled, annul the forfeiture of the Share on conditions determined by them.
- 5.36 Promptly after a Share has been forfeited:
- 5.36.1 notice of the forfeiture must be given to the Member in whose name the Share was registered immediately before its forfeiture; and
  - 5.36.2 the forfeiture and its date must be noted in the Register.
- 5.37 Omission or neglect to give notice of or to note the forfeiture as specified in **clause 5.36** will not invalidate a forfeiture.

### **Liability of former Member**

- 5.38 The interest of a person who held Shares which are forfeited is extinguished but the former Member remains liable to pay:
- 5.38.1 all money (including interest and expenses) that was payable by the Member to the Company at the date of forfeiture in respect of the forfeited Shares; and
  - 5.38.2 interest from the date of forfeiture until payment of the money referred to in **clause 5.38.1**, of this clause at a rate determined by the Directors (not exceeding 20% per annum).
- 5.39 A former Member's liability to the Company ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the former Member in respect of the Shares.

### **Disposal of Shares**

- 5.40 The Company may:
- 5.40.1 receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share, or a Share sold under a lien sale; and
  - 5.40.2 effect a transfer of the Share in favour of a person to whom the Share is sold or disposed of.
- 5.41 The purchaser of the Share:

- 5.41.1 is not bound to check the regularity of the sale or the application of the purchase price;
  - 5.41.2 obtains title to the Share despite any irregularity in the sale; and
  - 5.41.3 will not be subject to complaint or remedy by the former holder of the Share in respect of the purchase.
- 5.42 A statement signed by a Director and the Secretary that the Share has been regularly forfeited and sold or reissued or regularly sold without forfeiture to enforce a lien, is conclusive evidence of the matters stated as against all persons claiming to be entitled to the Share.
- 5.43 Subject to the terms on which a Share is on issue, the net proceeds of any sale made to enforce a lien or on forfeiture must be applied by the Company in the following order:
- 5.43.1 in payment of the costs of the sale;
  - 5.43.2 in payment of all amounts (if any) secured by the lien or all money (if any) that was payable in respect of the forfeited Share; and
  - 5.43.3 where the Share was forfeited under **clause 5.32**, in payment of any surplus to the former Member whose Share was sold.

## **6 General Meetings**

### **Convening general meeting**

- 6.1 The Board (but not a single Director or a minority of Directors) may, at any time, convene a general meeting (including convening a meeting at 2 or more venues using technology which gives Members as a whole a reasonable opportunity to participate).
- 6.2 A Member may request the Directors to convene a general meeting only in accordance with section 249D of the *Corporations Act 2001*.
- 6.3 A Member may not convene or join in convening a general meeting except in accordance with section 249E or 249F of the *Corporations Act 2001*.

### **Notice of general meeting**

- 6.4 Subject to the provisions of the *Corporations Act 2001* allowing general meetings to be held with shorter notice and exempting the Company from the requirement to give notices of meetings of the Company to a particular Member, at least 21 days written notice (exclusive of the day on which the notice is served

or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.

6.5 A notice convening a general meeting:

6.5.1 must specify the place, date and time of the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this;

6.5.2 must state the general nature of the business to be transacted at the meeting; and

6.5.3 may specify a place, facsimile number and electronic address for the purposes of proxy appointment.

6.6 A notice of annual general meeting must state the business to be transacted at the meeting such as:

6.6.1 the consideration of the annual financial report, Directors' report and Auditor's report;

6.6.2 the election of directors;

6.6.3 the appointment and fixing of the remuneration of the Directors.

6.7 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting convened as the result of a request under **clause 6.2**).

6.8 The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.

6.9 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## **7 Proceedings at General Meetings**

### **Member**

7.1 In this **clause**, '**Member**' includes a Member present in person or by proxy, attorney or Representative.

## **Business of Meetings**

- 7.2 Except with the approval of the Board, with the permission of the chairperson of the meeting or pursuant to the *Corporations Act 2001*, no person may move at any meeting of Members:
- 7.2.1 any resolution (except in the form set out in the notice of meeting); or
  - 7.2.2 any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Members to inspect or obtain.

## **Quorum**

- 7.3 No business may be transacted at a general meeting except the election of the chairperson of the meeting, unless a quorum of Members is present when the meeting proceeds to business.
- 7.4 A quorum of Members is constituted by 10 Members entitled to vote on a resolution at that meeting (including a quorum present by way of that provided for in clause 7.5 below) or if only one person holds all of the Shares eligible to be voted at that meeting, then that person present in person or by proxy or attorney at the meeting. Each individual present may only be counted once towards a quorum.
- 7.5 A quorum includes the chairperson holding proxies for 10 or more Members where the chairperson is the only person present at the meeting or such smaller amount (in proxy) where less than 10 Members are present in person at the meeting and that smaller amount in addition to the Members present in person at the meeting constitutes 10 Members.
- 7.6 If a quorum is not present within 30 minutes after the time appointed for a meeting:
- 7.6.1 if the meeting was convened on the requisition of Members, it is automatically dissolved; or
  - 7.6.2 in any other case:
    - (a) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
    - (b) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, it is automatically dissolved.

## **Chairperson**

7.7 The chairperson, or in the chairperson's absence the deputy chairperson of Directors' meetings will be the chairperson at every meeting of Members.

7.8 If:

7.8.1 there is no chairperson or deputy chairperson; or

7.8.2 neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the meeting; or

7.8.3 the chairperson and deputy chairperson are unwilling to act as chairperson of the meeting,

the Directors present may elect a chairperson.

7.9 If no election is made under **clause 7.8**, then:

7.9.1 the Members may elect one of the Directors present as chairperson; or

7.9.2 if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

7.10 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

7.11 A chairperson of a meeting of Members may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by the chairperson.

## **Adjournment**

7.12 The chairperson of a meeting at which a quorum is present:

7.12.1 in his or her discretion may adjourn a meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chairperson; and

7.12.2 must adjourn a meeting if the meeting directs him or her to do so.

7.13 An adjourned meeting may take place at a different venue to the initial meeting.

7.14 The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.

- 7.15 If a general meeting has been adjourned for more than 21 days, at least 3 days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Members.

### **Conduct of General Meetings**

- 7.16 Subject to the *Corporations Act 2001*, the chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- 7.17 The chairperson of a meeting of Members may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.
- 7.18 The chairperson of a meeting of Members may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- 7.19 The chairperson of a meeting of Members may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- 7.20 The chairperson of a meeting of Members may, subject to the *Corporations Act 2001*, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- 7.21 The chairperson of a meeting of Members may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the *Corporations Act 2001* without being referred to in the notice of meeting.
- 7.22 The chairperson of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
- 7.22.1 in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
  - 7.22.2 has any audio or visual recording or broadcasting device;
  - 7.22.3 has a placard or banner;
  - 7.22.4 has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
  - 7.22.5 behaves or threatens to behave in a dangerous, offensive or disruptive manner;

- 7.22.6 refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession; or
- 7.22.7 is not entitled pursuant to the *Corporations Act 2001* or this Constitution to attend the meeting.
- 7.23 If the chairperson of a meeting of Members considers that there are too many persons present at the meeting to fit into the venue where the meeting is to be held, the chairperson may nominate a separate meeting place using any technology that gives Members as a whole a reasonable opportunity to participate.
- 7.24 Nothing contained in **clauses 7.16 to 7.23** limits the powers conferred by law on the chairperson of a meeting of Members.

### **Decision of questions**

- 7.25 Subject to the *Corporations Act 2001* in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 7.26 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the *Corporations Act 2001*.
- 7.27 The chairperson has a casting vote in addition to the chairperson's votes as a Member, proxy, attorney or Representative.
- 7.28 Unless a poll is demanded:
- 7.28.1 a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
- 7.28.2 an entry to that effect in the minutes of meeting,
- is conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 7.29 The demand for a poll may be withdrawn.
- 7.30 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

### **Taking a poll**

- 7.31 A poll will be taken when and in the manner that the chairperson directs.
- 7.32 The result of the poll will be the resolution of the meeting at which the poll was demanded.

- 7.33 The chairperson may determine any dispute about the admission or rejection of a vote.
- 7.34 The chairperson's determination, if made in good faith, will be final and conclusive.
- 7.35 A poll demanded on the election of the chairperson or the adjournment of a meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Members must be taken in the manner and at the time and place the chairperson of the meeting directs.
- 7.36 After a poll has been demanded at a meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

### **Demutualisation Resolution**

- 7.37 **Schedule 5** applies to any Demutualisation Resolution to be submitted to Members.

## **8 Votes of Members**

### **Entitlement to vote**

- 8.1 A Member's entitlement to vote may not be exercised:
- 8.1.1 in relation to an annual general meeting, if, on the day before nominations for election of Directors close:
- (a) in the case of a Member who holds Statutory Redeemable Preference Shares or Transitional Redeemable Preference Shares – that Member did not hold the required number of Redeemable Preference Shares required to be held under the rules of the Company immediately before 1 July 1999 or
  - (b) in the case of Shares issued under the Constitution after 27 November 2000 – that Member did not hold the number of Redeemable Preference Shares required to be held under the Constitution; or
- 8.1.2 in relation to a special general meeting, if at least seven days before notice of the special general meeting is given:
- (a) in the case of a Member who holds Statutory Redeemable Preference Shares or Transitional Redeemable Preference Shares – that Member did not hold the required number of Redeemable Preference Shares required to be held under the rules of the Company immediately before 1 July 1999 or

(b) in the case of Shares issued under the Constitution after 27 November 2000 – that Member did not hold the number of Redeemable Preference Shares required to be held under the Constitution.

8.2 A Member is not entitled to vote on a resolution at a meeting of Members where that vote is prohibited by the *Corporations Act 2001* or an order of a court of competent jurisdiction.

## Voting Rights

8.3 At general meetings:

8.3.1 each Member may vote by proxy;

8.3.2 subject to the provisions in this Constitution regarding voting by corporate representatives or proxy, on a show of hands or on a poll any Member present either personally or by proxy has one vote, regardless of the number of Shares held.

8.4 A Member who is a minor may not vote or hold office in the Company.

## Joint holders

8.5 If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.

8.6 For the purposes of **clause 8.4**, several executors or administrators of a deceased Member in whose sole name any Shares are registered will be taken to be joint holders of those Shares.

## Objections

8.7 An objection to the qualification of a voter may be raised only at the meeting or adjourned meeting at which the voter tendered its vote.

8.8 An objection must be referred to the chairperson of the meeting, whose decision made in good faith is final.

8.9 A vote which the chairperson does not disallow pursuant to an objection is valid for all purposes.

## Votes by operation of law

- 8.10 A person who has satisfied the Directors not less than 24 hours before a general meeting that the person is entitled to a Share by operation of law may exercise all rights attached to the Share in relation to a general meeting, as if the person were the registered holder of the Share.

## Votes by proxy

- 8.11 If a Member appoints one proxy, that proxy may vote on a show of hands. The chairperson or a person who is the chairperson for a particular meeting can act as proxy for any number of Members. However, any other person may not act as proxy for more than ten Members.
- 8.12 A proxy may demand or join in demanding a poll.
- 8.13 The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members in respect of the Shares to which the authority relates is suspended while the Member is present in person at that meeting.

## Instrument appointing proxy

- 8.14 A Member who is entitled to vote at a meeting may appoint one proxy.
- 8.15 A Member who is a natural person may appoint a proxy by:
- 8.15.1 a written appointment signed by the appointor or the appointor's attorney duly authorised in writing; or
  - 8.15.2 if permitted by the notice of meeting, an electronic appointment submitted by the Member in accordance with **clause 8.17**.
- 8.16 A Member which is a corporation may appoint a proxy by:
- 8.16.1 a written appointment executed in accordance with section 127 of the *Corporations Act 2001* or signed by the appointor's attorney duly authorised in writing; or
  - 8.16.2 if permitted by the notice of meeting, an electronic appointment submitted by the Member in accordance with **clause 8.17**.
- 8.17 For the purposes of **clauses 8.15.2** and **8.16.2**, an appointment received in electronic form, including by email or internet based voting, must be authenticated in accordance with the *Corporations Act 2001* and *Corporations Regulations* and in the manner approved by the Directors from time to time.
- 8.18 A proxy need not be a Member.

- 8.19 An appointment of a proxy must be in a form approved by the Directors.
- 8.20 **Schedule 1** sets out a form which will be taken to be approved by the Directors unless they resolve to use a different form and which, if permitted by the notice of meeting, may be submitted to the Company by electronic means as an electronic appointment in accordance with **clause 8.17**.
- 8.21 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll or show of hands in accordance with any instructions on the appointment.
- 8.22 If the name of the proxy or the name of the office of the proxy appointment of a Member is not filled in, the proxy of that Member is:
- 8.22.1 the person specified by the Company in the form of proxy in the case that the Member does not choose; or
- 8.22.2 if no person is so specified, the chairperson of that meeting.
- 8.23 A proxy's appointment is valid at an adjourned meeting.

### **Lodgement of proxy**

- 8.24 The written appointment of a proxy or attorney must be received by the Company, not less than 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- 8.24.1 the time for holding the meeting or adjourned meeting at which the appointee proposes to vote; or
- 8.24.2 the taking of a poll on which the appointee proposes to vote.
- 8.25 If the appointment purports to be executed under a power of attorney or other authority, then the original document, or an office copy or a notarially certified copy of it, must be forwarded with the appointment.
- 8.26 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- 8.26.1 the Office;
- 8.26.2 a facsimile number at the Office; or
- 8.26.3 a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## **Validity**

8.27 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

8.27.1 died;

8.27.2 became of unsound mind;

8.27.3 revoked the proxy or power; or

8.27.4 transferred the Shares in respect of which the vote was cast,

unless any written notification of the death, unsoundness of mind, revocation or transfer was received by the Company before the relevant meeting or adjourned meeting.

8.28 The chairperson of a meeting of Members may require a person acting as a proxy, attorney or Representative at that meeting, to establish to the chairperson's satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the chairperson may exclude the person from attending or voting at the meeting.

## **Representatives of corporations**

8.29 Any Member which is a corporation may appoint an individual as its representative as provided by the *Corporations Act 2001*.

8.30 The chairperson of a general meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chairperson of the general meeting his or her status as a Representative within a period prescribed by the chairperson of the general meeting.

8.31 The appointment of a Representative may set out restrictions on the Representative's powers.

## **9 Appointment and Removal of Directors**

### **Number of Directors**

9.1 Subject to the *Corporations Act 2001*, the Company may by resolution passed at a general meeting increase or reduce the minimum or maximum number of Directors.

- 9.2 Until the Company resolves otherwise there will be:
- 9.2.1 a minimum of 5 Directors; and
  - 9.2.2 a maximum of 9 Directors.
- 9.2A The Directors must take all reasonable steps to ensure that the composition of the Board of Directors complies with any relevant Standard.

## Qualification

- 9.3 A person is not eligible to be a Director if the person:
- 9.3.1 is not a Member of the Company; or
  - 9.3.2 is not the representative of a Body Corporate or Unincorporated Association member of the Company; or
  - 9.3.3 is a minor; or
  - 9.3.4 is an employee of the Company (except where **clause 12.24** applies); or
  - 9.3.5 is bankrupt, has applied to take the benefit of any law for the relief of bankrupt of insolvent debtors, compounded with his or her creditors, or made an assignment of his or her remuneration for their benefit; or
  - 9.3.6 is prohibited or disqualified from being a director by the *Corporations Act 2001* or another relevant law for a reason other than the person's age; or
  - 9.3.7 has been convicted in the last ten years of:
    - (a) an indictable offence in relation to the promotion, formation or management of a Body Corporate; or
    - (b) an offence involving fraud or dishonesty; or
    - (c) is a Member whose voting rights have been suspended under **clause 8.1**; or
  - 9.3.8 does not, in the determination of the Board Governance Committee, have the appropriate fitness and propriety to be and act as a director, by reference to the board's Fit and Proper Policy; or
  - 9.3.9 has been a Senior Manager of the Company (as defined in the Banking Act 1959 (Cth)) within 3 years prior to their nomination as a candidate for election or their appointment as a director, whichever is the earlier.

## **Election of Directors and the appointment, removal and suspension of Directors**

- 9.4 The rules in **Schedule 2** apply to the election of Directors.
- 9.5 The Company may by resolution passed in general meeting:
- 9.5.1 remove any Director; and
  - 9.5.2 appoint another person in the Director's place.
- 9.5A Each Director, or candidate for election or appointment as a Director, must provide to the Company on request such information as the Company requires (including consents for the Company to access sensitive information under the *Privacy Act 1988*) to comply with:
- 9.5.3 any policy of the Board created to comply with a Standard regarding the fitness or propriety of persons to hold office in the Company;
  - 9.5.4 any relevant Standard; or
  - 9.5.5 any other relevant law or financial or other reporting requirement.
- 9.5B Each Director must provide updated information to the Company if the information previously provided in accordance with clause 9.5A changes or becomes out of date where notification of such change is necessary for the Company to maintain compliance with the requirements set out in clause 9.5A.
- 9.5C If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company:
- 9.5C.1 a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director;
  - 9.5C.2 the suspended Director may not take any part in the business or affairs of the Company until the suspension has been terminated;
  - 9.5C.3 within 14 days of the suspension, unless a provision of **clause 9.15** applies, the Directors must call a general meeting, at which the Members may consider a motion to remove the Director from office in accordance with **clause 9.5**;
  - 9.5C.4 if a motion to remove the Director from office is not carried at the general meeting called to consider the matter, the suspension of the Director is terminated and the Director is reinstated in his or her office.

## **Additional and casual Directors**

- 9.6 Subject to **clause 9.3**, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors but not if that appointment would result in the maximum number of Directors being exceeded.
- 9.7 If a person is appointed by the other Directors as a Director, that person holds office until the conclusion of the Company's next annual general meeting. Subject to the *Corporations Act 2001* and this Constitution that person is eligible to be elected at that annual general meeting as a Director in accordance with this Constitution. If the person is not so elected as a Director, then the person ceases to be a Director of the Company at the end of the annual general meeting.

## **Retirement by rotation and nominations of directors**

- 9.8 At each annual general meeting one-third of the Directors or, if their number is not a multiple of three, then the number nearest to but not more than one-third of the Directors must retire from office.
- 9.9 The Directors to retire by rotation at an annual general meeting are those Directors who have been longest in office since their last election or appointment.
- 9.10 Directors elected or appointed on the same day may agree among themselves or determine by lot which of them must retire.
- 9.11 A Director must retire from office at the conclusion of the third annual general meeting after the Director was last elected, even if his or her retirement results in more than one-third of all Directors retiring from office.
- 9.12 A retiring Director will be eligible for re-election.
- 9.13 A person other than a Director retiring by rotation or seeking re-election is not eligible for election as a Director at a general meeting unless the person complies with the rules relating to the nomination of candidates set out in **Schedule 2**.

## **Period of office**

- 9.14 Subject to this Constitution, a Director is elected for a term of three years, commencing at the end of the annual general meeting at which his or her election is announced and ending at the end of the third annual general meeting happening after his or her election. Subject to this **clause**, a Director will continue to hold office until he or she dies or until his or her office is vacated pursuant to **clause 9.15**.

## Vacation of office

- 9.15 The office of a Director immediately becomes vacant if the Director:
- 9.15.1 dies;
  - 9.15.2 ceases to be eligible to be a Director under **clause 9.3**;
  - 9.15.3 as a representative of a Body Corporate or Unincorporated Association member of the Company whose eligibility for election to the office was based on being that representative, ceases to be so eligible;
  - 9.15.4 having been elected as an Employee Director ceases to be an employee of the Company;
  - 9.15.5 is absent from three consecutive ordinary meetings of the Board of Directors without its leave;
  - 9.15.6 resigns by written notice given to the Board of Directors;
  - 9.15.7 is three months in arrears in relation to money due to the Company and has failed to make arrangement for payment satisfactory to the Company;
  - 9.15.8 completes a term of office;
  - 9.15.9 is prohibited by the *Corporations Act 2001* or otherwise is disqualified by law from holding office or continuing as a Director;
  - 9.15.10 cannot manage the Company because of his or her mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it;
  - 9.15.11 is removed by a resolution of the Company;
  - 9.15.12 does not, in the determination of the Board Governance Committee, have the appropriate fitness and propriety to be and act as a director, by reference to the board's Fit and Proper Policy; or
  - 9.15.13 is the subject of a direction under section 23 of the *Banking Act 1959*.

## 10 Remuneration of Directors

### Remuneration of Directors

- 10.1 The Directors (other than any Employee Director) may be paid as remuneration for their services the aggregate maximum sum from time to time determined by the Company in general meeting.

- 10.2 Unless otherwise resolved by the Company in general meeting, the remuneration will be divided between the Directors in such proportion and manner as the Directors agree and, in default of agreement, equally and the Directors may determine how and when it is to be paid. The remuneration accrues from day to day.
- 10.3 Where, in the opinion of Directors it is necessary or desirable for a Director to:
- 10.3.1 perform extra or special services, including being a member of a Directors committee; or
  - 10.3.2 participate in an educational activity for directors, be it a formal course of training, seminar, conference, convention or the like,
- the Company may pay the Director, in addition to the Director's remuneration under clause 10.1, a fixed sum as determined by the Directors which will accrue from day to day.
- 10.4 In addition to remuneration, the Directors may be paid all reasonable expenses incurred by them in connection with the business of the Company.
- 10.5 The Company may also pay a premium in respect of a contract insuring a person who is or has been a Director against a liability incurred by the person as a Director, except in circumstances prohibited by the *Corporations Act 2001*.

## **Remuneration of Employee Director**

- 10.6 The remuneration of an Employee Director may from time to time be fixed by the Directors.
- 10.7 The Company may pay a premium in respect of a contract insuring a person who is or has been an Employee Director against a liability incurred by the person as a Director, except in circumstances prohibited by the *Corporations Act 2001*.

## **11 Powers and Duties of Directors**

### **Directors to manage Company**

- 11.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the *Corporations Act 2001* do not require to be exercised by the Company in general meeting.
- 11.2 Without limiting the generality of **clause 11.1**, subject to any applicable prudential standards (including standards issued by APRA) the Directors may exercise all the powers of the Company to:

- 11.2.1 borrow money;
  - 11.2.2 charge any property or business of the Company or all or any of its uncalled capital;
  - 11.2.3 issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
  - 11.2.4 guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.
- 11.3 Every Director and other agent or officer of the Company must:
- 11.3.1 keep secret all aspects of all transactions of the Company, except:
    - (a) to the extent necessary to enable the person to perform his or her duties to the Company;
    - (b) as required by law; and
    - (c) when requested to disclose information by the Directors, to the auditors of the Company or a general meeting of the Company; and
    - (d) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

## 12 Proceedings of Directors

### Directors' meetings

- 12.1 A Director may at any time, and the Secretary must on the request of a Director, convene a Directors' meeting.
- 12.2 It is not necessary to give notice of a meeting of the Directors to a Director whom the Secretary, when giving notice to the other Directors, reasonably believes to be outside Australia.
- 12.3 Subject to the *Corporations Act 2001*, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 12.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 12.5 A Director who participates in a meeting held in accordance with **clause 12.3** is taken to be present and entitled to vote at the meeting.

- 12.6 A Director can only withdraw his or her consent to the means of communication between Directors proposed for a Director's Meeting if the Director does so at least 48 hours before the meeting,
- 12.7 **Clause 12.3** applies to meetings of Directors' committees as if all committee members were Directors.
- 12.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 12.9 At a meeting of Directors, a quorum is not less than half the total number of directors or such other number as the Board determines. If within 30 minutes of the time appointed for a meeting of the Board, a quorum is not present the meeting will stand adjourned to the same day in the next week at the same time and place.
- 12.10 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.
- 12.11 A Director who attends a Board meeting waives any objection that they and:
- 12.11.1 any Alternate Director appointed by that Director; or
- 12.11.2 if the person is an Alternate Director, the Director who appointed that person as Alternate Director,
- may have to a failure to give notice of the meeting.
- 12.12 Anything done (including the passing of a resolution) at a Board meeting is not invalid because a Director does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a Director.

### **Decision of questions**

- 12.13 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to **clause 12**, each Director has one vote.
- 12.14 The chairperson of a meeting has a casting vote in addition to his or her deliberative vote if there is an equality of votes.
- 12.15 An Alternate Director has one vote for each Director for whom he or she is an alternate.
- 12.16 If the Alternate Director is a Director, he or she also has a vote as a Director.

## Directors' interests

- 12.17 A Director and any firm, body or entity in which a Director has a direct or indirect interest may in any capacity:
- 12.17.1 enter into any contract or arrangement with the Company;
  - 12.17.2 be appointed to and hold any office or place of profit under the Company, other than the office of auditor; and
  - 12.17.3 act in a professional capacity, other than as auditor, for the Company, and may receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.
- 12.18 Each Director must disclose his or her interests to the Company in accordance with the *Corporations Act 2001* and the Secretary must record all declarations in the minutes of the relevant Directors' meeting.
- 12.19 A Director's failure to make disclosure under this clause does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- 12.20 A Director must not vote in respect of a contract or arrangement or proposed contract or arrangement in which the Director has a direct or indirect material interest.
- 12.21 If the Director does purport to vote, the Director's vote will not be counted.
- 12.22 The requirement in **clause 12.20** is in addition to any requirements of the *Corporations Act 2001* in relation to voting by an interested Director of a public company.
- 12.23 A Director may join in executing in accordance with section 127 of the *Corporations Act 2001* any document relating to a contract or arrangement or proposed contract or arrangement in which the Director has an interest.

## Employee Directors

- 12.24 The Members may elect one employee of the Company, otherwise qualified under **clause 9.3** to be a Director the Company. Only the Directors may nominate an employee for election.

## Alternate Directors

- 12.25 A Director may appoint any person as his or her alternate for a period determined by that Director.

- 12.26 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 12.27 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 12.28 The provisions of this Constitution which apply to Directors also apply to Alternate Directors, except that Alternate Directors are not entitled to any remuneration from the Company.
- 12.29 The appointment of an Alternate Director may be revoked at any time by the appointor.
- 12.30 An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.
- 12.31 Any appointment or revocation under this **clause** must be effected by written notice delivered to the Secretary.
- 12.32 An Alternate Director is an officer of the Company and not an agent of his or her appointing Director.

### **Remaining Directors**

- 12.33 The Directors may act even if there are vacancies on the board.
- 12.34 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- 12.34.1 appoint a Director; or
- 12.34.2 convene a general meeting.

### **Chairperson**

- 12.35 The Directors may elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office.
- 12.36 If no chairperson is elected or if the chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of that meeting only.
- 12.37 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

## **Directors' committees**

- 12.38 The Directors may:
- 12.38.1 delegate any of their powers to a committee or committees, a Director, an employee of the Company or any other person (**Delegate**); and
  - 12.38.2 any time revoke any delegation of power to a Delegate.
- 12.39 A Delegate must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 12.40 A Delegate may be authorised to sub-delegate all or any of the powers for the time being vested in it.
- 12.41 Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

## **Written resolutions**

- 12.42 The Directors may pass a resolution without a Directors' meeting being held if all 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. The resolution is passed when the last Director signs.
- 12.43 For the purposes of **clause 12.42**, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 12.44 Any document referred to in this **clause** may be in the form of a facsimile transmission or electronic notification.
- 12.45 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

## **Validity of acts of Directors**

- 12.46 If it is discovered that:
- 12.46.1 there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
  - 12.46.2 a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## **Minutes and registers**

- 12.47 The Directors must cause minutes to be made of:
- 12.47.1 the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
  - 12.47.2 all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
  - 12.47.3 all resolutions passed by the Directors in accordance with **clause 12.42**;
  - 12.47.4 all orders made by the Directors and Directors' committees; and
  - 12.47.5 all disclosures of interests made pursuant to **clause 12.18**.
- 12.48 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body, and if so signed will be conclusive evidence of the matters stated in such minutes.

## **Appointment of attorneys and agents**

- 12.49 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the *Corporations Act 2001* appoint any person to be the agent or attorney of the Company:
- 12.49.1 for the purposes;
  - 12.49.2 with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - 12.49.3 for the period; and
  - 12.49.4 subject to the conditions,  
  
determined by the Directors.
- 12.50 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- 12.50.1 any company;
  - 12.50.2 the members, directors, nominees or managers of any company or firm;  
or

- 12.50.3 any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 12.51 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 12.52 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 12.53 An attorney or agent appointed under **clause 12.52** may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## **13 Secretary**

### **Secretary**

- 13.1 There must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 13.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 13.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## **14 Seals**

### **Common Seal**

- 14.1 If the Company has a Seal:
  - 14.1.1 the Directors must provide for the safe custody of the Seal;
  - 14.1.2 the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal; and
  - 14.1.3 every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

## **Duplicate Seal**

- 14.2 If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:
- 14.2.1 must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal';
  - 14.2.2 must only be used with the authority of the Directors or a Directors' Committee.

## **15 Inspection of Records**

### **Times for inspection**

- 15.1 Except as otherwise required by the *Corporations Act 2001*, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 15.2 A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

## **16 Dividends and Reserves**

### **Calculation and Distribution of reserves**

- 16.1 The Company's profit or loss in any one financial year arising from its operations must be determined and dealt with in accordance with any applicable prudential standards. The Directors must also resolve in each financial year the amount of profit which must be carried to a reserve.
- 16.2 The Directors may set aside out of profits an amount by way of reserves as they think appropriate to pay a dividend if and only if the following conditions are met:
- 16.2.1 the declaration and payment of the dividend is permitted by APRA;
  - 16.2.2 the declaration and payment of the dividend will not result in any breach by the Company of any capital adequacy requirements of APRA; and
  - 16.2.3 dividends are paid out of profits of the Company.

- 16.3 The Directors may apply the reserves for any purpose for which profits may be properly applied. Pending any such application, the Directors may invest or use the reserves in the business of the Company or in other investments as they think fit.

### **Fixing of time to pay a dividend**

- 16.4 Subject to this Constitution the Directors may by resolution authorise the Company to pay:
- 16.4.1 an interim dividend which is payable on the date fixed by the Directors; and
- 16.4.2 a final dividend which is payable on the date fixed by the Directors.
- 16.5 Subject to the *Corporations Act 2001*, the Directors may amend or revoke a resolution to pay a dividend at any time before the date fixed for payment.
- 16.6 The Company in general meeting may not resolve to pay a dividend in an amount exceeding the amount authorised by the Directors under this **clause**.

### **Interest**

- 16.7 The Company must not pay interest on a dividend.

### **Dividend entitlement**

- 16.8 Notwithstanding anything else contained in this Constitution:
- 16.8.1 a dividend must not be paid on Redeemable Preference Shares; and
- 16.8.2 a dividend must not be paid on Bonus Shares.
- 16.9 Subject to the rights of persons (if any) entitled to Shares with special rights as to dividend, any dividend must be paid according to the amounts paid or credited as paid on the Shares in respect of which the dividend is paid.
- 16.10 All dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividend is paid, but, if a Share is issued on terms providing that it will rank for dividend as from a particular date, that Share ranks for dividend accordingly.

## **Cumulative dividend limit**

16.11 The maximum cumulative amount that may be paid for all dividends declared by the Company for Redeemable Capital Preference Shares and Tier 1 Shares in a 1 year period, must:

16.11.1 be limited by reference to an independent and objectively verifiable external benchmark or mechanism such as the bank bill swap rate or a stock exchange index and be payable only out of that year's profits; or

16.11.2 not be more than a fixed percentage of the company's annual profit after tax in any year and be payable only out of that year's profits. The fixed percentage cannot be more than 50%.

Members must by resolution approve the way the Company calculates dividends on Redeemable Capital Preference Shares or Tier 1 Shares before the Company issues any such shares.

## **Deductions from dividends**

16.12 The Directors may deduct from a dividend payable to a Member all sums presently payable by the Member to the Company on account of calls or otherwise in relation to Shares in the Company.

## **Capitalisation of profits**

16.13 The Directors may resolve:

16.13.1 to capitalise profits and apply the sum capitalised; and

16.13.2 that the sum be applied, in any of the ways mentioned in **clause 16.14**, for the benefit of Members, or persons who have applied for Shares, in the proportions determined by the Directors.

16.14 The ways in which a sum may be applied for the benefit of Members under **clause 16.13** are:

16.14.1 in paying up any amounts unpaid on Shares held or to be held by Members;

16.14.2 in paying up in full Shares or debentures to be issued to Members as fully paid; or

16.14.3 partly as mentioned in **clause 16.14.1** and partly as mentioned in **clause 16.14.2**.

- 16.15 The Directors must do all things necessary to give effect to a resolution under **clause 16.13** and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:
- 16.15.1 issue fractional certificates or make cash payments in cases where Shares or debentures become issuable in fractions; and
  - 16.15.2 authorise any person to make, on behalf of all the Members entitled to a benefit on the capitalisation, an agreement with the Company providing for:
    - (a) the issue to them, credited as fully paid up, of any such further Shares or debentures; or
    - (b) the payment by the Company on their behalf of the amount or any part of the amount remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised,and any agreement made under the authority of **clause 16.15.2** is effective and binding on all the Members concerned.

### **Issue of Bonus Shares**

- 16.16 Without limiting the Directors' powers and discretions under this **clause**, the Directors may resolve that the payment of a dividend (interim or final) will be satisfied wholly or partly by the issue of Bonus Shares carrying the rights and obligations as set out in this **clause**.
- 16.17 The rights and obligations attaching to Bonus Shares are as follows:
- 16.17.1 Bonus Shares do not confer on the holder of the shares any voting rights;
  - 16.17.2 Bonus Shares do not confer on the holder of the shares of any rights to distributions of income or capital of the Company whether on winding up or otherwise;
  - 16.17.3 each Bonus Share will have an issue price of \$1.00 and will be issued fully paid;
  - 16.17.4 Bonus Shares are not transferable;
  - 16.17.5 Bonus Shares are transmissible in accordance with this **clause**;
  - 16.17.6 the Company in its absolute discretion may redeem any Bonus Share by paying the issue price of each Bonus Share to a Member 12 months after the Member has resigned from the Company if:
    - (a) the redemption is permitted by APRA;

- (b) the redemption will not result in any breach by the Company of any capital adequacy requirements of APRA;
- (c) the Member requests it;
- (d) the Member has repaid all outstanding financial accommodation and discharged all other obligations to the Company; and
- (e) the Member redeems the Member's Redeemable Preference Shares from the Company in accordance with **clause 5.2** and ceases to be Member.

16.18 A person who becomes entitled to a Bonus Share in consequence of the death, lunacy or bankruptcy of a Member may, subject to producing to the Directors evidence of its entitlement which is satisfactory to the Directors, elect to:

16.18.1 be registered as the holder of the Bonus Share; or

16.18.2 transfer the Bonus Share to some other person nominated by it.

16.19 The legal personal representative of a deceased Member who was the sole holder of Bonus Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares. If a deceased Member was a joint holder of Bonus Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's Shares.

16.20 If the person who has become entitled to a Bonus Share:

16.20.1 elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by it; or

16.20.2 elects to transfer the Bonus Share, then the person must execute a transfer of the Bonus Share.

16.21 A person who:

16.21.1 has become entitled to a Bonus Share by operation of law; and

16.21.2 has produced evidence of its entitlement which is satisfactory to the Directors,

is entitled to all the rights of the registered holder of the bonus share.

16.22 Any person who is registered under this **clause** must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person.

16.23 Bonus shares may be transferred under this **clause** by a written transfer instrument in any usual or common form or any other form approved by the

Directors. A written transfer instrument must be executed by or on behalf of the person who has been entitled to the Member's Bonus Shares and the transferee.

16.24 A transferor of Bonus Shares remains the holder of the Bonus Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Bonus Shares.

16.25 The written transfer instrument must be left at the Office or the office of the Company's share registrar and accompanied by a certificate for the Bonus Shares dealt with in the transfer unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate. The transfer books and the Register may be closed for up to 30 days in each year.

## **Payment**

16.26 Any dividend or other money payable in respect of Shares may be paid by either:

16.26.1 cheque sent through the mail directed to:

- (a) the address of the Member shown in the Register or to the address of the joint holder of Shares shown first in the Register; or
- (b) an address which the Member or joint holders has in writing notified the Company as the address to which dividends should be sent;

16.26.2 crediting an account nominated in writing by a Member and acceptable to the Board; or

16.26.3 any other manner as the Board resolves.

16.27 Any joint holder may give an effectual receipt for any dividend or other money paid in respect of Shares held by holders jointly.

## **17 Notices**

### **Service of notices**

17.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:

17.1.1 serving it on the person;

17.1.2 sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address

- supplied by the person to the Company for sending notices to the person; or
- 17.1.3 if the notice is to a Member and the Member has no registered address, posting it on a notice board at the Office.
- 17.2 A notice sent by post is taken to be served:
- 17.2.1 by properly addressing, prepaying and posting a letter containing the notice; and
- 17.2.2 on the day after the day on which it was posted.
- 17.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- 17.3.1 by properly addressing the facsimile transmission or electronic notification and transmitting it; and
- 17.3.2 on the day after its despatch.
- 17.4 A notice posted on a notice board is taken to be served 24 hours after it is posted on the board.
- 17.5 A notice may be given by the Company to joint holders by giving the notice to the joint holder whose name appears first in the Register.
- 17.6 Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is taken to receive any notice served in accordance with this **clause** on the person from whom it derives its title.
- 17.7 A Member whose registered address is not in Australia may specify in writing an address in Australia as the Member's registered address within the meaning of this **clause**.
- 17.8 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 17.9 Subject to the *Corporations Act 2001* the signature to a written notice given by the Company may be written or printed.
- 17.10 All notices sent by post outside Australia must be sent by prepaid airmail post.

### **Persons entitled to notice**

- 17.11 Notice of every general meeting must be given to:
- 17.11.1 every Member;

17.11.2 every Director and Alternate Director; and

17.11.3 any Auditor.

17.12 No other person is entitled to receive notice of a general meeting.

## **18 Audits and Accounts**

18.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the *Corporations Act 2001*.

18.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the *Corporations Act 2001*.

## **19 Winding up**

### **Liability on winding up**

19.1 Subject to **clause 19**, on the winding up of the Company:

19.1.1 a Member's liability is limited to the amount unpaid in relation to the Member's contractual obligations with the Company; and

19.1.2 the liability of a holder of Statutory Redeemable Preference Shares extends to the amount unpaid in relation to those Shares.

### **Surplus**

19.2 On a winding up, subject to any preferred or other rights or restrictions attaching to Shares, Members are entitled to participate in any surplus equally and without regard to the number of Shares held by any Member. In the case of a voluntary winding-up, the Members at the time they resolve to wind up the Company may resolve that any surplus be transferred to any Company which has a mutual structure in accordance with any current policy of the ASIC or APRA.

## **20 Payments by the Company**

### **Indemnity and Insurance**

20.1 To the extent permitted by law and that the Officer is not indemnified by Directors' and officers' liability insurance maintained by the Company, the

Company indemnifies every person who is or has been an Officer of the Company against any Liability and Legal Costs of that person.

- 20.2 The indemnity pursuant to **clause 20.1** applies to the Liability or Legal Costs:
- 20.2.1 incurred by that person as an Officer, to another person other than the Company or a related Body Corporate of the Company, unless the liability arises out of conduct involving a lack of good faith;
  - 20.2.2 is enforceable without the Officer having first to incur any expense or make any payment;
  - 20.2.3 is a continuing obligation and is enforceable by the Officer even though that person may have ceased to be an Officer of the Company; and
  - 20.2.4 applies to Liabilities and Legal Costs incurred both before and after **clause 20.1** became effective.
- 20.3 To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to an Officer in respect of Legal Costs of that person.
- 20.4 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an Officer of the Company against a Liability of that person and the Legal Costs of that person unless the liability arises out of conduct involving:
- 20.4.1 a wilful breach of duty in relation to the Company; or
  - 20.4.2 without limiting **clause 20.4.1**, a contravention of sections 181, 182, 183 or 184 of the *Corporations Act 2001*.
- 20.5 To the extent permitted by law, the Company may enter into an agreement or deed with an Officer or a person who is, or has been, an Officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
- 20.5.1 keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
  - 20.5.2 indemnify that person against any Liability and Legal Costs of that person;
  - 20.5.3 make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
  - 20.5.4 keep that person insured in respect of any act or omission by that person while an Officer of the Company or a subsidiary of the

Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## 21 General

### Financial Accommodation to non-Members

21.1 The Company must not provide financial accommodation to or accept deposits of money from a person who is not a Member. This clause however does not limit the powers of the Company to invest funds, subject to any particular laws and prudential standards, otherwise than by way of financial accommodation to its Members. Nothing in this clause prohibits or prevents the Company from accepting a deposit of money from a non-Member in accordance with any applicable laws and prudential standards.

### Dispute Resolution

21.2 The Board must appoint a person to settle disputes between the Company and a Member (in the capacity as a Member), and establish procedures for the settlement of such disputes.

21.3 Nothing in this **clause** shall apply to any dispute as to the construction or effect of any law or of any mortgage or of any contract contained in any document other than this Constitution.

21.4 For the purposes of this **clause**:

21.4.1 '**Company**' includes the Board and officer:

21.4.2 '**Member**' includes:

- (a) any person aggrieved who has not for more than three months ceased to be a Member; and
- (b) any person claiming by or through a Member or by or through a person referred to in **clause 21.4.2(a)**.

### Fines and Forfeitures

21.5 Unless expressly provided by any other **clause**, no Member is liable to any fine or forfeiture other than as may be imposed by law.

## Fees and Charges

- 21.6 The Company may charge an admission fee as determined by the Board from time to time.
- 21.7 The Board may from time to time determine fees and charges for any one service provided by the Company.
- 21.8 The Board must cause notice of its determinations under this **clause** to be published at regular intervals to Members and to be displayed at all offices of the Company.

## 22 Definitions and interpretation

### Definitions

|                           |  |
|---------------------------|--|
| <b>Alternate Director</b> | means a person appointed as an Alternate Director under <b>clause 12.23</b>  |
| <b>APRA</b>               | means the Australian Prudential Regulation Authority and any entity in substitution thereof with responsibility for regulating the capital adequacy requirements of the Company                              |
| <b>ASIC</b>               | means the Australian Securities and Investments Commission   |
| <b>Auditor</b>            | means the Company's Auditor  |
| <b>Board</b>              | means the Directors of the Company from time to time   |
| <b>Body Corporate</b>     | means an entity or body (other than an individual) to which the law has given the capacity to have legal rights and duties as a legal person and includes an incorporated association                        |
| <b>Bonus Shares</b>       | means the bonus shares issued under <b>clause 16</b>   |
| <b>Business day</b>       | has the same meaning as in the <i>Corporations Act 2001</i>  |
| <b>Company</b>            | means <b>Bananacoast Community Credit Union Ltd ABN 50 087 649 750</b> and before 1 July 1999 means the credit union of the same name incorporated and formed under the <i>Financial Institutions Code</i> ; |
| <b>Constitution</b>       | means the constitution of the Company as amended from time to time   |

|   |  |
|---|--|
| <b>Demutualisation Resolution</b>       | has the meaning set out in <b>Schedule 5</b>   |
| <b>Director</b>                         | includes any person occupying the position of Director of the Company and, where appropriate, includes an Alternate Director   |
| <b>Directors</b>                        | means all or some of the Directors acting as a board   |
| <b>Liability</b>                        | of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an Officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another Body Corporate.  |
| <b>Legal Costs</b>                      | of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person. |
| <b>Member</b>                           | means a person whose name is entered for the time being on the Register as the holder of one or more Shares  |
| <b>New Redeemable Preference Shares</b> | means Redeemable Preference Shares issued after 27 November 2000 in accordance with the Constitution   |
| <b>Office</b>                           | means the Company's registered office  |
| <b>Officer</b>                          | means a current or former Director or secretary of the Company   |
| <b>Register</b>                         | means the register of Members of the Company   |
| <b>registered address</b>               | means the last known address of a Member as noted in the Register  |
| <b>Representative</b>                   | means a person appointed by a Member to act as its representative under <b>clause 8.29</b> or under section 250D of the <i>Corporations Act 2001</i>   |

|  |   |
|--|---|
| <b>Redeemable Capital Preference Shares</b>      | mean redeemable preference shares issued under <b>clause 2.12</b> on the terms and conditions set out in <b>Schedule 4</b> .  |
| <b>Redeemable Preference Shares</b>              | mean Statutory Redeemable Preference Shares, Transitional Redeemable Preference Shares and New Redeemable Preference Shares.  |
| <b>Seal</b>                                      | means the Company's common seal (if any)  |
| <b>Secretary</b>                                 | means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries  |
| <b>Shares</b>                                    | means shares of the Company issued from time to time including Redeemable Preference Shares, Bonus Shares, Redeemable Capital Preference Shares, Tier 1 Shares and any other preference share issued under this Constitution.   |
| <b>Standard</b>                                  | any prudential standard or guideline issued by APRA from time to time and which applies to the Company.   |
| <b>Statutory Redeemable Preference Shares</b>    | mean the redeemable preference shares referred to in <b>clause 1.2.2</b>  |
| <b>Tier 1 Shares</b>                             | mean shares issued under <b>clause 2.12</b> on the terms and conditions set out in <b>Schedule 6</b> .  |
| <b>Transaction</b>                               | in <b>clause 4.8</b> in relation to a Members deposit account with the Company means a debit or credit to the account, other than for:<br><br>(a) the payment of interest by the Company; or<br><br>(b) the charging of a fee by the Company for keeping the account. |
| <b>Transitional Redeemable Preference Shares</b> | means the shares referred to in <b>clause 1.3</b>   |
| <b>Unincorporated Association</b>                | means a combination of persons, operating either under their own guidance or under the guidance of a committee, that may contract through an entity or entities approved by the Company or in such other manner approved by the Company                               |

## **Interpretation - general**

- 22.1 In this Constitution, unless the contrary intention appears:
- 22.1.1 the singular includes the plural and vice versa and words importing a gender include other genders;
  - 22.1.2 words importing natural persons include corporations;
  - 22.1.3 words and expressions defined in the *Corporations Act 2001* have the same meaning in this Constitution;
  - 22.1.4 headings are for ease of reference only and do not affect the construction of this Constitution;
  - 22.1.5 a reference to the *Corporations Act 2001* is a reference to the *Corporations Act 2001* and the *Corporations Regulations* as modified or amended from time to time; and
  - 22.1.6 a reference to writing is a reference to any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile and email transmission and documents in electronic form.
- 22.2 An expression in a provision of this Constitution has the same meaning as in a provision of the *Corporations Act 2001* that deals with the same matter as the provision, unless the contrary intention appears in this Constitution.

## **The adoption of this Constitution is not a demutualisation of the Company**

- 22.3 By an instrument dated **30 October 2001**, the ASIC has exempted the adoption of this Constitution from the operation of Part 5 of Schedule 4 of the *Corporations Act 2001* relating to demutualisation. The ASIC has granted the exemption on the basis that it is satisfied that the adoption of this Constitution will not result in or allow a modification of the mutual structure of the Company.
- 22.4 This **clause 22.4** applies to the extent that Part 5 of Schedule 4 of the *Corporations Act 2001* relating to demutualisation continues to apply notwithstanding the ASIC instrument of exemption. The adoption of this Constitution is not intended to have any of the effects contemplated in clause 29(1) of schedule 4 of the *Corporations Act 2001*. The occurrence of any of those events is referred to as a '**demutualisation**'. If the adoption of any provision of this Constitution results in a demutualisation, then that provision is severed from this Constitution and, to the extent permitted by law, is replaced by such provisions of the repealed constitution which was in force immediately

before the adoption of this Constitution as is necessary or required so that the adoption of this Constitution does not cause or result in any demutualisation.

## **Schedule 1 - Form of Proxy**

**PROXY FORM**

BANANACOAST COMMUNITY CREDIT UNION LTD

ABN 50 087 649 750

[ANNUAL] GENERAL MEETING

[DATE]

Member's name and address (please print)

.....  
.....

..... |  
Membership number (please print)

.....

**STEP 1 APPOINTING YOUR PROXY (please select one option only)**

I/We appoint (mark one)

- the Chairperson of the meeting or
- 

Write here the name of the person you are appointing if the person is someone other than the Chairperson of the meeting,

or failing such appointment or in the absence of that person, the Chairperson of the Annual General Meeting, as my/our proxy to act generally at the meeting on my/our behalf, and to vote in accordance with the directions on this form or, if no directions have been given, as he or she sees fit (with discretion as to any business not referred to below), at the [Annual] General Meeting to be held on [day/date] at [time] at [address], and at any adjournment of that meeting.

**STEP 2 DIRECTING YOUR PROXY HOW TO VOTE FOR YOU**

Your proxy may vote as he or she sees fit unless you make a specific direction below.

I/We instruct my/our proxy to vote as follows (mark one):

\* If you mark the Abstain box, you are directing your proxy not to vote on your behalf and your votes will not be counted in computing the required majority on a poll.

1. RESOLUTION: For Against Abstain\*

STEP 3 PLEASE SIGN HERE

(this section must be signed in accordance with the instructions overleaf to enable your directions to be implemented)

Daytime Telephone:

Daytime Telephone:

Date: / /

Date: / /

## IMPORTANT NOTES

### YOUR VOTE IS IMPORTANT

If you are unable to attend the [Annual] General Meeting of the Credit Union to be held on [DATE], to assist you in exercising your right to vote, you are encouraged to appoint a person(s) who will attend the [Annual] General Meeting as your proxy.

### APPOINTMENT OF PROXY

Insert the name of the person you wish to appoint as your proxy where indicated. You cannot appoint yourself. A proxy need not be a member of the Credit Union. The Chairman of the meeting will act as your proxy if you do not appoint someone. You may appoint a proxy and still attend the meeting. If you do, your proxy's authority is suspended while you are present at the meeting. You may revoke your proxy before the meeting. The Chairperson or a person who is the Chairperson for a particular meeting can act as proxy for any number of Members. However, any other person may not act for more than ten Members.

### DIRECTING YOUR PROXY HOW TO VOTE

You can direct your proxy how to vote at the [Annual] General Meeting by marking one of the three boxes opposite the resolution. If you do not direct your proxy how to vote on any resolution, the proxy can decide how to vote himself or herself. If you mark the "abstain" box for the resolution, you are directing your proxy not to vote on a show of hands or on a poll and your vote will not be counted when calculating the required majority of a poll.

A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If an appointment directs the way the proxy is to vote on a particular resolution:

- If the proxy is the Chair - the proxy must vote on a poll and must vote in the way directed; and
- If the proxy is not the Chair - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote in the way directed.

### [CHAIRPERSON'S VOTING INTENTIONS

Proxy appointments in favour of the Chairman of the meeting which do not contain a direction will be voted in support of the resolutions.]

### SIGNING THE PROXY APPOINTMENT FORM

Individual                      This Proxy form must be signed by you or your duly authorised Power or Attorney in the first box

**Joint Members** For a joint membership the form must be signed by the primary member

**Attorney** If you are signing as an attorney, then the Power of Attorney or a certified copy should either have been lodged previously with the credit union or be enclosed with this form

**Companies** The form must be executed in accordance with the Company's Constitution. Only duly authorised officers can sign on behalf of a company. Please sign in the boxes and state the office held by the signatory and the company ACN.

#### DEADLINE FOR RECEIPT OF PROXIES

Your completed Proxy form (and any Power of Attorney or a certified copy under which the proxy form is signed) must be received by the credit union no later than [TIME] on [DAY/DATE], no later than 48 hours before the meeting time. Completed proxy forms must be returned in one of the following ways:

- By post to the Returning Officer in the reply paid, self-addressed envelope provided
- By hand delivery to the Returning Officer at the Credit Union's registered office at  
14 Cooper Street, Macksville, NSW 2447
- By fax to the Returning Officer on (02) 6568 3011

**Note:** Proxies may not be returned by email, nor is internet-based voting possible.

FOR ENQUIRIES AND ASSISTANCE PLEASE TELEPHONE 02 6560 7406

## Schedule 2 - Election of Directors

### 1 **Holding of Election**

An election of Directors of the Company is to be held by ballot except where the nominations equal or are less than the number of positions to be filled. If a ballot is not held, Directors shall be elected by separate resolution at the annual general meeting for each candidate.

### 2 **Appointment of Returning Officers**

The Board must appoint a Returning Officer who may appoint assistant Returning Officers, none of whom can be a Director of the Company or a person who intends to accept a nomination for the office of Director.

### 3 **Electoral Roll**

The Secretary must prepare and give the Returning Officer a list of Members eligible to vote on the election of Directors, made up to the day before nominations for the election close under **clause 4** of this schedule.

### 4 **Nominations**

4.1 The Board must call for nominations at least 77 days prior to the annual general meeting.

4.2 Nominations close on the date nominated in the notice calling for nominations, but not less than 14 days after nominations are called and not less than 56 days before the annual general meeting.

4.3 In order to be nominated, a candidate must:

4.3.1 be eligible for election under **clause 9.3** of the Constitution (Qualification);

4.3.2 be nominated by 2 Members; and

4.3.3 consent to the nomination.

4.4 A retiring Director may stand for re-election without nomination but must be eligible for election under **clause 9.3** of the Constitution (Qualification);

### 5 **Declaration by Candidate**

5.1 A candidate must furnish to the Company a declaration in such form as the Board may require:

5.1.1 as to his or her eligibility for election under **clause 9.3** of the Constitution (Qualification); and

5.1.2 as to whether he or she:

- (a) has any interest in a contract or a proposed contract, with the Company; or
- (b) holds an office or has an interest in property, whereby, whether directly or indirectly, duties or interests may be created that could conflict with a Director's duties or interests as a Director of the Company.

## 6 **Rejection of Nomination**

- 6.1 The Returning Officer must scrutinise nominations immediately upon receipt and reject a nomination where it appears to the Returning Officer that the candidate is not eligible under **clause 9.3** of the Constitution (Qualification).
- 6.2 Upon rejecting a nomination, the Returning Officer is to notify immediately the candidate, the candidate's proposes and the Board.

## 7 **Appointment of Scrutineer**

- 7.1 A candidate may appoint a scrutineer and the Board may appoint a maximum of three scrutineers, none of whom is a candidate or an employee of the Company.
- 7.2 The duties and responsibilities of scrutineers are to:
  - 7.2.1 observe the sorting, counting and recording of ballot papers;
  - 7.2.2 ensure that the votes of unrejected ballot papers are correctly credited to the appropriate candidates; and
  - 7.2.3 raise any query with the Returning Officer regarding any of the ballot papers.

## 8 **Ballot Papers**

- 8.1 After nominations have closed under **clause 4** of this Schedule the Returning Officer is to prepare ballot papers for the election.
- 8.2 The order in which the candidates appear on the ballot paper is to be determined by the Returning Officer by lot.
- 8.3 The Returning Officer must cause some authenticating mark to appear on each ballot paper prior to their distribution to Members.

- 8.4 On the issue of each ballot paper, mark the Member's name off the role of Members.
- 8.5 If approved by the Directors, the ballot papers may be in electronic form and may be authenticated in the same manner as required for a proxy appointment under **clause 8.17** of the Constitution.

## 9 **Conduct of the Ballot**

- 9.1 The ballot is to be conducted at the annual general meeting.
- 9.2 The Returning Office must provide:
  - 9.2.1 secured ballot boxes which are to remain secured until the closure of the ballot; and
  - 9.2.2 if permitted by the Directors, an electronic return address for the return of ballot papers at or prior to the annual general meeting.
- 9.3 For the purposes of **clause 9.2.2**, a ballot paper received at an electronic address or by internet voting must be authenticated in the same manner as required for a proxy appointment under **clause 8.17** of the Constitution.

## 10 **Closure of the Ballot**

The ballot closes at a time specified by the Returning Officer.

## 11 **Procedures After Close of the Ballot**

- 11.1 Immediately after the close of the ballot, the Returning Officer must deal with the ballots as follows:
  - 11.1.1 cause the ballots to be scrutinised under his supervision and reject such ballot papers as he finds to be informal;
  - 11.1.2 count the votes in accordance with **clause 12** of this Schedule;
  - 11.1.3 prepare and sign a declaration of the ballot as to:
    - (a) the number of ballot papers lodged;
    - (b) the number of formal votes;
    - (c) the number of informal votes;
    - (d) the number of votes cast for each candidate; and

- (e) the names of those persons elected; and
- (f) deliver the statement to the chairperson at the meeting.

11.2 A ballot paper is informal if:

- 11.2.1 it is not authenticated by the authenticating mark of the Returning Officer; or
- 11.2.2 it has no vote indicated on it or it does not indicate the Member's preference for a candidate.

11.3 The Returning Officer must destroy the ballot papers and delete the electronic records of the ballots if received by electronic means three months after the declaration of the ballot.

11.4 No election shall be voided on account of any error or omission of the Returning Officer which did not affect the results of the election.

## 12 **Voting System**

12.1 On any ballot, the persons receiving the highest number of votes in accordance with the numbers of vacancies to be filled are elected Directors.

12.2 In the case of an equality of votes, the person to be elected must be decided by lot.

### Schedule 3 - Timetable for Ballot and Annual General Meetings

| <b>Days Before Annual General Meeting</b> | <b>Procedures for Election of Directors</b> | <b>Procedures for Annual General Meeting</b>  |
|---|---|---|
| not less than 77 days before AGM          | Call for nominations                        |   |
| not less than 56 days before AGM          | Nominations close                           | End of time for Members to notify any proposed resolution for inclusion in notice of Annual General Meeting |
| not less than 21 days before AGM          | Ballot papers prepared                      | Notice of Annual General Meeting issued   |
| <b>0</b>                                  | Annual General Meeting                      |   |

## **Schedule 4 - Terms and Conditions of Redeemable Capital Preference Shares**

### **1. Rights of Redeemable Capital Preference Shareholders**

A Redeemable Capital Preference Share confers on the holder the following rights:

#### ***Repayment of capital***

- 1.1 Subject to the rights of holders of Tier 1 Shares, the right on a winding up of the Company to the payment of:
- 1.1.1 the amount of capital paid up on the Redeemable Capital Preference Share set out in the terms of issue of a Redeemable Capital Preference Share, which are the subject of a resolution of the Board under **clause 2.12** of the Constitution;
  - 1.1.2 the amount of any dividend accrued but unpaid before the date of commencing the winding up.

#### ***Surplus assets or profits***

- 1.2 A Redeemable Capital Preference Share does not confer on the holder any further right beyond that right set out in **clause 1.1** to participate in surplus assets or profits of the Company whether in winding up or otherwise.

#### ***Non-cumulative dividends***

- 1.3 The right to a non-cumulative preferential dividend:
- 1.3.1 calculated in accordance with the terms of issue; and
  - 1.3.2 payable on the dates set out in the terms of issue,
- in priority to the payment of any dividend on any other class of Shares, except Tier 1 Shares, set out in the terms of issue.

#### ***Voting rights***

- 1.4 No right to vote attaches to a Redeemable Capital Preference Share.

#### ***Accounts and reports***

- 1.5 The same rights as the holder of a Share to receive notices, report and audited accounts.

## 2. Terms of Issue

### *Dividends*

- 2.1 The Board may only resolve to issue a Redeemable Capital Preference Share if it resolves to do so on issue terms that set out the following:
- 2.1.1 the dates for dividend payment on the Redeemable Capital Preference Share; and
  - 2.1.2 the rate of dividend payable on the Redeemable Capital Preference Share, which may:
    - (i) be fixed;
    - (ii) be variable;
    - (iii) be franked to an extent specified in the terms of issue;
    - (iv) be unfranked.
- 2.2 The amount for a dividend is subject to the limit in **clause 16.11**.
- 2.3 Dividend payments for the Redeemable Capital Preference Shares are to be paid only:
- 2.3.1 if the Directors, at their discretion, determine that the dividend is payable;
  - 2.3.2 if APRA has not issued any objection to the dividend payment or stated that if the proposed payment is made the Redeemable Capital Preference Shares will cease to be treated as Lower Tier 2 Capital;
  - 2.3.3 if the Company complies with APRA's then prevailing capital adequacy standards and guidelines; and
  - 2.3.4 to the extent that payment is permitted by any law and by any relevant regulatory authority.
- 2.4 Subject to the preferential dividend rights attaching to Tier 1 Shares, any payments made in relation to the Redeemable Capital Preference Shares out of net profits or net assets have preferential rights over payments made in relation to Redeemable Preference Shares from the same sources.

### *Maturity*

- 2.5 Redeemable Capital Preference Shares are to remain on issue for the term which is determined by the Directors at the time of issue but which must be a minimum period of 5 years.

### ***Priority***

- 2.6 The Redeemable Capital Preference Shares rank:
- 2.6.1 subordinate to all creditors including depositors; and
  - 2.6.2 subordinate to holders of Redeemable Preference Shares; and
  - 2.6.3 in priority to all other Shares (except for any Shares expressed by the terms of issue or this Constitution to rank in priority to the Redeemable Capital Preference Share),
- for return of the amount paid in respect of a Member's Redeemable Capital Preference Shares and the amount of any dividend due but unpaid.

### ***Issue to Members only***

- 2.7 Redeemable Capital Preference Shares may only be issued to a person who at the time of issue is a Member of the Company.
- 2.8 Redeemable Capital Preference Shares must be issued as fully-paid.

### ***Redemption***

- 2.9 Redeemable Capital Preference Shares may be, subject to **clauses 2.10, 2.11 and 2.12** of this Schedule:
- 2.9.1 redeemable at the option of the holder; or
  - 2.9.2 redeemable at the option of the Company,
- at the dates and times and on the conditions set out in the terms of issue.
- 2.10 A Redeemable Capital Preference Share may not be redeemed without the approval of the Directors.
- 2.11 If a Redeemable Capital Preference Share is to be redeemed but the redemption of the Redeemable Capital Preference Share would place the Company in breach of a prudential standard made under the Banking Act 1959, the redemption cannot be carried out without the approval of APRA.
- 2.12 Where the Company proposes to redeem, buy-back or otherwise repurchase Redeemable Capital Preference Shares before the expiry of the minimum term of 5 years, the Company's right to redeem, buy-back or otherwise repurchase Redeemable Capital Preference Shares is subject to the Company receiving the prior approval of APRA.
- 2.13 A Redeemable Capital Preference Share may be redeemed in the following manner:
- 2.13.1 Where the holder of a Redeemable Capital Preference Share has a right to redeem a Redeemable Capital Preference Share, the holder of a Redeemable Capital Preference Share may exercise that right by

delivering to the Company at its Office a duly executed notice of redemption (**Redemption Notice**).

- 2.13.2 Where the Company has a right to redeem a Redeemable Capital Preference Share, the Company may exercise that right by delivering a Redemption Notice to the Redeemable Capital Preference Shareholder's registered address.
- 2.14 Within one calendar month of the receipt of a Redemption Notice (or such other time set out in the terms of issue), the Company will pay to the holder of a Redeemable Capital Preference Share an amount calculated in accordance with the terms of issue.
- 2.15 The payment of the amount in **clause 2.14** of this Schedule as a result of the delivery of a Redemption Notice will be deemed to be full repayment of the Redeemable Capital Preference Share and the Company's liability in respect of the Redeemable Capital Preference Share will then cease completely except in respect of any obligation or liability which may have arisen on or before the date of redemption.

### ***Default***

- 2.16 If the Company defaults under the terms of issue, remedies available to the holders are limited to actions for specific performance, recovery of amounts currently outstanding (for example, unpaid dividends or capital on redemption provided the Company can make such payments and remain solvent) or the winding-up of the Company.

### **3. Restriction on holding**

- 3.1 A Member of the Company and that Member's connected entities (within the meaning of subsection 995-1 (1) of the *Income Tax Assessment Act 1997*) can together hold not more than 10% by value of the Redeemable Capital Preference Shares issued by the Company.
- 3.2 If a Member and that Member's connected entities (**Eligible Member**) together hold more than 10% by value of the Redeemable Capital Preference Shares issued by the Company, the Directors may invoke the procedure for the sale of Redeemable Capital Preference Shares under this **clause 3 (Procedure)**.
- 3.3 To invoke the Procedure, the Directors must give the Eligible Member a written notice (**Notice of Divestiture**) that complies with this **clause 3**.
- 3.4 A Notice of Divestiture given to an Eligible Member must state that the Redeemable Capital Preference Shares referred to in the Notice of Divestiture are liable to be sold in accordance with the Procedure if the Eligible Member does not advise the Company before a specified date (**Relevant Date**) that the Eligible Member has divested sufficient Redeemable Capital Preference Shares to reduce the Eligible Member's holding to not more than 10% by value of the Redeemable Capital Preference Shares issued by the Company.
- 3.5 The Relevant Date must be six weeks or more after the date that the Notice of Divestiture is sent.

- 3.6 If an Eligible Member on whom a Notice of Divestiture has been served does not give the Company written notice before the Relevant Date advising the Company that the Eligible Member has divested sufficient Redeemable Capital Preference Shares to reduce the Eligible Member's holding to not more than 10% by value of the Redeemable Capital Preference Shares issued by the Company, the Company may sell sufficient Redeemable Capital Preference Shares in accordance with the Procedure to reduce the Eligible Member's holding to not more than 10% by value of the Redeemable Capital Preference Shares issued by the Company.
- 3.7 Any Shares which may be sold under this **clause 3** may be sold on the terms, in the manner (whether on-market, by private treaty, through a share sale facility established by, on behalf or, or at the request of the Company, or otherwise) and at the time or times determined by the Directors and, for the purposes of a sale under this **clause 3**, each Eligible Member:
- 3.7.1 appoints the Company as the Eligible Member's agent for sale;
- 3.7.2 authorises the Company to effect on the Eligible Member's behalf a transfer of the Shares sold and to deal with the proceeds of the sale of the Shares in accordance with **clause 3.9** of this Schedule;
- 3.7.3 appoints the Company, its Directors and the Secretary jointly and severally as the Eligible Member's attorneys to execute an instrument or take other steps, in the Eligible Member's name and on the Eligible Member's behalf, as they or any of them may consider appropriate to transfer the Shares sold; and
- 3.7.4 authorises each of the attorneys appointed under **clause 3.7** of this Schedule to appoint an agent to do a thing referred to in **clause 3.7** of this Schedule.
- 3.8 The title of the transferee to Shares acquired under this **clause 3** is not affected by an irregularity or invalidity in connection with the sale of Shares to the Transferee.
- 3.9 The proceeds of any sale of Shares under this **clause 3** less expenses of sale (including any duty or brokerage), any unpaid calls and interest (**Sale Consideration**) will be paid to the relevant Member or as that Member may direct.
- 3.10 The Company will hold the Sale Consideration in trust for the Member whose Shares are sold under this **clause 3** and will forthwith notify the Member in writing that the Sale Consideration in respect of the Member's Shares has been received by the Company and is being held by the Company pending instructions from the Member as to how it is to be dealt with. If the Member has been issued with a share certificate or certificates, the Member's instructions, to be effective, must be accompanied by the share certificate or certificates to which the Sale Consideration relates or, if the certificate or certificates has or have been lost or destroyed, by a statement and undertaking under subsection 1070D(5) of the *Corporations Act 2001*.
- 3.11 Subject to the *Corporations Act 2001*, the Company or the Member will bear any costs, including brokerage and stamp duty, associated with the sale of any Shares under this clause.

**4. Further Issues**

- 4.1 The Company may at any time issue further Redeemable Capital Preference Shares.
- 4.2 Any such subsequently issued Redeemable Capital Preference Shares will be identical in all respects to the existing Redeemable Capital Preference Shares, save for the issue price.
- 4.3 Subsequently issued Redeemable Capital Preference Shares will rank pari passu with the existing Redeemable Capital Preference Shares in all respects including right to dividends.

**5. Transfer of Redeemable Capital Preference Shares**

- 5.1 Unless otherwise specified in the terms of issue, a Redeemable Capital Preference Share is transferable in any manner permitted by the *Corporations Act 2001* and, in the case of a Redeemable Capital Preference Share that is quoted on a stock exchange, in any manner permitted by the listing rules of the stock exchange.

**6. Right to refuse registration**

- 6.1 The Directors may in their absolute discretion and without assigning any reason decline to register any transfer of Redeemable Capital Preference Shares.
- 6.2 The Directors may in their absolute discretion refuse to register any transfer of Redeemable Capital Preference Shares on which stamp duty or other taxes of a similar nature are payable but unpaid.
- 6.3 The Directors must refuse to register any transfer of Redeemable Capital Preference Shares that would result in a Member (and that Member's connected entities) together holding more than 10% by value of the Redeemable Capital Preference Shares issued by the Company.

**7. Modification of Terms of Issue**

- 7.1 Any subsequent modification of the terms of issue that impact on the eligibility of Redeemable Capital Preference Shares to continue qualifying as Lower Tier 2 capital are subject to APRA's prior consent.

## Schedule 5 - Consideration of Demutualisation Resolutions

### 1. Interpretation

In this Schedule 5, unless the contrary intention appears:

"**Additional Costs**" means all costs reasonably incurred by the Company in complying with its obligations under **clause 4** of this **Schedule 5**.

"**Additional Information**" means:

- (a) an explanation as to how the Demutualisation Resolution will affect Member rights as a holder of Shares and as a customer of the Company;
- (b) an explanation as to the effect of the Demutualisation Resolution on the Company and Members with respect to:
  - (i) the rights of Members to vote and to participate in the distribution of profits and reserves of the Company and the loss of any such rights;
  - (ii) the effect on the business, operations, employees, products, services, pricing and distribution network of the Company;
- (c) an explanation of the mutuality benefits to Members that will be lost if the Demutualisation Resolution is passed; and
- (d) an explanation of the availability and effect of other alternatives to the Demutualisation Resolution.

"**Demutualisation Resolution**" means a proposed resolution, or combination of proposed resolutions:

- (a) which, if passed, will or may result in:
  - (i) the Company ceasing to be an authorised deposit-taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "Credit Co-operative" without committing an offence under the *Banking Act 1959*; or
  - (ii) a voluntary transfer of the Company's business, pursuant to the *Financial Sector (Transfers of Business) Act 1999*, to an Entity that is not an authorised deposit taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "Credit Co-operative" without committing an offence under the *Banking Act 1959*; or
  - (iii) Redeemable Preference Shares or Redeemable Capital Preference Shares becoming transferable or capable of sale or assignment (other than as provided in this Constitution); or
  - (iv) a right to vote attaching to any Share other than a Redeemable Preference Share; or

- (b) in relation to which the consent of the Treasurer is required pursuant to either section 63 of the *Banking Act 1959* or section 11 of the *Financial Sector (Shareholdings) Act 1998*, unless the consent is required for the purposes of a voluntary transfer of the Company's business, pursuant to the *Financial Sector (Transfers of Business) Act 1999*, to an Entity that is an authorised deposit taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "Credit Co-operative" without committing an offence under the *Banking Act 1959*;  
or
- (c) the effect of which would be to modify or repeal any clause in this **Schedule 5**; or
- (d) the effect of which would be to modify or repeal the Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the clauses in this **Schedule 5**.

**"Directors' Statement"** means a statement by the Directors containing:

- (a) the recommendation of each Director as to whether the Demutualisation Resolution should be passed and their reasons for making that recommendation;
- (b) details of any payment, valuable consideration or any other benefit to be received by the Directors if the Demutualisation Resolution is passed;  
and
- (c) particulars of any agreement between a Director and any other person in connection with, or conditional upon, the outcome of the Demutualisation Resolution.

**"Eligible Member"** means a Member who has been a Member for at least 12 months as at the date of a meeting convened to consider a Demutualisation Resolution and who is entitled to vote under **clause 8.1.2**.

**"Entity"** includes any:

- (a) incorporated or unincorporated bodies;
- (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.

**"Information"** means:

- (a) a disclosure statement that:
  - (i) contains all the information that members would reasonably require and expect to be given to make an informed decision about the Demutualisation Resolution, including but not limited to the Additional Information;

- (ii) states that the Demutualisation Resolution may alter the company's mutual structure and outlines the intentions of the Member or Entity seeking to convene or convening a meeting of the Company:
  - (A) in relation to the future of the Company if the Demutualisation Resolution is passed; and
  - (B) in relation to Members' interests if the Demutualisation Resolution is passed;
  - (C) in relation to the directors if the Demutualisation Resolution is passed; and
- (iii) explains the effect the passing of the Demutualisation Resolution is likely to have on the business, operations, employees, products, services, pricing and distribution network of the Company;
- (b) provides an estimate of the benefits (if any) the Members, the Directors and other officers of the Company will be offered if the Demutualisation Resolution is passed;
- (c) explains the basis upon which Members' entitlements to benefits will be determined, including:
  - (i) any minimum period of membership that a Member must satisfy to receive benefits; and
  - (ii) whether Members must pay any amount or provide other value to receive benefits;
- (d) details any preferential allocation of benefits to Members, or a class of Members, and how that allocation is to be determined;
- (e) a report by an expert that:
  - (i) states whether, in the expert's opinion:
    - (A) the Demutualisation Resolution is in the best interests of the Members of the Company as a whole;
    - (B) whether the Demutualisation Resolution is fair and reasonable to Members having regard to any change of voting rights and the right to participate in profits and reserves; and
  - (ii) sets out the expert's opinions in relation to the Additional Information; and
  - (iii) gives the expert's reasons for forming those opinions; and
  - (iv) complies with the requirements of clause 33 of Schedule 4 of the *Corporations Act 2001*;

- (f) contains any additional information required to be provided under the *Corporations Act 2001* or any other law or regulation.

**"Member"** means a Member as that term is defined in **clause 22**.

**"Requisitionists"** means the Members who request the convening of a general meeting that is convened by the Directors at the request of members made under **clause 6.2** or who call the meeting in accordance with **clause 6.3**.

## **2. Application of Schedule 5**

Notwithstanding any provision contained in this Constitution to the contrary, this Schedule 5 will apply if a meeting of the Company is convened, or is to be convened, at which a Demutualisation Resolution will be considered.

## **3. Requirement for General Meeting**

If a meeting of the Company is convened, or is to be convened, at which a Demutualisation Resolution will be considered:

- (a) a general meeting must be convened and conducted in accordance with this Constitution to consider the Demutualisation Resolution;
- (b) the information required by **clause 4** of this **Schedule 5** must be provided to members in convening the general meeting to consider the Demutualisation Resolution;
- (c) unless otherwise approved by the chairperson, Members speaking on the Demutualisation Resolution shall not exceed a speaking time of 10 minutes;
- (d) unless the Demutualisation Resolution has been recommended by the Directors, the Demutualisation Resolution may not be moved at the general meeting, or passed at the general meeting, if the Demutualisation Resolution, or a substantially similar Demutualisation Resolution, was moved at a general meeting held within the 3 years prior to the general meeting and not passed;
- (e) only Eligible Members are entitled to vote on a Demutualisation Resolution; and
- (f) the Demutualisation Resolution shall only be passed at the general meeting if:
  - (i) at least 5% of all Eligible Members who are entitled to vote on the Demutualisation Resolution do vote on the Demutualisation Resolution; and
  - (ii) at least 75% of the votes cast by those Eligible Members approve the Demutualisation Resolution.

#### **4. Disclosure requirements**

- 4.1 If a meeting of the Company at which a Demutualisation Resolution will be considered or convened or is to be convened in accordance with **clause 6.2**, or otherwise than in accordance with **clause 6.3**:
- (a) the Member or Members requesting the convening of the meeting shall at the time of requesting the convening of the meeting provide the Information to the Company; and
  - (b) the Company shall at the time of convening the meeting provide the Members with:
    - (i) notice of the Demutualisation Resolution in accordance with section 249L(1)(c) of the *Corporations Act 2001*;
    - (ii) the Information supplied to the Company;
    - (iii) the Directors' Statement; and
    - (iv) such further information, if any, as the Directors consider appropriate.
- 4.2 If a meeting of the company at which a Demutualisation Resolution will be considered is convened or is to be convened in accordance with **clause 6.3**:
- (a) the Member or Members requesting the convening of the meeting shall at the time of convening the meeting provide the Information to the Members; and
  - (b) the Company shall, not less than 14 days before the meeting, provide the Members with:
    - (i) a Directors' Statement; and
    - (ii) such other information, if any, as the Directors consider appropriate.

#### **5. Costs**

- 5.1 If a meeting of the Company at which a Demutualisation Resolution will be considered is convened by the Directors at the request of Members made under **clause 6.2** or by Members in accordance with **clause 6.3**, and the Demutualisation Resolution is not passed at the general meeting, then the Requisitionists will be jointly and severally liable to the Company for the Additional Costs and must pay the Additional Costs to the Company within 7 days of the Company making a written demand for payment.
- 5.2 The Requisitionists must, at the time of making the request or convening the meeting referred to in **clause 5.1** of this **Schedule 5**:
- (a) provide to the Company an indemnity in respect of the liability that the Requisitionists may incur to the Company for the Additional Costs in a form satisfactory to the Directors; and
  - (b) if so requested by the Company, deposit with the Company an amount (as determined by the Directors) on account of the liability that the

Requisitionists may incur to the Company for Additional Costs, which sum the Company may set off against the Requisitionists' liability to the Company for Additional Costs if and when the Requisitionists become liable to pay the Additional Costs to the Company.

5.3 The Company will refund to the Requisitionists:

- (a) if the Demutualisation Resolution is passed at a general meeting, the whole of any amount deposited with the Company pursuant to **clause 5.2(b)** of this **Schedule 5**;
- (b) if the Demutualisation Resolution is not passed at a general meeting, any amount by which the amount deposited with the Company pursuant to **clause 5.2(b)** of this **Schedule 5** exceeds the Additional Costs.

## **Schedule 6 — Tier 1 Shares**

### **1. Terms of Issue**

The Company may issue Tier 1 Shares on terms the Board approves but subject to the rights and restrictions contained in this **Schedule 6**.

### **2. Rights, Obligations and Restrictions Attaching to Tier 1 Shares**

2.1 The following rights attach to each Tier 1 Share:

- (a) the right to vote on the terms set out in **clause 3** of this **Schedule 6**;
- (b) the right to participate in dividends in priority to all other Shares on the terms set out in **clause 4** of this **Schedule 6**;
- (c) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in **clause 5** of this **Schedule 6**; and
- (d) the rights of redemption on the terms set out in **clause 6** of this **Schedule 6**

### **3. Voting Rights**

Except as required by law, Tier 1 Shares do not confer on the holder of the shares any voting rights.

### **4. Dividend Entitlements**

4.1 Each Tier 1 Share carries a right to participate in dividends as specified in its terms of issue.

4.2 Dividends on Tier 1 Shares are non-cumulative.

4.3 Each Tier 1 Share confers a right to receive dividends in priority to dividends (if any) which may become payable on Redeemable Capital Preference Shares.

4.4 Each Tier 1 Share may be entitled to payment of dividend equally with or behind any other share, the terms of whose issue specify a ranking equally with, or in priority to, the Tier 1 Share.

4.5 The amount for a dividend is subject to the limit in **clause 16.11**.

### **5. Distribution on Winding-Up**

5.1 On a winding-up of the Company each Tier 1 Share:

- (a) is entitled to repayment of the amount of capital paid up on the Tier 1 Share equally with every other Tier 1 Share;
- (b) the amount of any dividend accrued but unpaid before the date of commencing the winding up; and

(c) is not otherwise entitled to share in any surplus assets or profits of the Company.

5.2 Tier 1 Shares rank behind Redeemable Preference Shares for repayment of capital on a winding-up.

5.3 Tier 1 Shares may rank equally with or behind any other shares, the terms of whose issue specify a ranking equally with, or in priority to, the Tier 1 Shares.

## 6. Redemption

6.1 Tier 1 Shares may be:

6.1.1 redeemable at the option of the holder; or

6.1.2 redeemable at the option of the Company,

in accordance with any terms of issue at the dates and times and on the conditions set out in the terms of issue and subject to any applicable law and the requirements of APRA.

6.2 If a Tier 1 Share is to be redeemed but the redemption of the Tier 1 Share would place the Company in breach of a prudential standard made under the Banking Act 1959, the redemption cannot be carried out without the approval of APRA.

6.3 A Tier 1 Share may be redeemed in the following manner:

6.6.1 where the holder of a Tier 1 Share has a right to redeem a Tier 1 Share, the holder of a Tier 1 Share may exercise that right by delivering to the Company a notice of redemption; and

6.6.1 where the Company has a right to redeem a Tier 1 Share, the Company may exercise that right by delivering a notice of redemption to the Tier 1 Shareholder,

in each case in accordance with the terms of issue or otherwise in accordance with the Constitution.

6.4 Within one calendar month of the receipt of a notice of redemption (or such other time set out in the terms of issue), the Company will pay to the holder of a Tier 1 Share an amount calculated in accordance with the terms of issue.

6.5 The payment of the amount in **clause 6.4** of this Schedule will be deemed to be full repayment of the Tier 1 Share and the Company's liability in respect of the Tier 1 Share will then cease completely except in respect of any obligation or liability which may have arisen on or before the date of redemption.

**7. Default**

- 7.1 If the Company defaults under the terms of issue, remedies available to the holders are limited to actions for specific performance, recovery of amounts currently outstanding (for example, unpaid dividends or capital on redemption provided the Company can make such payments and remain solvent) or the winding-up of the Company or as otherwise provided in the terms of issue.