

**AWA MUTUAL LIMITED**

**ACN 087 651 652**

# **CONSTITUTION**

**This document shows in red underlined text the proposed changes to AWA's Constitution (last updated following the Annual General Meeting 31 October 2022) referred to in the Scheme Booklet issued by AWA Mutual Limited to be dated on or about 15 December 2023 as the 'Constitutional Amendment':**

**Authorised by me Peter Richardson on 31 October 2023:**



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**Peter Richardson**  
**Chairman of the Board**  
**AWA Mutual Limited**

Updated following Annual General Meeting

31<sup>st</sup> October 2022



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# Preamble

## AWA MUTUAL LIMITED

AWA Mutual Limited is a public company limited by shares.

The mutual is organised on the basis of Principles of Mutuality.

### Principles of Mutuality

#### Members and Customers

1. A mutual may provide products and services to a customer who has chosen not to acquire the mutual's shares.

#### Membership and Member Shares

##### *How to become a member*

2. A person can only become a member by subscribing for a member share, except in the circumstances of a *scheme* under which member shares are transferred.

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

3. Subject to the exception in Principle 6, a mutual may only issue one member share to any person.

4. A trustee for an unincorporated association may be issued 1 member share in the trustee's own right, and 1 member share as trustee for the unincorporated association.

##### *Consideration paid for membership shares*

5. A mutual may issue member shares of any class as wholly paid or partly paid.

6. A mutual may only issue a member share to a person in return for valuable consideration.

7. The person must provide consideration in cash or, in relation to partly paid member shares, partly or wholly in the form of an obligation to pay cash.

##### *Voting*

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

##### *Dividends and Surplus*

9. A member share may confer a right to participate in the mutual's profits through payment of dividends.

10. A member share must confer a right to participate in surplus when the mutual is wound up.

11. Any participation in profit or surplus must be on equitable terms.

*Redemption and Transfer*

12. A member share must confer on the member a right to redeem the member share on request, subject only to any period of notice set out in the mutual's constitution.
13. Subject to the exceptions in Principle 146 and in the case of a *scheme*, member shares may not be transferred.
14. A trustee for an unincorporated association may transfer the member share that the trustee holds on trust for the unincorporated association.

**Additional Shares***Definition*

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

*Issue of additional shares only to members*

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

*Voting*

17. Subject to the exceptions in Principle 19, an additional share must not confer the right to vote.
18. Additional shares may confer the right to vote, at meetings of the holders of additional shares, on questions affecting the continuing existence of the mutual.

*Dividends and Surplus*

19. An additional share may confer the right to participate in the mutual's profits through payment of dividends.
20. An additional share may confer a right to participate in surplus when the mutual is wound up but only to the extent of:
  - (a) repayment of capital paid on the additional shares; and
  - (b) payment of arrears of cumulative dividends.
21. The right to participate in profits and surplus conferred by additional shares may be preferred, equal or deferred to the rights conferred by the member shares.

*Redemption and Transfer*

22. An additional share may confer on the holder of the additional share a right to redeem or, subject to Principle 2423, to transfer the additional share.
- 23.—The holder of additional shares may only transfer additional shares to a person who has been a member of the mutual continuously for the past 6 months.

**Accumulation of Securities**

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

**Directors**

25. Only a member of a mutual may be a director of the mutual, *except in the case of a scheme where the scheme transferee may nominate directors of its choosing.*

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



# CONSTITUTION

## DIVISION 1 — INTRODUCTORY MATTERS

### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

*board* means the board of *directors*.

*customer* means a person who acquires products or services from the *mutual* who is not a *member*.

*corporations act* means the Corporations Act 2001 (Cth).

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

*effective* means the date of which a *scheme* becomes effective if it has been approved by the requisite majorities of *members* and by the Court pursuant to Part 5.1 of the Corporations Act and a copy of the Court's orders has been lodged with the Australian Securities and Investments Commission pursuant to s 411(1) of the Corporations Act.

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

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

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

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

*mutual* means AWA Mutual Limited ACN 087 651 652.

*scheme* means a *scheme* of arrangement under Part 5.1 of the Corporations Act between the *mutual* and its *members*, pursuant to which a *scheme transferee* is to acquire all of the *member shares* of the *mutual*.

*scheme share* means a member share transferred (or to be transferred) pursuant to a *scheme*.

*scheme transferee* means the person that is to acquire all of the *member shares* of the *mutual* pursuant to *scheme*.

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

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

### 1.2 Interpretation

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

- (a) the singular includes the plural and vice versa;
  - (b) where an expression is defined in this Constitution, any other grammatical form of the expression has a corresponding meaning;
  - (c) words and expressions defined in the *Corporations Act 2001* (Cth) have the same meaning in this Constitution;
  - (d) headings are for purposes of convenience only and do not affect the interpretation of this Constitution;
  - (e) a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation;
  - (f) a reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument;
  - (g) a reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body:
    - (i) that replaces it; or
    - (ii) to which substantially all the powers and functions relevant to this Constitution are transferred; and
  - (h) a reference to ‘in writing’ is a reference to any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile and e-mail transmissions and documents in electronic form.
- (2) The notes to this Constitution are for purposes of convenience only and do not affect the interpretation of this Constitution. The notes do not form part of this Constitution and may be removed or modified without the *mutual* complying with the *Corporations Act 2001*(Cth) requirements that apply to removal or modification of constitutional provisions.

### 1.3 Time

Unless expressly provided otherwise, when this Constitution, or any notice given under this Constitution, states a time or a period of time, the time stated is, or the period of time is calculated by reference to, Australian Eastern Standard Time (AEST) or Australian Eastern Daylight Time (AEDT), as the case may be, at the *mutual's* registered office.

### 1.4 Replaceable Rules do not Apply

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

### 1.5 Notices

- (1) This Rule applies to all notices and documents that the *Corporations Act 2001* (Cth) or this Constitution requires a party to this Constitution to send to another party to this Constitution.
- (2) In this Rule, ***business day*** means a day that is not:
- (a) a Saturday or Sunday; or
  - (b) a public holiday or bank holiday in the place where the notice is received.
- (3) A person sending a notice must do so in writing and must address it to the recipient at the following respective addresses:
- (a) if to the ***mutual*** — at its registered office or such other address as the ***mutual*** specifies to ***members*** from time-to-time; and
  - (b) if to a ***member*** — at the ***member's*** address appearing on the Register of Members from time-to-time or at any alternative address nominated by the ***member***, or at any fax number or electronic address nominated by the ***member***.

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

- (4) A person may send a notice or other document to another person in any of the ways set out in column 2 of the table below. The other person receives the notice at the time set out in column 3:

	<b><i>Delivery Method</i></b>	<b><i>Time Person Receives Notice</i></b>
<b>1</b>	<b>Hand delivering the notice personally</b>	The other person receives the notice: <ol style="list-style-type: none"> <li>(i) if hand delivered before 5:00 pm on a <b><i>business day</i></b> — on that <b><i>business day</i></b></li> <li>(ii) if hand delivered after 5:00 pm on a <b><i>business day</i></b> — on the next <b><i>business day</i></b></li> <li>(iii) if hand delivered on a day other than a <b><i>business day</i></b> — on the next <b><i>business day</i></b></li> </ol>
<b>2</b>	<b>Sending the notice by pre-paid post</b>	The other person receives the notice on the third <b><i>business day</i></b> after posting unless it is actually delivered earlier
<b>3</b>	<b>Sending the notice by facsimile transmission</b>	The other person receives the notice: <ol style="list-style-type: none"> <li>(i) if sent before 5:00 pm on a <b><i>business day</i></b> — on that <b><i>business day</i></b></li> <li>(ii) if sent after 5:00 pm on a <b><i>business day</i></b> — on the next <b><i>business day</i></b></li> <li>(iii) if sent on a day other than a <b><i>business day</i></b> — on the next <b><i>business day</i></b></li> </ol>

		This rule does not apply where the person sending the facsimile has evidence that the transmission was unsuccessful
<b>4</b>	<b>Sending the notice by electronic means</b>	<p>The other person receives the notice:</p> <ul style="list-style-type: none"> <li>(i) if sent before 5:00 pm on a <i>business day</i> — on that <i>business day</i></li> <li>(ii) if sent after 5:00 pm on a <i>business day</i> — on the next <i>business day</i></li> <li>(iii) if sent on a day other than a <i>business day</i> — on the next <i>business day</i></li> </ul> <p>This rule does not apply where the person sending the notice by electronic means has evidence that the notice did not reach the other person's electronic address.</p>

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

## 1.6 Transitional

Upon this Constitution taking effect:

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

## DIVISION 2 — PURPOSE, OBJECTS & LIMIT ON POWERS

### 2.1 Purpose and objects

- (1) The *mutual* has the purpose and objects set out in Appendix 1.

### 2.2 Stakeholder interests

- (1) In discharging their duties under this constitution, the *Corporations Act 2001*(Cth) and the general law, the directors or other officers of the *mutual*:
- (a) must consider:
- (i) the likely consequences of any decision or act of the *mutual* in the long term; and
  - (ii) the interests of the *mutual's* employees; and
  - (iii) the need to foster the *mutual's* business relationships with suppliers, customers and others; and
  - (iv) the impact of the *mutual's* operations on the community and the environment; and
  - (v) the desirability of the *mutual* maintaining a reputation for high standards of business conduct; and
  - (vi) the interests of the members of the *mutual*; and
  - (vii) the ability of the *mutual* to create an overall positive impact on society and the environment; and
- (b) need not give priority to a particular matter referred to in paragraph (a) over any other matter, unless the *mutual* has stated in this constitution that the directors or other officers of the *mutual* must give priority to certain matters related to the pursuit or creation of any objects and purpose listed in this constitution.

### 2.3 Members and Customers

- (1) The *mutual* may provide products and services to *members* and *customers*.

## DIVISION 3 — MEMBERSHIP

### 3.1 Admission to Membership

- (1) Subject to any other Rule allowing admission of *members* (including Rules 3.1A and 9.1A), the *mutual* may admit a person as a *member* only if:
- (a) the person makes a written application in a form the mutual requires; and
  - ~~(b)~~ (c) the person pays in cash the *subscription price* for the *member share*.
  - ~~(b)~~ (c) the person engages in a *scheme* whereby shares are transferred to them.

**Note:** The *mutual* may also admit a person as a *member* by registering a transfer or transmission of a *member share* to the person under Rule 9.3, Rule 9.6, Rule 10.1, or Rule 10.2.

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

#### 3.1A Exceptions to Membership Share Transfers

- (1) The provisions of this Division 3 will not apply to a transfer of *member shares* pursuant to a *scheme*, in which case the provisions of the *scheme* in relation to the transfer of *member shares* and admission to membership under that *scheme* will apply.

### 3.2 Delegation of Power to Admit Members

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

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

### 3.3 Joint Members

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



## DIVISION 4 — TERMINATION OF MEMBERSHIP

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

- (1) The *mutual* can remove the *member's* name from the Register of Members if:
- (a) the *mutual* redeems the *member's member share* under Rule 4.2, Rule 4.3 or Rule 4.4;
  - (b) the *mutual* registers a transfer of the *member shares* in a manner permitted by this Constitution (including a transfer under Rule 9.1A);
  - ~~(b)~~(c) the *mutual* forfeits the *member's member share* under Subrule 6.3(1) or Subrule 6.3(2);
  - (d) the *member* surrenders the *member's member share* under Subrule 6.3(5);
  - (e) the *member's member share* has been transferred to another;
  - ~~(e)~~(f) the *member* has requested it;
  - ~~(d)~~(g) if the *member* is an individual — the *member*:
    - (i) dies;
    - (ii) becomes a bankrupt and the *mutual* registers the *member's* trustee in bankruptcy as the holder of the *member's member share* under Rule 10.2; or
    - (iii) becomes mentally incapable and the *mutual* registers the *member's* trustee or guardian as the holder of the *member's member share* under Rule 10.3;
  - ~~(e)~~(h) if the *member* is a body corporate — the *member* is deregistered or dissolved; or
  - ~~(f)~~(i) if the *member* is a trustee for an unincorporated association — the *mutual* registers the transfer of the *member's member share* to another person who is to act as trustee for the unincorporated association.

### 4.2 Member's Request for Termination

- (1) A *member* may request termination of membership. The request must be in the form the *mutual* requires and executed by the *member*.
- (2) If a *member* makes a request under Subrule (4.2(1)), the *mutual* must redeem the *member's member share* as soon as practicable after receiving the written request. However, the *mutual* may defer redeeming the *member's member share* until the *board* is satisfied that the *mutual* has sufficient profits available to pay the amount payable on redemption of the *member share*.

### 4.3 Termination by the Board

- (1) The *mutual* may redeem a *member's member share* by *board* resolution if:
  - (a) the *member* fails to discharge the *member's* obligations to the *mutual*;
  - (b) the *member* has engaged in conduct that the *board* reasonably considers to be detrimental to the *mutual*; or
  - (c) the *member* obtains membership by misrepresentation or mistake.
- (2) The *mutual* must give notice of the proposed resolution under Subrule (4.2(1)) to the *member* at least 14 days before considering the proposed resolution.
- (2) At the time the *board* considers the proposed resolution, the *member* is entitled:
  - (a) to be present with or without the *member's* legal representative; and
  - (b) to be heard, either in person or through the *member's* legal representative.
- (3) On redeeming the *member share*, the *mutual* may pay the amount payable on redemption of the *member share* to the *member* by sending a cheque to the *member's* address as set out in the Register of Members.

#### 4.4 Termination where a member is inactive

- (1) The *mutual* may:
  - (a) determine that the *member* is inactive; and
  - (b) redeem the *member's member share*,  
by board resolution if the *member* has not initiated any transactions in relation to any products and services (including deposit accounts) made available by the *mutual* through its agency relationship with Bendigo and Adelaide Bank Limited ABN 11 068 049 178 or any other third party in the 12 month period before the date of the resolution.
- (2) The *mutual* must send notice of the proposed resolution under Subrule (1) to the *member* at the *member's* last known address as shown on the Register of Members at least 14 days before considering the proposed resolution.
- (3) On redemption of the *member share*, the *mutual* must pay the amount payable on redemption of the *member share* to the *member*.
- (4) The *board* may delegate its power to make a determination under Rule 4.4() or redeem a *member's member share* under Rule 4.4(1)(b) to an officer of the *mutual*. The delegation must not contain an authority to further delegate the relevant power.

## DIVISION 5 — ISSUE OF SHARES

### 5.1 Classes of Shares

- (1) The *mutual* may only issue *member shares*.

### 5.2 Board Power to Issue Shares

- (1) The *board* may exercise the *mutual's* power to issue shares at any time to the exclusion of the *general meeting*.

### 5.3 Restrictions on Issue of Member Shares

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

**Notes:** Rule 5.3(4) does not limit the number of *member shares* that may be held by, or transferred to, a *scheme transferee* pursuant to Rule 9.1A.

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

## DIVISION 6 — CALLS, FORFEITURE AND LIENS

### 6.1 Payment of Calls on Member Shares

- (1) This Rule applies in relation to a *member share* if some or all of the *subscription price* for the *member share* is payable on the *mutual* calling up payment of some or all of the unpaid *subscription price*. This Rule applies in relation to a share subject to:
  - (a) any restriction in the terms of issue for the *member share*; and
  - (b) any *special resolution* providing that the *mutual* can only call up some or all of the *subscription price* for *member shares* if the *mutual* becomes an externally-administered body corporate.
- (2) The *mutual* may call for payment of any amount of the unpaid *subscription price* for a *member share* by *board* resolution. The *mutual* must give a *member* holding a *member share* on which the *mutual* has made a call a notice setting out how much, when and how the *member* must make the payment. The *mutual* must give the notice at least 14 days before the time the *member* must pay the call.
- (3) The *mutual* may revoke or postpone a call on a *member share* by *board* resolution. The *mutual* must give notice as soon as practicable after the *board* resolution to each *member* holding a *member share* for which the *mutual* has revoked or postponed a call.
- (4) In any proceeding to recover unpaid instalments, a *member* is conclusively presumed to be liable for a call if:
  - (a) the *mutual's* minutes record the *board* resolution calling for payment of the amount of the call;
  - (b) the *member's* name appeared in the Register of Members as holder of the *member share* on the date of the *board* resolution; and
  - (c) the *mutual* gave the *member* a notice in accordance with Subrule 6.1(2).
- (5) At any time, the *mutual* may accept from a *member* prepayment of any amount of the unpaid *subscription price* on a *member share*.

### 6.2 Effect of Failure to Pay Unpaid Amounts

- (1) This Rule applies if a *member* does not pay any amount of the unpaid *subscription price* for a *member share* at the time the amount becomes due. This Rule does not limit any other remedies that the *mutual* may have against the *member*.
- (2) The *member* must pay:
  - (a) the amount due on the *member share*; and
  - (b) all costs and expenses that the *mutual* incurs (including, without limitation, legal expenses on a solicitor and own client basis or full indemnity basis,

whichever is the higher) because the *member* did not pay the amount when it became due.

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

- (3) At any time while the amount payable under Subrule (2) remains unpaid in respect of a member share, the *mutual* may give the *member* a default notice:
  - (a) setting out:
    - (i) how much is due; and
    - (ii) when the *member* must pay the amount due; and
  - (b) stating that, if the *member* does not pay the amount due by that date, the *member* will forfeit the *member share*.
- (4) The date for payment must be at least 14 days after the date on which the *mutual* gives the *member* the default notice. In the absence of any manifest error, the default notice is conclusive evidence of the amount that the *member* must pay the *mutual* as at the date the *mutual* issues the default notice.

### 6.3 Forfeiture and Surrender

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

- (b) less any amount that the *mutual* receives on sale or disposal of the forfeited *member shares*.

#### 6.4 Liens

- (1) The *mutual* may at any time exempt a *member share* wholly or in part from this Rule by *board* resolution.
- (2) The *mutual* has a first and paramount lien on:
  - (a) every partly-paid *member share* that a *member* holds;
  - (b) the proceeds of sale of every partly paid *member share* that the *member* holds; and
  - (c) dividends payable on every partly-paid *member share* that the *member* holds.

for all amounts, whether presently due or not:

  - (d) payable in relation to the *member share*; or
  - (e) that the *member* or the *member's* estate otherwise owes to the mutual.
- (3) If an amount secured by a lien in Subrule 6.4(2) is presently due, the *mutual* may give the holder of the *member share* a sale notice:
  - (a) setting out:
    - (i) how much is due; and
    - (ii) when the *member* must pay the amount due; and
  - (b) stating that, if the *member* does not pay this amount by that date, the *mutual* may sell the *member share*.
- (4) The date for payment must be at least 14 days after the date on which the *mutual* gives the *member* the sale notice. In the absence of any manifest error, the sale notice is conclusive evidence of the amount that the *member* must pay the *mutual* as at the date the *mutual* issues the sale notice.
- (5) If a *member* does not pay the amount due by the date stated in the sale notice under Subrule 6.4(3), the mutual may sell the *member shares* on the terms and in the manner that the *board* determines. The *mutual* may:
  - (a) execute a share transfer to give effect to a sale of the shares; and
  - (b) register the transferee as the holder of the *member shares*.
- (6) The transferee's title is not affected by any irregularity or invalidity in connection with the sale of the *member shares*. The transferee is not required to see the application of the purchase consideration.

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

## DIVISION 7 — DIVIDENDS

### 7.1 Payment of Dividends

- (1) At least 50% of the *mutual's* profit each year is to be re-invested into ongoing operations of the *mutual* and in a manner which is consistent with the objectives of operating as a social enterprise, with a majority of annual profits used towards fulfilling the *mutual's* purpose and objects set out in clause 2.1.
- (2) The *board* may determine that the *mutual* pay a dividend on *member shares* to which a right to participate in dividends attaches and may determine:
  - (a) the amount of the dividend;
  - (b) the time for payment of the dividend; and
  - (c) the method of payment of the dividend.
- (3) The method of payment may include the payment of cash, the issue of securities and the transfer of assets. Where the *mutual* pays the dividend other than in cash, the *board* may fix the value of any securities issued or assets transferred.
- (4) If the terms of issue for a share require the *general meeting's* approval to any payment of a dividend on the share, the *board's* determination under Subrule (1) is effective only if the *general meeting* approves the dividend before the time for payment of the dividend arrives. The *general meeting* may not vary the *board's* determination.

### 7.2 Differential Dividends

- (a) Subject to the terms on which shares in a class are issued, the *board* may determine dividends to different *members* in a class that differ: in amount; and
- (b) in the method of payment (whether cash, securities, assets or any combination of them).

### 7.3 Interest on Dividends

Interest is not payable on a dividend.



## DIVISION 8 — SHARE CERTIFICATES

### 8.1 Share Certificates

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

## DIVISION 9 — TRANSFER OF SHARES

### 9.1 Form of Share Transfer

Subject to Rule 9.1A, Aa *member* wishing to transfer the *member's* shares must use a share transfer that complies with the following requirements:

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

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

### 9.1A Exceptions in Share Transfer

(1) The provisions of this Division 9 and Appendix 2 will not apply to a transfer of *member shares* pursuant to a *scheme*, in which case the provisions of the *scheme* in relation to the transfer of *member shares* under that *scheme* will apply.

### 9.2 Ownership of Share Transfer

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

### 9.3 Registration of Share Transfer

- (1) The *mutual* must not register a share transfer if:
  - (a) the terms of issue for the shares prohibit the transfer of the shares to the transferee;
  - (b) the share transfer is not in the form approved under Rule 9.1; or
  - (c) if the transfer of shares is dutiable — the share transfer is not duly stamped.
- (2) The *mutual* may refuse to register a share transfer unless:
  - (a) the shares are fully paid;
  - (b) the *mutual* does not have a lien on the shares;
  - (c) the transferor has executed the share transfer;
  - (d) subject to Rule 9.1A, the transferee has executed the share transfer;

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

#### 9.4 Powers of Attorney

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

#### 9.5 Suspension of Registration

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

#### 9.6 Amendment of Constitution after a scheme

Subject to any statutory requirement (including any demutualisation procedure), if a *scheme* becomes *effective*, a *scheme transferee* that becomes a sole member of the *mutual* may amend or repeal and replace this Constitution by a written declaration of that sole member made for the purpose of this Rule 9.6.

## DIVISION 10 — TRANSMISSION OF SHARES

### 10.1 Transmission of Shares on Death

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

### 10.2 Transmission of Shares on Bankruptcy

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

### 10.3 Transmission of Shares on Mental Incapacity

- (1) If a person entitled to *member shares* because of a *member's* mental incapacity gives the board the information it reasonably requires to establish the person's entitlement to be registered as a holder of the *member's share*:
  - (a) the person may require the *mutual* to register the person as holder of the *member's share*; and
  - (b) whether or not registered as the holder of the member shares, the person has the same rights, obligations and restrictions as the *member*.

## **DIVISION 11 — HOLDING MEMBERS' MEETINGS**

### **11.1 Calling Meetings of Members**

- (1) The *board* may call a *members'* meeting.

### **11.2 Adjourning Meetings of Members**

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

### 11.3 Proceedings at Members' Meetings

- (1) The quorum for a *members'* meeting is:
- (a) 10 *members* present in person; or
  - ~~(b)~~ if less than 50 *members* are eligible to attend and vote at a *member's* meeting — 50% of the *members* eligible to attend and vote at the *member's* meeting;  
or
  - ~~(b)~~(c) if there is a single *member*, that *member*.

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

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

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

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

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

- (b) after the time appointed for consideration of an item of special business, the item lapses.
- (4) The chair of *members'* meetings is:
- (a) the chair of meetings of the *board*; or
  - (b) if the chair of meetings of the *board* is not present or declines to act for the meeting (or part of it) — the deputy chair of meetings of the *board*.
- (5) If the chair or deputy chair of meetings of the *board* is not available within 30 minutes of the appointed start of the meeting, or declines to act, the *members* must elect an individual present to chair the meeting.

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

#### 11.4 Holding *members'* meetings and giving notices of meetings using one or more technologies

- (1) Subject to the company complying with any requirements of the *Corporations Act 2001* (Cth) and all other laws, a *members'* meeting may be held using one or more technologies that give all persons entitled to attend a reasonable opportunity to participate without being physically present in the same place, and the following provisions apply if a *members'* meeting is held in that way:
- (a) all persons so participating in the meeting are taken for all purposes (for example, a quorum requirement) to be present at the meeting while so participating;
  - (b) a requirement to allow an opportunity for persons attending the meeting to speak (for example, by asking questions) may be complied with by using one or more technologies that allow that opportunity; and
  - (c) a proxy may be appointed using one or more technologies specified in the notice of the meeting.
- (2) If a *members'* meeting is held in the way described in paragraph (1):
- (a) notice of the meeting must include information about how those entitled to attend can participate in the meeting (including how they can participate in a vote taken at the meeting, and speak at the meeting, to the extent they are entitled to do so); or
  - (b) if a *member* is entitled to attend the meeting, or to vote at the meeting, by proxy, the person conducting the meeting must treat a duly appointed proxy in the same way as the *member* would be entitled or required to be treated if the *member* attended the meeting in person.
- (3) If the technology used in this Rule 11.4 encounters a technical difficulty, whether before or during the *members'* meeting, which results in a *member* not being able to participate in any part of the meeting, the chair may, subject to the *Corporations Act 2001* (Cth) and Rule 11.3:
- (c) allow the meeting to continue; or
  - (d) adjourn the meeting either for a reasonable period of time as may be required to fix the technology or to such other date, time and location as the chairperson of the meeting considers appropriate.
- (4) Subject to the company complying with any requirements of the *Corporations Act 2001* (Cth) and all other laws, a notice of a *members'* meeting may be given, and any other information to be provided with a notice of a *members'* meeting or at or in relation to the meeting may be provided, using one or more technologies to communicate to those entitled to receive notice of the meeting:

- (a) the contents of the notice and the other information; or
  - (b) details of an online location where the items covered by paragraph (a) can be viewed or from where they can be downloaded.
- (5) All other provisions in this Constitution, including those in any Appendix, which:
- (a) require or permit a *members'* meeting to be held;
  - (b) regulate giving notice of a *members'* meeting; or
  - (c) regulate the conduct of a *members'* meeting,

are to be read subject to this Rule 11.4, and this Rule 11.4 prevails to the extent of any inconsistency, except in the case of a *scheme* where a competent Court may make orders in respect of the convening and holding of, and procedures to be followed at, any *members'* meetings necessary or desirable to approve the *scheme*.



## DIVISION 12 — VOTING AT MEMBERS' MEETINGS

### 12.1 Voting

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

### 12.2 Voting on a Show of Hands

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

### 12.3 Voting on a Poll

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

### 12.4 Body Corporate Representatives

- (1) A *member* that appoints a body corporate representative must give the *mutual*:
  - (a) if the *member* appointed the representative by board resolution — a certified copy of the board resolution appointing the representative; and
  - (b) otherwise — a copy of the instrument appointing the representative,

as soon as practicable after appointing the representative, and in any event before any *member's* meeting at which the representative may exercise the *member's* rights.

- (2) In addition to the rights and powers a *member's* representative may exercise under the *Corporations Act 2001* (Cth), the representative may exercise the *member's* right to vote in a ballot to appoint *directors* by election.

## 12.5 Proxies

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

## 12.6 Objections

An objection to the qualification of a voter:

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

## DIVISION 13 — DIRECTORS — APPOINTMENT & VACATION OF OFFICE

### 13.1 Number of Directors

- (1) The *mutual* must have no less than 3 and no more than 9 *directors*.

### 13.2 Eligibility to be a Director

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

### 13.3 Appointment by Members — Election

- (1) Subject to 13.3(2), ~~the~~ *members* may appoint a person ~~who is less than 72~~ to be a *director* by election held under the provisions of Appendix 4.

- (2) Subject to a *scheme* becoming *effective*, a *scheme transferee* may appoint a person who is less than 72 to be a director by providing written notice to the *mutual* specifying the date on which the appointment is to be effective.

~~The *members* may appoint a person who is 72 or more to be a *director* by election held under the provisions of Appendix 4 followed by a special resolution appointing the person as a *director*.~~

### 13.4 Appointment by Board

- (1) The *board* may appoint 1 person as a *director*.
- (2) The term of office of a *director* appointed under Subrule 13.4(1) will be 1 year unless the *board* terminates the appointment.

### 13.5 Appointment by Board – Casual Vacancies

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

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

- (2) The term of office for a *director* appointed to fill a vacancy in Subrule 13.5 ends:

- (a) if the *general meeting* approves the appointment before the end of the next Annual General Meeting (AGM) after the *director's* appointment — at the end of the term of office of the *director* whose office has become vacant; and
  - (b) otherwise — at the end of the next AGM after the *director's* appointment.
- (3) The term of office for a *director* appointed to fill a vacancy in Rule 13.5 ends at the end of the next AGM after the *director's* appointment.

### 13.6 Term of Office

- (1) Subject to the *Corporations Act 2001*(Cth) and the rotation provisions in this Rule, a *director's* term of office:
- (a) starts at the end of the AGM at which the *director's* election is announced or at the date in the notice provided for the purposes of Rule 13.3(2); and
  - (b) ends at the end of the third AGM after the AGM at which the *director's* election is announced or 36 months after the date specified in the notice provided for the purposes of Rule 13.3(2).
- (2) If the number of *directors* that *members* appoint, other than *directors* who are 71 or more, is more than a third of the maximum number of *directors* on the *board* in Rule 13.1:
- (a) the term of office for the third of the *board* that receives the most votes at the election, ~~ends~~ ends at the end of the third AGM after the AGM at which the *directors'* election is announced; and
  - (b) the term of office for the remainder ends at the end of earlier AGMs where less than a third of the *board* is due to retire at those earlier AGMs.

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

- (3) For purposes of Subrule (2):
- (a) treat *directors* who are 71 or more at the date of the AGM at which the *directors'* election is announced, as receiving the least votes of the *directors* elected at the election;
  - (b) if the number of *directors* on the *board* is not divisible by 3 — round fractions up to the nearest whole number in determining how many *directors* there are in a third or in two thirds of the *board*; and
  - (c) if 2 or more *directors* have the same number of votes — the order of retirement amongst them is determined by lot.

### 13.7 Automatic Vacation of Office

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

- (a) dies;

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

### 13.8 Automatic Vacation of Office

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

### 13.9 Automatic Vacation of Office

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

*alternate* means a person that a *director* appoints as his or her alternate *director* under Subrule 13.9(2), but only in the person's capacity as the alternate *director*.

*appointor* means the *director* who appoints an *alternate* under Subrule (2)

- (2) A person is eligible to be an *alternate* for a *director* if the person:
  - (a) is eligible to be a *director* under Rule 13.2;
  - (b) is not a *director*; and
  - (c) is not an alternate for another *director*.
- (3) A *director* (but not an *alternate*) may give the *mutual* a notice appointing a person eligible under Subrule 13.9(2) to be his or her *alternate*. The notice must set out:
  - (a) the name of the person to be appointed as *alternate*;
  - (b) the term of the *alternate's* appointment (or that the appointment is for an indefinite term); and
  - (c) whether or not the *alternate* can sign circulating resolutions instead of the *appointor*.

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

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

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

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

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

- (7) The reference to '*directors*' in Rule 15.5 refers to:
- (a) if the *appointor* notifies the *mutual* that the *alternate* can sign circulating resolutions instead of the *appointor* — the *alternate* and other *directors* but not the *appointor*;
  - (b) otherwise — the *appointor* and other *directors* but not the *alternate*.
- (8) The *mutual* must not provide remuneration to the *alternate* (in his or her capacity as *alternate*) except out of remuneration that it has allocated to the *appointor*. The *alternate* has no right to remuneration against the *mutual*. This does not affect any right to remuneration that the *alternate* may have against the *appointor*.

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

- (9) The *alternate's* office automatically becomes vacant if:
- (a) the *appointor* revokes the *alternate's* appointment; or
  - (b) the *appointor's* office as a *director* becomes vacant (except where the *appointor's* term as a *director* ends at the end of an AGM under Rule 13.6 and the *members* re-elect the *appointor* as a *director* at that AGM).

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

## DIVISION 14 — DIRECTORS' POWERS

### 14.1 Powers and Duties of the Board

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

### 14.2 Negotiable Instruments

- (1) The *board* may authorise a person or persons to sign, draw, accept, endorse or otherwise execute negotiable instruments for the *mutual*. The *board* may authorise the application of signatures to negotiable instruments by machine or other electronic methods.

### 14.3 Delegation

- (1) The *board* may delegate any of its powers to any committee or any other person or persons, subject to Rule 3.2. The *board* may permit the delegate to sub-delegate any powers delegated to them.
- (2) The *board* must establish policies for the guidance of delegates in the exercise of any powers so delegated.
- (3) Without limiting its powers, the *board* may appoint a person to be the *mutual's* attorney for purposes, with powers (being the *board's* powers), for the period and on terms the *board* determines. In particular, the power of attorney may:
- (a) include terms protecting persons dealing with the attorney, as the *board* determines; and
  - (b) authorise the attorney to delegate any or all of the attorney's powers.

## DIVISION 15 — DIRECTORS' MEETINGS

### 15.1 Calling and Conduct of Board Meetings

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

### 15.2 Quorum of Board

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

### 15.3 Chair of Board

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

### 15.4 Passing of Directors' Resolutions

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

### 15.5 Circulating Resolutions

- (1) The *board* may pass a resolution without a *board* meeting if all the directors receive the document containing the resolution, and a majority of the *directors* entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document or acknowledge electronically their consent to the resolution.
- (2) All circulating resolutions require endorsement by the *board* at the following *board* meeting.



- (3) Separate copies of a document may be used for signing by different *directors* if the wording of the resolution and statement is identical in each copy.
- (4) The resolution is passed when the last *director* needed to form a majority signs or indicates consent.

#### **15.6 Committees of Directors**

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

## DIVISION 16 — CONFLICTS OF INTEREST

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

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

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

- (1) This Rule applies if a *director* with a *material personal interest* in relation to a matter:
  - (a) complies with the requirements of the *Corporations Act 2001* (Cth) in relation to disclosure of the nature and extent of the interest and its relation to the *mutual's* affairs; but
  - (b) must not be present and vote on the matter under the *Corporations Act 2001*(Cth).
- (2) The *director* is not in breach of duty to the *mutual* merely because he or she does not act in relation to the matter.
- (3) The *board* may vote on matters that relate to the *director's* interest in the *director's* absence.
- (4) In relation to any transactions that relate to the *director's* interest:

- (a) the transactions may proceed;
- (b) the *mutual* cannot avoid the transactions merely because of the *director's* interest; and
- (c) the *director* may retain benefits under the transactions despite the *director's* interest.

### 16.3 Execution of Instruments

- (1) A *director* may participate in the execution of an instrument for the *mutual*, regardless of any interest or duty that the *director* may have:
  - (a) whether or not the *director* has complied with the requirements of the *Corporations Act 2001* in relation to disclosure of the nature and extent of the interest and its relation to the *mutual's* affairs; and
  - (b) whether or not the *director* may be present and vote in relation to the execution of the instrument under the *Corporations Act 2001*.

## DIVISION 17 — REMUNERATION, INDEMNITY AND INSURANCE

### 17.1 Remuneration of Directors

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

### 17.2 Travelling Expenses and Insurance

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

### 17.3 Indemnities for Officers and Former Officers

- (1) In this Rule *indemnified person* means an officer or agent, or former officer or agent, of the *mutual*.
- (2) To the extent that the *Corporations Act 2001* (Cth) permits:
  - (a) the *mutual* must indemnify an *indemnified person* against any liability that the *indemnified person* incurs in conducting the *mutual*'s business or exercising the *mutual*'s powers as an officer or agent of the *mutual*; and
  - (b) the *mutual* may indemnify, agree to indemnify or enter into (and pay premiums on) a contract of insurance in relation to an *indemnified person* or any other person.
- (3) The indemnity in Subrule 17.3(2)(a) applies in relation to an *indemnified person* for all incidents occurring during the period that person is an officer or agent of the *mutual*, even though a claim is made against the *indemnified person* after they have ceased to be an officer or agent of the *mutual*.

## DIVISION 18 — ADMINISTRATION

### 18.1 Seal

- (1) The *board* is to provide for the safe custody of the seal.
- (2) The seal is to be used only by the authority of the *directors*.

The *board* may authorise:

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

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

### 18.2 Secretary

- (1) The *board* must appoint 1 person to be the *secretary*.
- (2) Subject to Rule 18.3, the *board* may determine a *secretary's* terms of appointment, powers, duties and remuneration. At any time, the *board* may vary or revoke a determination, or an appointment, whatever the terms of the appointment.

### 18.3 Resignation of Secretary

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

## APPENDIX 1 — PURPOSE AND OBJECTS

The purpose of the *mutual* is to deliver benefits to members whilst having an overall positive impact on society and the environment including the following primary objects:

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

## APPENDIX 2 — SHARES

### DIVISION 1 — MEMBER SHARES

#### A2-1 Subscription Price

The *subscription price* for a *member share* is \$10.00.

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

- (1) The following rights attach to each *member share*:
  - (a) the right to vote on the terms set out in clause A2-3;
  - (b) the right to participate in dividends on the terms set out in clause A2-4;
  - (c) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A2-5; and
  - (d) the right to redeem the *member shares* on the terms set out in clause A2-6.
- (2) The restriction on transfer of *member shares* in clause A2-7 attaches to each *member share*.

The *mutual* may issue more *member shares* at any time. The issue of more *member shares* does not vary the rights attached to *member shares* that the *mutual* has already issued.

#### A2-3 Voting Rights

- (1) Holders of *member shares* may participate and vote:
  - (a) at a *members'* meeting; and
  - (b) at a meeting of the class of holders of *member shares*: and
  - (c) in a ballot to appoint *directors* by election.
- (2) Subject to clause A2-3 (4) at a *members'* meeting or a meeting of the class of holders of *member shares*:
  - (a) on a show of hands each holder of *member shares*, other than a minor, has 1 vote; and
  - (b) on a poll – each holder of *member shares* other than a minor has 1 vote.
- (3) A member who is a minor has no vote.
- (4) Except as provided in Rule 12.4(2) (Body Corporate Representatives) and Rule 12.5 (Proxies) a member may exercise only one vote at a *members'* meeting or a meeting of the class holders of *member shares* or on an election of *directors* regardless of the fact that the *member* may hold more than one membership.

#### A2-4 Dividend Entitlements

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

#### A2-5 Distribution on Winding-Up

- (1) On a winding-up of the *mutual* the holder of a *member share* is entitled:
  - (a) to payment of the *subscription price* for the *member share* when the *member* subscribed for the *member share*; and
  - (b) if any assets remain after the payments in paragraph (a) — to any surplus assets of the *mutual*.
- (2) Each *member share* carries a right to participate in surplus assets equally with every other *member share*.
- (3) The *mutual* may offset against the amount payable under this clause:
  - (a) any amount unpaid on the *member share*; and
  - (b) any other amount payable by the *member* to the *mutual*.
- (4) The entitlements of holders of *member shares* to payment on winding-up are subject to any preferred entitlements to payment on winding-up that holders of any other class of shares may have.

#### A2-6 Redemption of Member Shares

- (1) The *mutual* may redeem a *member share* only if the following conditions are satisfied:
  - (a) either:
    - (i) the *member* has given the *mutual* notice requesting termination of the *member's* membership of the *mutual* under Rule 4.2; or
    - (ii) the *board* has resolved to terminate the *member's* membership of the *mutual* under Rule 4.3.
  - (b) the *mutual* can redeem the *member share* out of:
    - (i) the profits of the *mutual*; or



- (ii) the proceeds of a new issue of shares made for the purpose of the redemption.
- (2) On redemption, the *mutual* must pay the *member* an amount equal to the *subscription price* for the *member share* when the *member* subscribed for the *member share* less any amount unpaid on the *member share*.
- (3) On redemption, the *member shares* are cancelled.
- (4) This Rule does not affect the terms on which *member shares* may be cancelled under a reduction of capital or a share buy-back under *Corporations Act 2001*(Cth) Part 2J.1.

#### **A2-7 Transfer of Member Shares**

- (1) Subject to Subclause A2-7(2) and to Rule 9.1A of the Constitution, a *member* may not transfer their *member share*.
- (2) A trustee for an unincorporated association may transfer the *member share* that they hold as trustee for the unincorporated association to another person who is to act as trustee for the unincorporated association.

#### **A2-8 Interaction with Rule 9.6 of Constitution**

The rules set out in this Appendix 2 shall be read subject Rule 9.1A. In the event of any inconsistency, Rule 9.1A shall prevail.

## APPENDIX 3 — STANDING ORDERS

### A3-1 Time Limits for Speakers

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

### A3-2 Amendment

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

### A3-3 Speakers

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

### A3-4 Motions to be in Writing

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

### A3-5 Closure of Debate

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

## APPENDIX 4 — ELECTION OF DIRECTORS

### BALLOT AT AGM

#### A4-1 Election

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

Steps in Election Procedure	Time
Call for nominations (see clause A4-2(1))	56 days before AGM
Nominations close (see clause A4-2(2))	35 days before AGM
Conduct of ballot and announcement of <i>directors</i> (see clause A4-9 to A4-11)	AGM

#### A4-2 Nominations

- (1) The *board* must give *members* a notice calling for *members* to nominate candidates not less than 56 days before the AGM. The *board* may give this notice, in addition to any of the methods allowed in Subrule 1.5, by advertisement:
  - (a) at the *mutual's* offices; or
  - (b) in newspapers.
- (2) Nominations close 35 days before the AGM.
- (3) To nominate a candidate, 2 *members* must give the *mutual* a notice of nomination before nominations close. The notice of nomination must:
  - (a) declare that the candidate is eligible to be a *director* under Rule 13.2;
  - (b) state the candidate's age; and
  - (c) be signed by the nominating *members* and the candidate.
- (4) A retiring *director* may stand for re-election without nomination but must be eligible under Rule 13.2.

#### A4-3 Declaration by Candidate

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

- (a) as to the eligibility of the candidate for election under Rule 13.2; and

- (b) as to whether the candidate:
  - (i) has any interest in a contract or a proposed contract, with the *mutual*; or
  - (ii) holds an office or has an interest in property, whereby, whether directly or indirectly, duties or interests may be created that could conflict with the *director's* duties or interests as a *director* of the *mutual*.

#### **A4-4 Rejection of Nomination**

- (1) The returning officer must scrutinise nominations immediately upon receipt and reject a nomination where it appears to the returning officer that the candidate is not eligible under Rule 13.2.
- (2) The returning officer must reject a nomination where the candidate fails to furnish a declaration complying with clause A4-3.
- (3) Upon rejecting a nomination, the returning officer is to notify immediately the candidate, the candidate's proposer and the *board*.

#### **A4-5 Proceeding with Election**

- (1) If the number of candidates is equal to or less than the number of positions to be filled:
  - (a) the *general meeting* may appoint each candidate as a *director* by passing a separate resolution at the AGM;
  - (b) the election process otherwise set out in this Appendix is discontinued; and
  - (c) the *mutual* must give each *member* to whom notice of the AGM is to be given a notice that:
    - (i) states that the election process has been discontinued;
    - (ii) sets out the name of each candidate;
    - (iii) states that the *general meeting* will vote on the appointment of each candidate as a *director* by a separate ordinary resolution at the AGM;
    - (iv) identifies any candidates who will be 72 or more by the date of the AGM; and
    - (v) states that the *general meeting* will also have to pass a separate special resolution to appoint each candidate who will be 72 or more by the date of the AGM as a *director*.

**A4-6 Appointment of Returning Officers**

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

**A4-7 Appointment of Scrutineer**

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

**A4-8 Ballot Papers**

- (1) After nominations have closed, the returning officer must prepare ballot papers for the election. The ballot papers must:
  - (a) identify any candidates who will be 72 or more at the date of the AGM; and
  - (b) state that the *general meeting* will also have to pass a separate special resolution to appoint each candidate who will be 72 or more by the date of the AGM as a *director*.
- (2) The order in which the candidates appear on the ballot paper is to be determined by the returning officer by lot.
- (3) The returning officer must ensure some authenticating mark appears on each ballot paper before issuing them to the *members*.
- (4) On issuing each ballot paper, the returning officer must mark the *member's* name off the roll of *members*.

**A4-9 Conduct of Ballot**

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

**A4-10 Closure of the Ballot**

The ballot closes at the time the returning officer specifies.

#### A4-11 Procedures After Close of the Ballot

- (1) As soon as practicable after the ballot closes, the returning officer must ensure that the ballots are dealt with as follows:
  - (a) supervise the scrutinising of the ballot papers and reject informal ballot papers;
  - (b) count the votes;
  - (c) sign a declaration of the ballot as to the:
    - (i) names of the candidates appointed as *directors*;
    - (ii) votes cast for each candidate; and
    - (iii) number of votes rejected as informal; and
  - (d) deliver the declaration to the *secretary*.
- (2) A ballot paper is informal if:
  - (a) it is not authenticated by the returning officer;
  - (b) it has no vote indicated on it; or
  - (c) it does not indicate the *member's* preference for a candidate.
- (3) The *secretary* must announce the results of the ballot at the AGM.
- (4) If a *member* gives the *mutual* a written request, the *mutual* must make available to any *member* a copy of the returning officer's declaration of the ballot.
- (5) The returning officer must destroy the ballot papers three months after the declaration of the ballot.
- (6) The returning officer must within 7 days of the AGM furnish to the *chairperson* any declaration provided by a candidate pursuant to clause A4-3 who is elected to the *board* and the returning officer shall destroy all declarations provided by unsuccessful candidates pursuant to clause A4-3.

#### A4-12 Voting System

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

#### **A4-13 Irregularity in the Conduct of an Election**

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