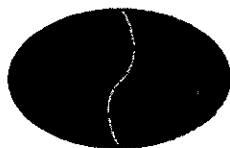


10/8/00



DEPARTMENT OF **FAIR TRADING**  
*NSW Consumer Protection Agency*

# **A Guide To Co-operatives**

**Advisory & Development Branch  
Registry of Co-operatives  
154 Russell Street  
BATHURST NSW 2795**

**DISCLAIMER OF LIABILITY**

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The publication is issued on the basis that the Department of Fair Trading is not engaged in the provision of legal or other professional services to the public. The Crown and the Department of Fair Trading expressly disclaim any liability for any omission or error which may appear and any liability arising from its use. If legal or other expert advice or assistance is required, the services of a competent professional person should be sought.

# **A Guide to Co-operatives**

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# 1. CO-OPERATIVES

## What is a Co-operative?

A co-operative is a democratic organisation owned and controlled by the people it serves who join together for a common benefit.

A co-operative may be formed for the provision of goods or services to members or for the supply of goods or services to the general public.

## Co-operative Principles

The Statement on Co-operative Identity was adopted at the 1995 General Assembly of the International Co-operative Alliance (ICA), held in Manchester on the occasion of the Alliance's Centenary. The Statement was the product of a lengthy process of consultation involving thousands of co-operatives around the world.

### DEFINITION

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically- controlled enterprise.

### VALUES

Co-operatives are based on the values of self-help, self- responsibility, democracy, equality, equity, and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility, and caring for others.

### PRINCIPLES

The co-operative principles are guidelines by which co-operatives put their values into practice.

#### ***1st PRINCIPLE: VOLUNTARY AND OPEN MEMBERSHIP***

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political, or religious discrimination.

#### ***2nd PRINCIPLE: DEMOCRATIC MEMBER CONTROL***

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are organised in a democratic manner.

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**3rd PRINCIPLE: MEMBER ECONOMIC PARTICIPATION**

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. They usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

**4th PRINCIPLE: AUTONOMY AND INDEPENDENCE**

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

**5th PRINCIPLE: EDUCATION, TRAINING AND INFORMATION**

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives.

They inform the general public -- particularly young people and opinion leaders -- about the nature and benefits of co-operation.

**6th PRINCIPLE: CO-OPERATION AMONG CO-OPERATIVES**

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional, and international structures.

**7th PRINCIPLE: CONCERN FOR COMMUNITY**

While focusing on member needs, co-operatives work for the sustainable development of their communities through policies accepted by their members.

**What can a Co-operative Do?**

A registered co-operative may carry out any activity or activities contained within its rules. These activities will reflect the nature of the co-operative's involvement in areas such as - primary production, manufacturing, trading, community or social activity.

The extent of the operations of a co-operative depends on the support given to it by its members, whether this be by the amount of share capital subscribed, personal efforts as directors or other officers, or by their own patronage of the co-operative.

One might ask, why join a co-operative?

Sometimes the task is bigger than the resources of the individual, but well within the reach of a group of persons with a common purpose who pool their resources. Co-operation provides strength by bringing together people with mutual aims.

Governments view co-operatives as ideal bodies to promote the well-being of the community, by assisting individuals, families and groups of persons to cope more effectively with economic and social challenges confronting them.

Co-operatives are mutual organisations that provide a service, which any member can enjoy.

## **Co-operatives differ from other organisations.**

There are practical similarities and differences between co-operatives and other kinds of organisations incorporated under New South Wales law. Differences arise from administrative and legal requirements created by adherence to the ethical ideas set out in the co-operative principles. Some key points of similarity and distinction are illustrated in the following comparison of characteristics of a co-operative registered under the Co-operatives Amendment Act 1997, a company registered under Corporations Law and an association registered under the Associations Incorporation Act 1984.

All three kinds of organisations:

- have corporate status, that is, they have a legal existence separate from that of the members and the organisation may sue or be sued in its own name; and
- may have limited liability, that is, in the event of winding up a member will not be required to make good any losses of the organisation.

Practical differences are shown in Table 1.

All organisations are required to comply with the laws under which they operate and there may be other important differences of significance to individual groups.

## **What types of co-operative organisations are there?**

There are about 1,300 co-operative type organisations in NSW. About 800 of these organisations are general co-operatives while the rest are mainly financial co-operatives. The general co-operatives are administered by the Registry of Co-operatives under the Co-operatives Amendment Act 1997.

Financial co-operatives include permanent building societies, credit unions, friendly societies and co-operative housing societies, which are administered by Australian Financial Institution Commission (FINCOM).

The general co-operatives in NSW are involved in a wide range of economic and social activities and contribute significantly to the economy of NSW. A number of agricultural industries in Australia are dominated by co-operatives, eg. the dairy, rice growing and processing, fishing and cotton growing and ginning industries. The activities of co-operatives include providing services to agriculture, food processing, processing fish and other seafood, ginning cotton, processing wool, manufacturing garments, printing and publishing books, distribution of water or operating irrigation systems, in the wholesale and retail industries, in freight transport services and taxi services, in housing, legal services, providing business or management consultancy services, marketing arts and crafts, providing hospital facilities and medical services, in pre-school education and post-school education, providing welfare and charitable services, radio broadcasting and in the recreating industry.

TABLE 1

	<b>Co-operative</b>	<b>Company</b>	<b>Association</b>
Powers	Not limited.	Not limited.	Main activity must not be Trade or Industry
Primary Activity(ies)	Included in Rules.	Nil.	Nil.
Issued Capital	Variable.	Fixed.	Nil.
Shares	May be purchased and there are restrictions on transfer.	Can't be repurchased but may be sold.	Nil.
Voting	The principle of one member one vote applies.	Voting rights frequently related to capital.	According to constitution
Profits	Surplus may be dealt with by rebates to members. Dividends on shares are limited.	No limit on dividend. Any distribution usually in proportion to shares held.	No distribution allowed.
Active Membership	Members undertake a minimum level of activity with co-op to retain membership.	Nil.	Nil.

The total number of members in co-operatives in NSW exceed 5 million, although some people may be members of more than one co-operative.

The turnover of the general co-operative sector in 1996/97 was \$3.24 billion while the total assets was \$1.9 billion.

## Why form a co-operative?

The co-operative form of enterprise is specially suited for meeting the collective needs of members, be they producers, consumers or workers. The basic objective of a co-operative is member service and satisfaction, unlike in a company driven by maximising profit. The members are more involved in the co-operative form of enterprise and they have more control of the activities of the co-operative.

A co-operative allows members to engage in both social and economic activities. The member service criterion provides for a more localised focus of activity, which is a reason for the low failure rate of co-operatives.

The co-operative structure is suited to large or small business. It is relatively simpler to form than a company and also, less costly to incorporate and administer in its day-to-day activities.

## 2. HOW IS A CO-OPERATIVE FORMED

Co-operatives in New South Wales are administered under the provisions of the New South Wales Co-operatives Amendment Act 1997, and the Co-operatives Regulation 1997. The Act and the General Regulations are designed to ensure that ownership and control of the co-operative always remains in the hands of those members who are actively utilising the facilities of the co-operative.

### Procedure for formation and registration.

In order to form and register a co-operative, certain documents must be prepared and submitted to the Registry of Co-operatives.

Preparation of these documents may be undertaken by persons who may expect to be involved as members, officers, directors or employees of the co-operative when it commences operations. In large scale proposals the services of an accountant or solicitor may be required.

If you feel that the proposed co-operative will be able to meet the requirements of the Co-operatives Amendment Act and co-operative principles, and that the necessary membership support can be obtained prior to the formation meeting, contact the Registry at the address shown in this booklet.

### Formation Kits.

On receipt of a request for information, a formation kit will be sent to you.

The kit will include:

- (a) **A copy of the standard rules**  
This document outlines the governing structure of the co-operative ie. primary activity(ies), objects if any, membership and active membership details, shares if applicable, directors, meetings etc.
- (b) **A copy of the disclosure statement format**  
The disclosure statement serves two main purposes:
  - (i) It demonstrates to the sponsors that there is a rational basis for their belief in the success, financial and otherwise, of the proposed co-operative
  - (ii) It provides information to prospective members upon which they may rely when making a decision to join the proposed co-operative, including liability and financial involvement.
- (c) **The co-operatives formation booklet, "Forming a Co-operative".**  
This booklet includes details of:-
  - Steps involved in forming a co-operative
  - How to complete the draft rules
  - How to complete the disclosure statement
  - Some guidelines on active membership
  - How to conduct a formation meeting



It is important that the notes included in the kit be followed closely and that amendment is not made to any standard rule unless made in accordance with these guidelines and the Co-operatives Act. Registry officers can advise on proposed rules and completion of other documents.

Copies of the Co-operatives Amendment Act, 1997 and the Co-operatives Regulations, 1997 may be obtained from the NSW Government Information Office [Telephone (02) 9743 7200 for Sydney and 1800 463 955 for country].

Sponsors are encouraged to use the standard draft material and instructions contained within the "Formation Kit". Not only will this save time and effort for the sponsors, but it will help to ensure that all aspects of the legislation have been complied with.

## The Disclosure Statement

The information to be inserted in the "disclosure statement" or included as an annexure is essential for full consideration of the proposed co-operative by all interested parties involved. Delays tend to occur when sponsors have to furnish corrections or essential information which has been omitted, and without which a satisfactory proposal cannot be established.

The following matters are included in the "disclosure statement":

- (i) Information as to the nature and extent of a person's financial involvement or liability as a member of the co-operative;
- (ii) A demonstration of the need for the co-operative, the resources available and the benefits expected to flow from its formation, together with details of members involvement and the minimum activity required from a member to retain membership;
- (iii) A list of persons who have indicated their intention to join the co-operative;
- (iv) If there is an existing unregistered organisation or business whose assets and liabilities are to be taken over, copies of the accounts and balance sheets for the last financial year - preferably certified by an auditor with an accompanying signed report;
- (v) A budget covering at least the first 12 months' operations. Capital and revenue items should be shown separately and revenue items should be adjusted on a proper accrual basis. However, in the case of very small organisations, a budget on an estimated cash flow basis would be acceptable;
- (vi) Lists of persons willing to be appointed as officers and directors with details of their experience and qualifications.; and
- (vii) Copies of letters evidencing offers or availability of real estate, loans, grants, subsidies, donations, and particular resources necessary for the proposed operations of the co-operative.

## **Submission of draft documents.**

It is important that draft documents, when completed, be submitted to the Registry of Co-operative prior to making any arrangements or commitment for formation of the co-operative. The draft documents to be submitted are:

- a) The proposed rules of the co-operative - to be submitted at least 28 days prior to the scheduled formation meeting
- b) The proposed disclosure statement - to be submitted at least 28 days prior to the scheduled formation meeting.

## **Where should the draft formation documents be sent?**

Once the rules, disclosure statement and primary activity(ies)/objects statement have been drafted, they should be forwarded by mail to:

**Registry of Co-operatives  
Formations Officer  
154 Russell Street  
BATHURST NSW 2795**

**Tel: (02) 6333 1422  
Fax: (02) 6333 1444**

Alternatively, the drafts may be prepared and arrangements made for an interview by writing to or by telephoning the Registry of Co-operatives. This will enable most matters to be clarified or adjusted by the sponsors.

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## 3. DIRECTORS AND OFFICERS OF CO-OPERATIVES

### Introduction.

These notes are designed as a guide only to the statutory and other responsibilities of directors and other persons empowered under the rules of a registered co-operative to give directions in regard to the business of the co-operative. These persons are defined as "officers" in the legislation under which the co-operative is registered.

The material in this publication should not be read as a substitute for the relevant Acts and Regulations, which should be kept for reference at the co-operative's office.

### Board of directors.

A co-operative is managed and controlled by its Board of Directors — subject to any restrictions imposed by rules. The Act does not confer any powers on the Manager, Secretary, Treasurer or employees of a co-operative. Under the Act it is the Board of Directors that is responsible for issuing instructions to those persons charged with the day to day management of the co-operative.

### Responsibilities of directors.

The business responsibilities of directors are:

- The development of basic guidelines for the control of the business activities of the co-operative.
- The appointment, supervision and removal of employees including the determination of their pay and description of their responsibilities.
- The calling of special meetings whenever necessary or upon the request of members as provided in the rules.
- The approval of general business arrangements such as entering into contracts with distributors or suppliers
- The settlement of arrangements for handling funds and the designation of the people who may sign cheques.
- The borrowing of funds for any legal and approved purpose.
- Ensuring that an adequate bookkeeping system is maintained, that regular financial reports and audits are done and that a complete record of Board meetings is kept in accordance with accounting standards.
- Ensuring that the organisation establishes and maintains systems of internal control and supervision and safe custody of appropriate documents.
- Exercising prudent decision-making regarding the level of debt entered into.
- The duties of loyalty, honesty and good faith.

- Declaring interest in proposed contracts.

The Director's responsibilities to members are:

- Serving to the best of one's ability and capacity.
- Representing members' interests on an impartial basis.
- Selecting good staff and overseeing activities without undue interference.
- Adopting policies and procedures along sound business lines. These should be based on study and analysis of available facts and should be compatible with the organisation's objectives.
- Using adequate checks to make certain that employed staff and voluntary officers, the Manager, Secretary and Treasurer are conforming to the policies adopted by the Board of Directors.
- Studying operating results in order to determine whether policies should be continued, changed or dropped.
- Taking active and energetic steps to keep members fully informed as to the organisation's activities and problems. Care must be taken, however, to ensure that individual members' private and confidential business is not disclosed.
- Providing high-quality, reliable service and making members' interests of first importance.

All of these responsibilities are common to large and small co-operatives. Therefore, it is important that a person possesses the ability to implement these responsibilities when being appointed as a director.

In practical terms, the day to day control will be placed in the hands of a single person. That person may have a title of Secretary, Manager, Executive Officer or some other title reflecting the size of the organisation. Regardless of the size of the organisation, it is important that the person takes a businesslike approach to his/her duties whether as an honorary officer or paid employee.

## **Responsibilities of manager.**

The primary responsibilities of the manager are:

- Serving the society (either directly or through assistants) in accordance with the policies determined by the Board of Directors.
- Being knowledgeable of the organisation's objectives and complying with all policies designed to achieve them.
- Providing the Board of Directors with basic information and suggestions for developing new objectives, changing established ones and controlling operations.
- Selecting, training, supervising and developing personnel.
- Operating the organisation on a sound business basis by giving attention to:
  - Developing an effective business structure.
  - Using operating and financial budgets.

- Developing and maintaining an adequate accounting and record system.
- Initiating sound purchasing and marketing practices.
- Studying, planning and conducting research on problems of interest to the organisation.
- Identifying and using external sources of assistance on problems affecting the organisation.
- Achieving technical proficiency with respect to the products handled and the physical facilities operated.

## **Statutory obligations.**

A co-operative has a number of statutory obligations under various Acts of Parliament. (This publication does not attempt to deal with matters such as taxation, industrial matters or the Unclaimed Moneys Act.)

A co-operative is required, by legislation, to do a number of things which entail the forwarding of documents to the Registrar of Co-operatives on a periodical or event basis, such as annual returns, change in registered office or a change in the composition of the Board.

In addition, a co-operative is also required to keep various registers and to have certain documents and records as specified in the relevant legislation available for inspection.

For instance:

- A copy of the Act and Regulations.
- A copy of the rules of the co-operative.
- A copy of the last balance sheet, profit and loss account, together with the report of the auditor.
- A register of directors, members and shares.
- A register of loans raised and securities given.
- Minute books.
- Active membership records.

The powers and duties of the Directors are regulated by both the rules of the co-operative and the provisions in the legislation.

## **Offences.**

There are certain offence provisions in the legislation which make certain actions grounds for conviction. They also deal with the recovery of penalties from Directors who fail to act in the prevention of the commission of any offence.

## **General.**

Many matters such as the preparation of annual accounts and lodgement of annual returns, as well as the holding of the annual general meeting are annual events. They should be diarised as agenda

items for a board meeting well prior to the end of the co-operatives financial year. A further meeting should be held shortly afterwards in order to ensure that these reports have received proper attention.

### **For further information on documents and forms.**

Enquires regarding annual return arrangements can be made by telephoning the Co-operatives Financial Analysis Branch in the Registry on telephone (02) 6333 1460.

Enquiries regarding forms and fees for application for registration of alterations to rules, changes in directors and other documents may be made by telephoning the Supervisor, Registrations and Rules in the Registry on telephone (02) 6333 1476.

#### **Published By**

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## 4. HOW CAN WE HELP YOU?

### What does the Registry of Co-operatives do for Co-operatives?

Activities of the Registry of Co-operatives within the Department of Fair Trading include:

- Providing an information service, including statistical data, about co-operatives.
- Provision of advice on policy, legislative and practical matters (particularly relating to the formation, operation, merging or winding up of co-operative organisations).
- Liaising with industry groups, Ministerial Advisory Committees, individual co-operatives and government departments with the view to improving the delivery of co-operative type services to the community.
- Maintaining a register of co-operatives under the Act 1997. (This includes the registration of their rules, amendments, special resolutions and charges given over their assets in order to secure any borrowings by a co-operative).
- Provision of search facilities for persons wishing to search registers or documents or to obtain copies of available documents.
- Provision of advisory services to prospective or existing co-operatives on requirements for the registration of co-operatives documents or rules.
- Authorisation and monitoring the activities of co-operatives registered in other states which are operating in New South Wales.

### Advisory Services

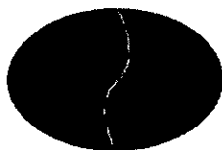
Staff at the Registry are experienced in the legislative and regulatory framework required to operate viable co-operative businesses. They may be able to assist managers and directors with statutory or commercial issues by suggesting various courses of action. Please note while Registry staff are not able to provide legal or accounting advice, they may assist with interpretation of the co-operative legislation

Financial assistance to fund feasibility studies or business plans may also be available from the Registry's Co-operative Development Fund.

From time to time, the Registry of Co-operatives receives complaints or enquiries from members of co-operatives and the general public.

Members of co-operative organisations are urged, in the first instance, to raise the issue with the co-operative concerned.

In most cases, the problem is resolved by clarifying the position for the complainant or after consultation with the co-operative.



DEPARTMENT OF **FAIR TRADING**

*NSW Consumer Protection Agency*

# **Simple Steps to forming a Co-operative**

**Advisory & Development Branch  
Registry of Co-operatives  
154 Russell Street  
BATHURST NSW 2795**



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## **CO-OPERATIVES FORMATION BOOKLET**

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## **INTRODUCTION**

**TO BEGIN** - browse through the contents of the Formation Kit. It contains:

- A 'Guide to Co-operatives' brochure
- Blank Disclosure Statement for completion
- Suggested Standard Rules
- Suggested Rules Option Sheet

Initially you need to determine whether a co-operative structure will suit your needs. The enclosed brochure "Guide to Co-operatives" contains information which will help you in making your decision.

Also you should ensure the proposed activity is likely to be financially workable.

The Disclosure Statement, is a handy, helpful tool to assist you clarify your ideas and work out what additional information you may need. In some ways the Disclosure Statement is like a summarised business plan providing information on aims, directors, management, assets, other resources and financing.

If you need any additional information or assistance please call the Formations Officer on (02) 6333 1422.

Registry of Co-operatives  
154 Russell Street  
BATHURST NSW 2795

### **OTHER SERVICES AVAILABLE**

Details of Business Enterprise Centres in both metropolitan and country regions are included. These centres provide a range of financial and business publications, as well as assistance in establishing new businesses.

You can also contact the Outreach Co-ordinator at your local TAFE college to discuss educational courses for setting up a co-operative. A kit, "Planning Community and Co-operative Enterprises", is available for \$65 from:

Foundation Studies  
Training Division  
Suite 6, Level 1  
125 Main St.  
Blacktown NSW 2148

Another useful contact in some areas is your Local Government Council. Some councils have a development officer who will provide assistance in helping to establish new businesses.

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## **SIMPLE STEPS TO FORMING A CO-OPERATIVE**

Once you have determined that a co-operative is a good idea for your group, you should take the following steps to forming your co-operative:

**STEP 1.**      Required Number of Persons

You will need at least five (5) interested people.

**STEP 2.**      Documents to be Completed and Submitted to the Registry of Co-operatives

Complete the following documents in draft form:

(a)      Rules

(b)      Disclosure Statement -      This must be submitted to the Registry at least 28 days before the scheduled formation meeting.

Note: The above documents are in the enclosed formation kit.

**STEP 3.**      Submission of Draft Documents

Mail the draft documents to:

The Formation Officer  
Registry of Co-operatives  
154 Russell Street  
BATHURST NSW 2795

**STEP 4**      Review by the Registry

The draft documents will be reviewed by the Registry as quickly as possible.

**STEP 5**      The Formation Meeting

After your documents have been approved by the Registrar you can hold your formation meeting with as many potential members as possible present. The legal minimum number required is five (5).

For guidance on how to conduct a formation meeting you will need to refer to "The Formation Meeting for a Co-operative", which will be sent to you when the Registrar approves your draft rules and disclosure statement. The necessary forms to apply for registration of your co-operative will also be sent to you at this time.

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**STEP 6.**      Notify the Results of Formation meeting to the Registry

Within two (2) months of holding the formation meeting the registration documents (including the rules and disclosure statement, certified at the Formation Meeting) must be sent to the Registry so that your co-operative may be registered.

Registration Fee

The Registration Fee is \$155 for a trading co-operative or \$103 for a non-trading co-operative.

**STEP 7**      After Registration

Once registered, a certificate of incorporation and a registered copy of the rules are mailed to the co-operative.

The new co-operative may now commence its activities.

## **HOW TO COMPLETE THE DISCLOSURE STATEMENT**

One of the requirements that must be met by the sponsors before an application to register a co-operative is made is to present to the formation meeting a separate, written disclosure statement for the purpose of ensuring the prospective members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the co-operative.

The disclosure statement contains a number of sections to be completed by the sponsors together with provision for annexures. When completed, a draft must be submitted to the Registrar of Co-operatives at least 28 days before the formation meeting is held. The Registrar may approve the draft statement as submitted or may approve an amended statement. Approval is given by the Registrar by notice in writing to the person who submitted the draft statement.

**Outlined below are the major areas you need to consider in the disclosure statement.**

- 1.      Liability and financial involvement of members once the co-operative is formed**
  - 2.      Who can be a member of the co-operative including details of active membership requirements and objects, if applicable.**
  - 3.      Details of how the co-operative will perform its activities.**
-

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**4. Particulars of how the co-operative will be managed including details of:**

- Proposed directors;
- Proposed directors interest in any contract with the co-operative;
- Day to day management;
- Responsibility for accounting and financial functions of the co-operative;
- Name of auditor together with written consent to nomination;

**5. Detailed financial information including details of:**

- Start up funding showing internal and external source of funds;
- Property and assets;
- Trading stock;
- Market research;
- Formation expenses;
- Proposed contracts which the co-operative will assume once formed;
- Forecast cashflow budget in the format provided or by annexure;
- Forecast profit and loss statement in the format provided or by annexure.

## **HOW TO COMPLETE THE RULES**

### **What are the Rules?**

The rules are a collection of Clauses which describe the basic way the group will organise its activities. They outline the primary activity or activities, objects if any, the active membership provisions, qualifications for members and directors, admission of new members, shares and other charges, the meeting procedures, distribution of surplus, accounts and audit requirements, and more.

In a formal sense the rules are a binding contract between the members and the co-operative. They are equivalent to the Memorandum and Articles of Association of a company - they are the constitution of the organisation.

Firstly check to see if your group needs any rule options, as listed on an enclosed sheet. If you do, then send the completed list to the Registry of Co-operatives. The options will be sent to you.

Copies of Co-operatives legislation, including the Co-operatives Act 1992 and Co-operatives Regulation 1997 are available from:

**The Government Information Service**  
Ph: (02) 9743 7200 or Toll free 1800 463955

Also, ask for any amendments.

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## **SOME DOs AND DON'Ts WHEN COMPLETING LEGAL DOCUMENTS** **(DISCLOSURE STATEMENT AND RULES)**

These documents have a number of legal functions. Neatness and clarity make it easy for your members and others to use them. Some do's and don'ts in respect of documents intended for registration are:

- DO preferably TYPE your responses. In the case of inserting additional rules, set them out on a separate sheet of white paper then PASTE in securely. If unable to type, use a BLACK pen.
- DO INITIAL any changes to the Rules e.g. inserting new rules deleting existing rules. (Initials of the Chairperson and Secretary of your co-operative are necessary).
- DO RULE OUT unused pages or spaces at the foot of pages in the Rules Book with a "Z".
- **DON'T USE WHITEOUT.** If you make a mistake, paste the correction over it and have the chairperson and secretary initial it.
- Please take care when completing these legal documents. In general, the Registry Staff are unable to correct any significant errors you make and the documents will be returned to you for correction.

## **ACTIVE MEMBERSHIP**

### **NATURE OF ACTIVE MEMBERSHIP**

The Co-operatives Act 1992 require that a co-operative rules specify the manner and extent to which a member is required to actively support a co-operative. This support is measured against the co-operative's 'primary activity' (or a combination of primary activities). Members are obliged to use or support an activity, or activities, of a co-operative in order to retain the right to be a member, including the right to vote.



### **SOME GUIDELINES ON ACTIVE MEMBERSHIP**

1. Firstly the primary activity has to be set out. This primary activity should make up at least:

10 percent of the turnover; or  
10 percent of the income; or  
10 percent of the expense; or  
10 percent of the surplus; or  
10 percent of the business of the society.

To supply to members ..... goods.

To dispose of ..... produce of members.

2. Secondly, the minimum amount of activity a member must have with the co-operative needs to be set out with the time period for the activity. some guidelines for the minimum amount of activity and time period are listed below:-

<u>Produce or Services</u> <u>Period</u>	<u>Minimum Value</u>	<u>Time</u>
Farm supplies	\$100	one month
Household supplies	\$10	one month
Books, and stationery	\$20	12 months
Machinery, parts and goods not included elsewhere	\$100	12 months
Sugar cane	40 tonnes	12 months
Grain (other than seed grain)	1 tonne	12 months
Seed grain	10 kilograms	12 months
Fruit and vegetables	40 cases	12 months
Fish and shellfish	10 kilograms	12 months
Livestock		
- cattle	10 animals	12 months
- pigs	20 animals	12 months
- sheep, goats or other	30 animals	12 months
Services	\$10	12 months
Subscription	\$10	12 months

### **SOME SAMPLES OF ACTIVE MEMBERSHIP**

#### **Sample of a Dairy Co-operative:-**

Rule 12 In accordance with Part 6 of the Act:

- (a) To dispose of milk produce of members is the primary activity of the co-operative; and
- (b) A member shall supply at least 1,000 litres of milk during a period of seven days in order to establish active membership of the co-operative.



---

**Sample of an Export Co-operative:-**

Rule 12 In accordance with Part 6 of the Act:

- (a) To export fruit grown by members is a primary activity of the co-operative; and
- (b) A member shall supply to the co-operative a minimum of X cases of fruit during any period of 12 months in order to establish active membership of the co-operative

**Sample of a Marketing Co-operative**

Rule 12 In accordance with Part 6 of the Act:

- (a) To market wheat and such other grains as members determine is a primary activity of the co-operative ; and
- (b) A member shall pay a service fee of not less than \$X during any period of 12 months in order to establish active membership of the co-operative.

**Sample of a Trading Co-operative**

Rule 12 In accordance with Part 6 of the Act:

- (a) the operation of a trading store is a primary activity of the co-operative; and
- (b) a member shall
  - (i) purchase farm supplies of a least \$100 value; or
  - (ii) purchase household supplies of at least \$10 value during a period of one month

in order to establish active membership of the co-operative.

**Sample of a Craft Co-operative:-**

Rule 12 In accordance with Part 6 of the Act:

- (a) to provide a retail outlet for the art and crafts produced by members is a primary activity of the co-operative; and
- (b) a member shall
  - (i) provide art and/or crafts for sale to the amount of not less than \$250.00 in any period of 12 months; and
  - (ii) perform all rostered duties determined by the board during any period of 12 months; and
  - (iii) attend at least 60% of monthly meetings in any period of 12 months.

In order to establish active membership of the co-operative.

---

---

**Sample of a Ski Club Co-operative:-**

Rule 12 In accordance with Part 6 of the Act:

- (a) The provision of a ski lodge accommodation is a primary activity of the co-operative, and
  - (b) a member shall:-
    - (i) pay an annual subscription of at least ten dollars (\$10) as set out in Rule number. (insert rule number);
    - (ii) stay overnight in the lodge on at least one occasion during a period of 12 months;or
    - (iii) undertake at least 14 hours voluntary maintenance work during a period of 12 months;
- in order to establish active membership of the Co-operative.

**Sample of a Rental Housing Co-operative**

Rule 12 In accordance with Part 6 of the Act:

- (a) the provision of homes for rental within the area of Gondwanna is a chief primary activity of the co-operative; and
  - (b) a member shall
    - (i) be over the age of 18 years; and
    - (ii) be a resident in a property which is leased from the Gondwanna Housing Co-operative Ltd.
- in order to establish active membership of the co-operative.

**Sample of a Worker Co-operative**

Rule 12 In accordance with Part 6 of the Act:

- (a) to carry on the business of.....and to provide employment for the members within the business is a primary activity of the co-operative; and
  - (b) a member shall work within the co-operative for a minimum period of X weeks in any period of 12 months in order to establish active membership of the co-operative.
-

## BUSINESS INFORMATION CENTRES

**BUSINESS ENTERPRISE CENTRES (BECs).** The Department of State & Regional Development provides funding for BECs across the State to enable them to deliver business information services to start-up and micro businesses in NSW.

### **METROPOLITAN OFFICES**

Blacktown	Telephone (02) 9672 3366
Botany	Telephone (02) 9316 5877
Eastern Suburbs	Telephone (02) 9369 2844
Fairfield	Telephone (02) 9726 2522
Campbelltown	Telephone (02) 4626 3544
Manly-Warringah	Telephone (02) 9971 1708
Northside	Telephone (02) 9415 2630
Parramatta	Telephone (02) 9689 1700
Penrith and District	Telephone (02) 4721 5011
St George & Sutherland Shires	Telephone (02) 9588 3688
Sydney	Telephone (02) 9282 6977
Sydney Aboriginal	Telephone (02) 9349 7300

### **BEC COUNTRY REGIONS**

Albury Wodonga	Telephone: (02) 6041 3704
Armidale & District	Telephone (02) 6771 2556
Ballina	Telephone (02) 6686 9122
Bathurst	Telephone (02) 6332 1077
Casino Region	Telephone (02) 6662 5055
Clarence	Telephone (02) 6645 3633
Cobar	Telephone (02) 6836 1184
Coffs Harbour	Telephone (02) 6651 3388
Cootamundra	Telephone (02) 6942 1400
Deniliquin	Telephone (0358) 81 3010
Forbes	Telephone (02) 6851 1377
Glen Innes Business Assistance Office.	Telephone (02) 6732 5177
Grafton & District	Telephone (02) 6643 1967
Hastings	Telephone (02) 6583 3211
Hunter	Telephone (02) 4925 2566
Illawarra	Telephone (02) 4223 3185
Inverell	Telephone (02) 6722 5688
Lismore	Telephone (02) 6622 1933
Lithgow	Telephone (02) 6352 3600
Lower Hunter	Telephone (02) 4991 1722
Macleay	Telephone (02) 6563 1022
Manning-Gloucester	Telephone (02) 6551 2499
MIA	Telephone (02) 6964 1555
Moree Region	Telephone (02) 6752 3533
Mudgee Region	Telephone (02) 6372 6088

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Murwillumbah	Telephone (02) 6672 5377
Orange	Telephone (02) 6362 0448
Parkes	Telephone (02) 6862 5511
Queanbeyan	Telephone (02) 6297 3121
Snowy Monaro	Telephone (02) 6452 5392
South East Region	Telephone (02) 6492 3944
Southern Tablelands	Telephone (02) 4822 1933
Tamworth & District	Telephone (02) 6766 2290
Tweed & District	Telephone (02) 75524 6677
Upper Hunter	Telephone (02) 6572 1877
Wagga Wagga	Telephone (02) 6925 6588
Wellington-Orana	Telephone (02) 6845 2233

**Published By**

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---

**FORMATION MEETING  
PROPOSED NON-TRADING CO-OPERATIVE**

**DISCLOSURE STATEMENT**

**FOR REGISTRATION OF A CO-OPERATIVE UNDER THE  
CO-OPERATIVES ACT 1992 (NSW). SECTIONS 16, 17 AND 19.**

**NAME OF PROPOSED CO-OPERATIVE:**

.....

**DATE OF LODGEMENT WITH REGISTRAR:**

     /      /       
DD MM YY

**DATE OF APPROVAL:**

<u>    </u>	/	<u>    </u>	/	<u>    </u>
DD		MM		YY

**VALID FOR A PERIOD OF 6 MONTHS FROM DATE OF APPROVAL FOR  
ISSUE WITHIN THE STATE OF NEW SOUTH WALES ONLY**

# **DISCLOSURE STATEMENT**

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## **CONTENTS**

- Name of Proposed Co-operative
- Explanation of this Form
- Liability and Financial Involvement
- How will this Co-operative Perform its Activities
- How will this Co-operative be Managed
- Detailed Financial Information
- Annexures Including Cash Flow Budget Forecast and Forecast Profit and Loss Statement
- Further Investigation
- Disclaimer of Liability by the Registry of Co-operatives
- Certification

## DISCLOSURE STATEMENT

---

### NAME OF PROPOSED NON-TRADING CO-OPERATIVE:

.....

### EXPLANATION OF THIS FORM:

- One of the requirements that must be met before an application to register a co-operative is made is to present to the formation meeting a separate, written disclosure statement for the purpose of ensuring the prospective members are adequately informed of the nature and extent of a person's financial involvement or liability as a member of the trading co-operative. Co-operatives Act 1992, Section 17(2).

### LIABILITY AND FINANCIAL INVOLVEMENT:

- Section 76(2) of the Co-operatives Act 1992 states that "a member of a co-operative with share capital is liable to the co-operative for the amount, if any, unpaid on the shares held by the member, together with any charges payable by the member to the co-operative as required by the rules of the co-operative".
- Section 76(3) of the Co-operatives Act 1992 states that "a member of a co-operative without share capital is liable to the co-operative for any charges payable by the member to the co-operative as required by the rules of the co-operative."

### 1. DETAILS OF LIABILITY AND FINANCIAL INVOLVEMENT

- 1.1 Share Capital cost per member \$
- 1.2 Annual Subscriptions Levies etc \$
- 1.3 Charges (this should be fees incurred as \$  
per 106 Standard Rules)
- 1.4 Any contracts, guarantees and indemnities, contingent liabilities, unresolved or pending law suits which the co-operative will assume once formed are listed below: (A copy of relevant contracts and other documents are included by way of annexure)

- 1.5 Where an existing organisation is seeking to register as a co-operative, indicate its current name below and attach copies of the last 2 years' profit and loss accounts and balance sheets.

## 2 WHO CAN BE A MEMBER OF THE CO-OPERATIVE?

**Active Membership :** The Co-operatives Act 1992, requires that a co-operative's rules specify the manner and extent to which a member is required to actively support a co-operative. This support is measured against the co-operative's primary activity (or a combination of primary activities). Members are obliged to use or support an activity, or activities, of a co-operative in order to retain the right to be a member, including the right to vote. *Note: Before an active membership rule (or amendment) can be put to members the written approval of the Registrar is required.*

- 2.1 The co-operative's active membership rule identifies the co-operative's basic reason for existence, or primary activity, as being: *(This should be the same as per Rule 14(a) of Standard Rules)*

- 2.2 and to maintain active membership of the co-operative, a member shall: *(This should be the same as per Rule 14(b) of Standard Rules)*

- 2.3 A co-operative may also have objects in addition to primary activities. *(This should be the same as per Rule 6 of Standard Rules. Any proposed objects should be listed below or attached as an annexure).*



**3 HOW WILL THIS NON-TRADING CO-OPERATIVE PERFORM ITS ACTIVITIES?**

The following demonstrates the need for the co-operative, the resources available and the benefits expected to flow from its formation.

- 3.1 The co-operative intends to carry out its Primary Activity(ies)/Objects as follows:

*(A general statement of how the co-operative intends to carry out its primary activities is required here)*

.....

.....

.....

.....

.....

- 3.2 The members will have the following role in the co-operative's functioning *(eg supply produce; use common services)*

.....

.....

.....

.....

.....

- 3.3 The following physical resources will be used to carry out the activities of the co-operative *(eg office or factory space, furniture, equipment, plant, vehicles).*

.....

.....

.....

.....

.....

- 3.4 The following products or services are to be provided to members by the co-operative.

.....

.....

.....

.....

#### 4 HOW WILL THE CO-OPERATIVE BE MANAGED?

- 4.1 **Directors** : The names of those who have consented to being nominated for election as directors to fill the positions provided for in the rules, being .....in number, are shown below.

*(Note: Directors must be over 18 years of age)*

(a)	Name	Occupation	Date of Birth	Place of Birth	Address	Relevant Experience
-----	------	------------	------------------	-------------------	---------	---------------------


*(If insufficient space, attach details as an annexure marked 'Directors').*

- (b) Will any of the promoters or any of the proposed directors or members have a direct or indirect interest in any contract or proposed contract with the co-operative, other than an interest in a contract referred to in Section 241 of the Act?

☐

Yes

☐

No

*(In the case of a contract referred to in Section 241 the contract must be made in good faith, in the ordinary course of the business of the co-operative and on such terms that will be usual and proper in similar dealings between the proposed co-operative and its members.)*

If yes, the following details must be specified here or by way of annexure;

- (i) the nature of the contract;
- (ii) the name of the parties to this contract
- (iii) (A) the interest, remuneration, reward or commission which any promoter or proposed director or member will be entitled to receive; or
  - (B) where the promoter or proposed director or member is a director, officer, shareholder or member of a body corporate or organisation, which is a party to the contract; the interest, remuneration, reward or commission which the body corporate or organisation will receive.
- (iv) the name of each promoter or proposed director or member referred to in (iii) above, and in the case of (iii)(B), the position or office held.

- (c) Will any of the proposed directors have a conflict of interest or duty within the provision of Section 234 of the Co-operatives Act 1992? If so, specify by way of annexure.

**4.2 Day-to-Day Management:** The name of the person who has agreed to be responsible to the board of directors for day-to-day management of the co-operative and brief details of his/her experience are as follows:

.....

.....

Management is to be ☐ paid or ☐ voluntary

☐ full-time or ☐ part-time

**4.3 Accounting**

- (a) The person named below has agreed to be responsible for general accounting and financial functions of the co-operative:

.....

.....

- (b) This person has the following qualifications and experience relevant to this responsibility or this person belongs to a firm having the following qualifications and experience.

.....

.....

**4.4 Auditing**

*(Note that the auditor must be a Registered Company Auditor within the meaning of the Corporations Law)*

- (a) The person named below has agreed to be responsible for auditing the co-operative's accounts:

.....

- (b) Attached is written evidence of the auditor's consent to appointment as the co-operative's auditor (*a letter on the auditor's letterhead, attached as a separate Annexure*).

## 5 DETAILED FINANCIAL INFORMATION

### 5.1 Start-up Funding

(a) Internal Source of Funds

The number of persons who qualify for membership of the co-operative and have indicated in writing their intention to join the co-operative, is ..... persons.

A list of the people who have indicated an interest in becoming members and the number of shares each person is subscribing (if applicable) is shown as an annexure marked "Members and Shares".

- (b) The total number of shares to be subscribed by these persons is ..... shares

- (c) Total share capital to be subscribed is \$.....  
 Total entrance fees are \$.....  
 Total initial subscriptions or levies are \$.....  
 Total other charges are \$.....

(d) External Source of Funds

If the co-operative is to use grants, subsidies, donations or other financial support to be viable, documents of funding received or requested should be given as an annexure marked "Grants and Subsidies".

- (e) If the co-operative is to borrow funds, indicate here the amount :

\$.....

and attach, as an annexure marked "Loan Funds", a copy of the offer to extend finance and the terms of such loan(s).

### 5.2 Property and Assets

- (a) If the co-operative is to purchase property or major assets, indicate here the current market value of the property or assets

\$.....

Evidence of the availability of the property or assets should be attached as an annexure marked "Property - Assets - Freehold".

- (b) If arrangements have been made, or are under negotiation, to lease property or major assets by the co-operative, evidence of this availability should be shown as an annexure marked "Property Assets - Leasehold".

- (c) Improvements to the property or assets (for example, renovations, furnishings, plant or equipment), if they are to be made, are estimated to cost

\$.....

Estimates for these costs should be detailed as an annexure marked "Property - Assets - Improvements".

- (d) Shown below are detail of property or major assets other than any property or major assets it will own or lease that the co-operative will have the use of.

.....  
 .....  
 .....

*(Evidence of such arrangements must be provided by a letter of authorisation from the owner)*

### 5.3 Demand for Proposed Co-operative's Goods/Services

Show here details of market research or analysis of demand, for the co-operative's goods or services that has been conducted:

.....  
 .....  
 .....

*If insufficient space, attach details as an annexure marked 'Market Research'.*

### 5.4 Formation Expenses

- (a) Expenses incurred prior to the formation meeting which are to be recouped once the co-operative is formed are :

\$.....

Description of these expenses:

.....  
 .....  
 .....

*If insufficient space, attach further details as an annexure marked "Formation Expenses".*

- (b) Any contracts, guarantees and indemnities, contingent liabilities unresolved or pending law suits which the co-operative will assume once formed are detailed below:

.....  
.....

**5.5 Forecast Cashflow Budget and Forecast Profit and Loss Statement**

- (a) *Attach as an annexure marked "Cash Flow Budget Forecast" details of both capital and revenue items anticipated for the first year of operation.*
- (b) *Attach as an annexure marked "Forecasted Profit and Loss Statement" details for the first year of operation including where appropriate : sales, cost of goods sold, gross profit margin, rebates, dividends.*

*A form is provided on pages 11 and 12 for each of the above budgets.*

6

**ANNEXURES**

Show here which annexures are attached to this formation statement (*tick appropriate boxes*).

Contracts Etc

☐

Feasibility Study

☐Existing Organisation  
Accounts☐

Business Plan

☐

Activities

☐Property - Assets  
- Freehold☐

Directors

☐Property - Assets  
- Leasehold☐Directors/Promoters  
Interest in Contract☐Property - Assets  
- Improvements☐

Auditors Letter

☐Property - Assets  
- Other☐

Members and Shares

☐Cash Flow Budget  
Forecast☐

Grants and Subsidies

☐Forecasted Profit  
& Loss Statement☐

Loan Funds

☐

Formation Expenses

☐

Market Research

☐

**FURTHER INVESTIGATION:**

- ↳ Further investigation by the prospective member may be necessary. This disclosure statement is not necessarily a full statement of the liability and financial involvement of a prospective member. Prospective members please note the disclaimer below.

**DISCLAIMER OF LIABILITY:**

- ↳ No responsibility as to the contents of: (i) the Disclosure Statement and attachments and annexures that form part of this document; and (ii) the associated Rules which all collectively make up the formation documentation, is to be taken by the Registrar of Co-operatives, the Department of Fair Trading or by any of its servants or agents.

Each prospective member is advised to make any investigations (including the obtaining of professional advice) which that person believes to be necessary to satisfy himself or herself about the contents of this formation documentation or the decision of whether or not to join the proposed co-operative.

It should be clearly known that the Registrar of Co-operatives, the Department of Fair Trading or any of its agents or servants are not engaged in the provision of legal or other professional services to the public, prospective members or co-operatives. If legal or other expert advice is required, the services of a competent professional person should be sought.

**CERTIFICATION:**

We the undersigned, certify that this is a copy of the disclosure statement which was presented to the formation meeting on ..... (date) for the purpose of forming a co-operative to be known as:

..... (name of co-operative)

..... Chairperson of Formation Meeting  
Signature

..... Secretary of Formation Meeting  
Signature

Note: This certification is signed at the Formation meeting which is held after the draft formation documentation which includes the Rules and the Disclosure Statement have been approved by the Registry and returned to the sponsors of the proposed co-operative.



## CASH FLOW BUDGET FORECAST

### FOR FIRST YEAR OF OPERATION

		ESTIMATES FIRST YEAR OF OPERATION 20.....
<b>CASH IN</b>	<b>OPENING BANK BALANCE</b>	
	Issue of Shares to members	.....
	Grants & Subsidies	.....
	Subscriptions & Donations	.....
	Commercial Revenue	.....
	Loans Raised	.....
<b>+ TOTAL CASH RECEIPTS</b>		.....
		=====
<b>CASH OUT</b>	Materials	.....
	Wages & Salaries	.....
	Transport & Travel	.....
	Rent	.....
	Insurance	.....
	Repair & Maintenance	.....
	Administration Expenses	.....
	Audit	.....
	Interest on Borrowings	.....
	Capital Expenditure	.....
	Tax	.....
	Sundries	.....
<b>- TOTAL CASH PAYMENTS</b>		.....
		=====
<b>= CLOSING BANK BALANCE</b>		.....
		=====

Please note :

- \* the forecasted Cash-Flow Budget and Profit & Loss Statements are provided as examples only. You may want to add additional items appropriate to your proposed co-operative;
- \* show your calculations and any assumptions for individual items on a separate sheet, eg cost of shares per member x number of members = total issue of shares to members in \$;
- \* check all items of income and expenses included;
- \* check arithmetic.

## FORECASTED PROFIT AND LOSS STATEMENT

Year One

**SALES**

.....

Less: Cost of Goods Sold

.....

**GROSS PROFIT**

\_\_\_\_\_

=====

Add : Other Income

.....

**TOTAL INCOME**

\_\_\_\_\_

=====

Less: Fixed Costs

.....

Operational Costs

.....

**OPERATING PROFIT/LOSS**

\_\_\_\_\_

=====

Less : Income Tax attributable  
to Operating Profit

.....

**OPERATING PROFIT/LOSS  
(AFTER TAX)**

\_\_\_\_\_

=====

**RULES OF**

---

**REGISTERED UNDER THE CO-OPERATIVES ACT 1992 (N.S.W.)**

**For a Housing Co-operative**

REGISTRY OF CO-OPERATIVES  
154 Russell Street  
BATHURST NSW 2795

DX 3123 BATHURST

**(Code: Rules Housing: 31/05/2000)**

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## DEFINITIONS

1. (a) In these rules, unless the context otherwise requires:
  - (i) "active member" means a member who is in active membership within the provisions of Rule 14;
  - (ii) "alter" or similar word or expression used in relation to a rule amendment includes add to, substitute, and rescind;
  - (iii) "auditor" means an auditor or auditors for the time being of the co-operative appointed in accordance with Rule 69;
  - (iv) "banking account" includes an account with a credit union or building society registered, or authorised to operate, under the Financial Institutions (NSW) Code into which the co-operative's monies may be paid;
  - (v) "business day" means a day that is not a Saturday or Sunday or a public holiday or bank holiday in New South Wales;
  - (vi) "CCU" means Co-operative Capital Unit issued in accordance with these rules;
  - (vii) "director" means any director of the co-operative for the time being and any deputy director acting in the absence of a nominating director under Rule 60;
  - (viii) "Director of the Office of Community Housing" means the head of the NSW Office of Community Housing or any successor in title to that position;
  - (ix) "financial year" means the financial year of the co-operative as specified in Rule 66;
  - (x) "may" or a similar word or expression used in relation to a power of the board indicates that the power may be exercised or not exercised at the board's discretion;
  - (xi) "member" means a member of the co-operative;
  - (xii) "month" means calendar month;
  - (xiii) "postal ballot" includes a special postal ballot;
  - (xiv) "prescribed" means prescribed by the Act or under the Act by Regulation;
  - (xv) "provision" in relation to the Act, means words or other matter that form or forms part of the Act, and includes:
    - (a) a chapter, part, division, subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or schedule of or to the Act; and
    - (b) a section, clause, subclause, item, column, table or form of or in a schedule to the Act; and
    - (c) the long title and any preamble to the Act;

- (xvi) "regulation" means a regulation made under the Act, and any regulation that applies to a co-operative by way of a transitional regulation made under the Act;
- (xvii) "relevant interest" has the same meaning as given in Schedule 2 of the Act;
- (xviii) "rules" mean the registered rules of the co-operative as amended from time to time and reference to particular rules has a corresponding meaning;
- (xix) "shall" or a similar word or expression used in relation to a power of the board indicates that the power must be exercised, subject to the Act or the rule granting the power;
- (xx) "special resolution" means a resolution which is passed in accordance with Rule 40;
- (xxi) "Tenant Member" means a tenant residing in or occupying accommodation owned, leased, or managed by the co-operative;
- (xxii) "the board" means the whole or any number of the directors assembled at a meeting of the directors or transacting business in accordance with Rule 51, being not less than a quorum or a majority, as the case may be;
- (xxiii) "the Act" means the Co-operatives Act 1992;
- (xxiv) "the co-operative" means .....
- (xxv) "the Law" means the Corporations Law;
- (xxvi) "the Registrar" means the Registrar of Co-operatives or any person delegated the Registrar's functions;
- (xxvii) "the secretary" means any person appointed by the board as secretary of the co-operative pursuant to Rule 64;
- (xxviii) "the State" means the State of New South Wales;
- (xxix) "writing" includes printing, typing, lithography and other modes of representing or reproducing words in a visible form and "written" has a corresponding meaning;
- (xxx) Words importing one gender include the other genders;
- (xxxi) Words importing persons include corporations;
- (xxxii) Words in the singular include the plural, and vice versa;
- (xxxiii) Words or expressions used have the same meanings as those given to them by the Act.

## **DEFINITIONS - INTERPRETATION PROVISIONS**

- (b) A reference in these rules to "the Act" includes a reference to:

- (i) the Act as originally enacted, and as amended from time to time since its original enactment; and
  - (ii) if the Act has been repealed since the inclusion of the reference in these rules - the legislation enacted in substitution of the Act (whether legislation of the State or Federal Parliament) and as amended from time to time since its enactment;
- (c) A reference in these rules to a provision in "the Act" includes a reference to:
- (i) the provision as originally enacted, and as amended from time to time since the original enactment;
  - (ii) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference - the provision as re-enacted and as amended from time to time since its re-enactment; and
  - (iii) if the provision has been omitted and replaced with a new provision dealing with the same area of law or procedure - the new provision as enacted and as amended from time to time since its enactment.
- (d) (i) In the interpretation of a rule, or paragraph of a rule, the interpretation that will best achieve the purpose of the rule is to be preferred to any other interpretation.
- (ii) This provision applies whether or not the purpose is expressly stated in the rule or paragraph of the rule.
- (e) In these rules, unless the context indicates a contrary intention, headings are for convenience and do not affect interpretation.

## RULES

2. (a) The rules of the co-operative have the effect of a contract under seal:
- (i) between the co-operative and each member;
  - (ii) between the co-operative and each director, the principal executive officer and the secretary of the co-operative; and
  - (iii) between a member and each other member;
- Under the contract, each of those persons agrees to observe and perform the provisions of the rules as in force for the time being so far as those provisions are applicable to that person.
- (b) (i) A person shall be entitled on demand to a copy of the rules upon payment of a sum not exceeding \$....., or such other amount as the board may from time to time determine.
- (ii) A person may inspect a copy of these rules free of charge at the office where the registers are kept, during all reasonable hours.



**NON-TRADING CO-OPERATIVE**

- 2A. The co-operative is a non-trading co-operative within the meaning of Section 15 of the Act.

**RULES SUBJECT TO THE RESIDENTIAL TENANCIES ACT**

- 2B. Nothing in these Rules shall effect the rights, liabilities and obligations of a member as a tenant under the Residential Tenancies Act 1987 and in the event of any conflict between these rules and the Residential Tenancies Act the provisions of the Residential Tenancies Act shall prevail.

**RULE ALTERATIONS**

3. (a) The rules may be altered by a special resolution, by a resolution of the board in accordance with Section 112 of the Act or as otherwise permitted by the Act. No alteration to these rules takes effect until the alteration is registered by the Registrar.
- (b) Where any rule is altered, by way of a board resolution under Section 112, the co-operative must cause the alteration to be notified, in writing, to members as soon as practicable after the alteration is registered and, in any event, not later than the date on which notice is given to the members of the next annual general meeting of the co-operative, following the registration of the alteration.

**NAME**

4. (a) The name of the co-operative shall be
- .....
- .....
- (b) The co-operative may, in accordance with Section 259, change its name by way of a special resolution to a name approved of by the Registrar.

**CHANGE OF REGISTERED OFFICE**

5. The board shall notify the Registrar of any change of address of the registered office of the co-operative within 28 days after the change, and on the form approved by the Registrar.

**NOTIFICATION OF OFFICE ADDRESS AT WHICH REGISTERS ARE KEPT**

- 5A. If the registers required by Section 249(1) to be kept by a co-operative are not kept at the registered office, the co-operative must lodge with the Registrar a notice of the address at which the register is kept within 28 days after the register is:
- (i) established at an office which is not the co-operative's registered office; or
- (ii) moved from one office to another.

**OBJECTS**

6. The objects of the co-operative shall be:

- (a) the provision of or the erection of accommodation or parts thereof for the members;
- (b) to provide for tenant members to exercise control over their housing through participation in the management and decision making processes of the co-operative;
- (c) to manage on co-operative principles the houses, land and other facilities occupied by the members under the terms of an appropriate agreement between the New South Wales Land and Housing Corporation and the co-operative; whose terms shall exclude the right to purchase, dispose, or transfer any co-operative property by members;
- (d) to provide extra facilities or services needed by the co-operative or its members and relating to the property managed by the co-operative;
- (e) to educate its members, employees and the public on the principles, benefits and activities of co-operation and co-operatives;
- (f) to actively co-operate in every practical way with other co-operatives and like-minded groups and individuals;
- (g) to provide secure affordable accommodation for those who find it difficult to compete on the private rental market and /or who are experiencing a housing crisis;
- (h) to promote public awareness and understanding of housing issues and the social context in which they occur; and
- (i) to do all such lawful things as are incidental or conducive to the attainment of the above objects and the exercise of the powers of the co-operative.

**POWERS**

7. (a) The co-operative shall have, both within and outside the State, the legal capacity of a natural person and have all the powers allowed by or under the Act, including but not limited to the power to do the following things:
- (i) take deposits pursuant to section 263A of the Act.
  - (ii) to obtain any financial accommodation for the purposes of carrying out any of its objects including the raising of money by issuing, discounting or otherwise dealing with bills of exchange.
  - (iii) to enter into guarantees, indemnities and agreements for recourse, purchase and repurchase with an owner in relation to credit sale agreements made between such owner and members of the co-operative in respect of goods, plant, machinery or equipment;
  - (iv) to:

- (A) contract or otherwise make arrangements for any guarantee by any person of the performance by the co-operative of any of its obligations whether present or future;
  - (B) indemnify, or agree to indemnify, the person giving or about to give a guarantee to the co-operative; and
  - (C) give security over the assets of the co-operative or any of them for such indemnity or for the performance of such agreement to indemnify;
- (v) to arrange insurance on behalf of its members;
- (vi) to:
  - (A) borrow money and grant security for the repayment of borrowed money by either standard mortgage security or floating charge or other fixed security over any of its property; and
  - (B) decide at any time the terms and conditions upon which money is to be borrowed and to change such terms and conditions.
- (vii) to accept subscriptions and donations and bequests by person or by written appeal, or public meeting, for the purpose of procuring contributions to the funds of the co-operative.
- (viii) to provide and carry on any community service, including transport and the supply of water, gas and electricity, provide and install plant, fittings and requisites in connection with any community service, and do anything necessary or convenient for that purpose;
- (ix) to erect dwellings or buildings either on behalf of members, or for the purpose of letting to members;
- (x) to acquire land on which dwellings or buildings are being or have been erected and to let the same to members;
- (xi) to subdivide land, make and maintain private ways, bridges, culverts and drains and make open and dedicate roads;
- (xii) to promote and carry out any charitable undertaking; and
- (xiii) to sell or let land to its members or to any other co-operative or association whether or not registered or unincorporated in the State;
- (b) The powers of the co-operative to:
  - (i) obtain financial accommodation; and
  - (ii) give security for the repayment of money,

shall be exercised subject to the Act, but otherwise unlimited by the rules.

**BY-LAWS**

8. (a) The members at a general meeting shall have power to make by-laws, not inconsistent with the Act, the Regulations and the rules relating to any of the following:
  - (i) the conduct of tenant members residing in, or occupying accommodation owned, leased, or managed by the co-operative;
  - (ii) the internal operations and administration of the co-operative;
  - (iii) the payment and collection of rent;
  - (iv) the repair and maintenance of residential premises;
  - (v) the determination of disputes between tenant members.
- (b) A member shall conform to and observe all by-laws made from time to time by the board under this rule.
- (c) A breach by a member of a by-law shall be deemed to be an infringement of the rules.
- (d) Nothing in this rule shall authorise the co-operative to make a by-law which is contrary to any statute or other legislation in force which regulates residential tenancies, or the activities of the co-operative.
- (e) For purposes of this rule:
  - (i) the power to make a by-law includes the power to alter, substitute and rescind a by-law; and
  - (ii) the substitution, alteration or rescission of a by-law does not affect:
    - (A) the previous operation of the by-law or any thing suffered or done or commenced under the by-law;
    - (B) any right, privilege, obligation or liability acquired, accrued or incurred under a by-law;
    - (C) any penalty or fine incurred in respect of a breach of a by-law;
    - (D) any proceeding or remedy in respect of any such right, privilege, obligation, liability or penalty,

and any such penalty or fine may be imposed and enforced and any such proceeding or remedy may be instituted, continued or enforced, as if the by-law had not been substituted, altered or rescinded.

**SALE OF PROPERTY**

- 8A. (a) The co-operative must not sell, assign, transfer, lease, mortgage or charge any real property unless the dealing has been approved by:
- (i) (A) a special postal ballot in accordance with Section 285 of the Act (if applicable); or
  - (B) a special resolution (where Section 285 is not applicable); and
  - (ii) the Director of the Office of Community Housing
- (b) This rule may not be altered without the approval of the Registrar and the Director of the Office of Community Housing.

### **LOANS BY MEMBERS TO THE CO-OPERATIVE**

9. (a) The co-operative may, in accordance with Section 268 of the Act, require its members to lend money to the co-operative, with or without security, in accordance with a proposal approved by the members by special resolution.
- (b) The approved proposal shall be binding on all members at the date of the passing of the special resolution other than a member who has given notice of their intention to cease active membership in accordance with Section 268(3)(c) and on all persons who become members of the co-operative after that date and before the total amount of the loan to be raised has been raised.

### **DEALINGS OF MEMBERS WITH CO-OPERATIVES**

10. (a) The co-operative may, in accordance with Section 78 of the Act, make a contract with a member requiring the member to have specified dealings with the co-operative for a fixed period.
- (b) The co-operative may by special resolution from time to time require members to enter into such contracts as may be determined by that resolution. If the member does not do so within the time therein specified, he or she shall be deemed to have committed conduct detrimental to the co-operative. The member shall then be liable to expulsion as provided in these rules.

### **SEAL**

11. (a) The co-operative shall, as required by Section 258(1)(a) of the Act, have the name of the co-operative appear in legible characters on its Common Seal and on any Official Seal, and the Australian Registered Body Number of the Co-operative if required under the Law. The Common Seal shall be kept at the registered office in such custody as the board shall direct.
- (b) The co-operative may, pursuant to Section 49 of the Act, have for use in place of its Common Seal outside the State, one or more Official Seals. Each of the additional seals must be a facsimile of the Common Seal with the addition on its face of the name of the place where it is to be used.

- (c) The Common Seal of the co-operative shall not be affixed to any instrument except by resolution of the board. Two directors and the secretary must be present and must sign all instruments sealed while they are present. The board may appoint a person other than the secretary to perform this function.
- (d) The person affixing the Official Seal must certify in writing on the instrument to which it is affixed, the date and place at which it is affixed.

#### **CO-OPERATIVE MAY AUTHORISE AGENT OR ATTORNEY TO EXECUTE DEEDS**

- 12. (i) The co-operative may, by writing under its Common Seal, empower its agent or attorney (either generally or in respect of a specified matter or specified matters) to execute deeds on its behalf.
- (ii) A deed signed by such an agent or attorney on behalf of the co-operative and under the agent's or attorney's seal, or under the appropriate official seal of the co-operative, binds the co-operative and has effect as if it were under the Common Seal of the co-operative.
- (iii) The authority of such an agent or attorney, as between the co-operative and a person dealing with the agent or attorney, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of the agent's or attorney's authority has been given to the person dealing with the agent or attorney.
- (iv) Where an agent or attorney affixes an Official Seal to an instrument, the person must comply with Rule 11 (d).

#### **CUSTODY AND INSPECTION OF RECORDS AND REGISTERS**

- 13. (a) The co-operative must have at the office where the registers are kept and available during all reasonable hours for inspection by *any member* free of charge the following:
  - (i) a copy of the Act and the regulations;
  - (ii) a copy of the rules of the co-operative;
  - (iii) a copy of the minutes of each general meeting of the co-operative;
  - (iv) a copy of the last annual report of the co-operative under section 252;
  - (v) the register of directors and members;
  - (vi) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative;
  - (vii) such other registers as the regulation provides are to be open for inspection.

- (b) A member is entitled to make a copy of entries in a register specified in subsection (a) and to do so free of charge unless the rules of the co-operative require a fee to be paid, in which case on payment of the required fee.
- (c) The co-operative must have at the place where the registers are kept and available during all reasonable hours for inspection by *any person*:
  - (i) a copy of the Act and the Regulation;
  - (ii) a copy of the rules of the co-operative;
  - (iii) a copy of the last annual report of the co-operative under section 252 of the Act.

## ACTIVE MEMBERSHIP PROVISIONS

14. In accordance with Part 6 of the Act:

- (a) .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 is a primary activity of the co-operative; and
- (b) a member shall .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 in order to establish active membership of the co-operative.

## CANCELLATIONS RELATING TO INACTIVE MEMBERS

- 15. (a) The board shall, after giving notice in accordance with Section 132 of the Act, declare the membership of a member cancelled if:
  - (i) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for a continuous period of no more than 3 years/..... (*Delete 3 years and insert a lesser period if considered appropriate*) before the date of cancellation; or

- (ii) the member is not presently an active member and has not been an active member at any time during the past 3 years *(or such lesser period as that inserted in Rule 15(a)(i))* immediately before the date of cancellation.
- (b) The co-operative shall, in a form approved of by the Registrar, keep a register of memberships cancelled pursuant to paragraph (a) of this Rule, which shall specify the particulars prescribed in Clause 6 of Schedule 1 of the Co-operatives Regulation 1997.
- (c) The board shall not be required to give notice, under this rule, if the member's whereabouts are unknown to the co-operative and the amount required to be repaid to the member in respect of the cancelled membership does not exceed \$50, or such other amount as may be prescribed.

## QUALIFICATIONS FOR MEMBERSHIP

- 16. (a) A person is not qualified to be admitted to membership of the co-operative unless the board has reasonable grounds for believing that the person will be an active member under Rule 14.
- (b) Every member shall be a resident of property owned, leased or managed by the co-operative.
- (c) Every member shall be over the age of 18 years.
- (d) The co-operative will ensure that, if there are more than 35% of the existing tenants earning a gross income above the current Office of Community Housing Income Criteria, the Co-operative will fill subsequent vacancies with tenants who are eligible for public housing, to endeavour to maintain the 65% of the tenants eligible for public housing level.

## APPLICANTS FOR MEMBERSHIP TO BE GIVEN NOTICE OF ENTRY AND PERIODIC FEES

- 17. The co-operative must supply, with each application for membership, a written notice of any intending or prescribed entry or periodic fees that a person will be liable to pay on becoming a member of the co-operative.

## SUBSCRIPTION

- 17A. (a) Members may be required to pay an annual subscription which shall:
  - (i) be in addition to any other charge payable under the rules;
  - (ii) be determined by the (\*) **board/ members at a general meeting** from time to time;
  - (iii) be payable, in advance, within the period set by the (\*) **board/ members at a general meeting**; and



(iv) not exceed \$ ..... in any financial year.

(\*) Indicate co-operative's option

### APPLICATION FOR MEMBERSHIP

18. (a) The board must provide each person intending to become a member of the co-operative with:
- (i) a consolidated copy of the rules of the co-operative; and
  - (ii) a copy of all special resolutions applicable to the member passed by the members of the co-operative, except special resolutions providing for an alteration of the rules of the co-operative; and
  - (iii) a copy of the last annual report of the co-operative under section 252.
- (b) The board may comply with Rule 18(a) by:
- (i) giving the person intending to become a member notice that the documents referred to in that sub-rule may be inspected by that person at the registered office of the co-operative, and
  - (ii) making those documents available for inspection.
- (c) Applications for membership shall be lodged at the registered office, in or to the effect of the form approved by the board.
- (d) Every application shall be considered by the board. The applicant's name, date and any other information required by or under the Act shall be entered in the register of members. The applicant shall be notified in writing of the entry in the register and shall then be entitled to the privileges attaching to membership.
- (e) The board may, at its discretion, refuse any application for membership and need assign no reasons for such refusal though the board may choose to give reasons, if the board considers it appropriate to do so. Upon refusal the applicant's deposit shall be refunded without interest.
- (f) In considering an application for membership pursuant to this rule, the board must ensure that a person who is not qualified for membership of the co-operative under Rule 16 is not admitted as a member.

### MEMBERS OF THE CO-OPERATIVE

19. The members of the co-operative are:
- (a) those persons who signed the application for registration of the co-operative; and
  - (b) those persons admitted to membership in accordance with Rule 18; and
  - (c) those persons who become members by:

- (i) a transfer of engagements to the co-operative; or
- (ii) a scheme of arrangement; or
- (iii) operation of law; or

#### **LIABILITY OF MEMBERS TO THE CO-OPERATIVE**

20. (a) A member shall not, as a member of the co-operative, be under any personal liability to a creditor of the co-operative.
- (b) A member shall, in accordance with Section 76 of the Act, be liable to the co-operative for any charges, including entry and periodic fees, payable by the member to the co-operative as required by these rules.
- (c) On the death of a member, the member's estate is subject to the same liability as the member would have been until the member's personal representative or some other person is registered in the member's place.

#### **ONE MEMBER ONE VOTE**

21. (a) An active member of the co-operative shall have one vote only in respect of any question or motion arising at a general meeting of the co-operative.
- (b) In the case of joint membership, the joint members shall have 1 vote only between them and that vote may only be exercised (subject to the grant of any proxy in accordance with Rule 22 or power of attorney) by the joint member whose name appears first in the register of members.

#### **PROXY VOTES**

22. (a) The instrument appointing a proxy shall be in writing under the hand of the appointer, or of the appointer's attorney, duly authorised in writing.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (c) No person shall act as a proxy unless the person is an active member under Rule 14.
- (d) Subject to (h) no person shall act as proxy for more than 10 persons.
- (e) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- (f) An instrument appointing a proxy may be in the following form, or any other form which the board shall approve:

**PROXY FORM**

I/we \_\_\_\_\_  
 of \_\_\_\_\_  
 appoint \_\_\_\_\_  
 of \_\_\_\_\_  
 or in that person's absence \_\_\_\_\_  
 of \_\_\_\_\_  
 \_\_\_\_\_

or [in that person's absence] the chairperson of the meeting, or a person nominated by the chairperson,

as my/our proxy to vote for me/us on my/our behalf at the [Annual/Special] General Meeting of the co-operative to be held on [ \* ] 20[ \* ] and at any adjournment of that meeting.

I/We direct my/our proxy to vote in respect of each resolution to be considered as indicated with an "X" below, and to vote or abstain in respect of any procedural resolution as my/our proxy thinks fit.

	FOR	AGAINST
[Ordinary/Special] resolution No. 1	[   ]	[   ]
[Ordinary/Special] resolution No. 2	[   ]	[   ]

If no direction is given above, I/we authorise my/our proxy to vote or abstain as my/our proxy thinks fit in respect of each resolution (including any procedural resolution) to be considered by the meeting and any adjournment of the meeting.

Dated 20[ \* ]

Signature \_\_\_\_\_

Corporate members should execute under seal or by attorney.

- (g) Where an instrument of proxy is signed by all of the joint members, the vote of the proxy so appointed shall be accepted as the vote of the joint member whose name appears first in the register of members.
- (h) Paragraph (d) of this Rule does not apply if the person acts under an instrument of proxy which specifies the manner in which the person is to vote in respect of a particular resolution.

**INSTRUMENT APPOINTING PROXY TO BE LODGED AT REGISTERED OFFICE**

23. (a) An instrument appointing a proxy is not valid unless:
- (i) the instrument; and
  - (ii) if the instrument is signed by the appointer's attorney - the authority under which the form was signed, or a notarially certified copy of the authority,
- is deposited at the registered office of the co-operative.
- (b) The documentation required to be given under this rule must be deposited at the registered office:
- (i) at least 48 hours before the meeting at which the proxy may be used; or
  - (ii) in the case of a poll - at least 24 hours before the taking of the poll.

**REVOCATION OF INSTRUMENT APPOINTING PROXY**

24. A vote given in accordance with the terms of an instrument of proxy, or of a power of attorney, is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the co-operative at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

**RESTRICTION ON VOTING ENTITLEMENT UNDER POWER OF ATTORNEY**

25. A person is not entitled to exercise a member's right to vote under a power of attorney, if that person has a power of attorney to vote in respect of another member.

**EXPULSION OF MEMBERS**

26. (a) A member may be expelled from the co-operative by special resolution to the effect:
- (i) that the member has failed to discharge the member's obligations to the co-operative, whether prescribed by these rules or arising out of any contract; or
  - (ii) that the member has been guilty of conduct detrimental to the co-operative.

(The rule may define specific circumstances which will be deemed to be considered detrimental to the co-operative.)

- (b) In either case written notice of the proposed resolution shall be forwarded to the member not less than 14 days before the date of the meeting at which the special resolution is to be moved, and the member shall be given a reasonable opportunity of being heard at the meeting.

- (c) Expulsion of a member shall not be effective, until the special resolution expelling the member is registered.
- (d) The expulsion of a member pursuant to this rule shall not:
  - (i) Affect the rights, obligations or liabilities that the member has as a tenant of property owned, leased or managed by the Co-operative; and
  - (ii) terminate the member's tenancy; and
  - (iii) diminish the rights, obligations or liabilities the Co-operative has under the Residential Tenancies Act to the member.

### **SUSPENSION OF MEMBERS FOR INFRINGEMENT OF BY-LAWS OR RULES**

- 26A. (a) The co-operative may in general meeting by special resolution suspend the co-operative's services for such period as it considered fit (for any one act not exceeding a period of one year) from members who do any of the following acts:
- (i) infringe any of the rules or by-laws of the co-operative;
  - (ii) fail to discharge their obligations to the co-operative whether prescribed by these rules or arising out of contract; or
  - (iii) conduct themselves in a manner prejudicial or detrimental to the interests of the society.
- (b) Where in the opinion of the board, a member does any acts referred to in paragraph (a), the board may call a special general meeting of the co-operative within 21 days of the occurrence of that act to consider it.
- (c) At least 7 days written notice stating the date, time and place of meeting shall be given to any member whose acts is to be considered under paragraph (b) and the written notice shall also state the nature of the act which, in the board's opinion, has been done by the member.
- (d) At the meeting the member shall be afforded a full opportunity to be heard in his/her own defence and shall be entitled to call witnesses and cross-examine witnesses call against the member. If the member fails to attend at the time and place mentioned without reasonable excuse, the act shall be considered and the co-operative may decide on the evidence before it, in spite of the absence of the member. Once the act has been considered, the co-operative, may decide to suspend the member who did the act.
- (e) The co-operative shall not make a decision on the act or on a suspension except by vote by secret ballot of the members present and entitled to vote. A motion for that decision shall not be deemed to be passed, unless two-thirds of the members so present and so entitled vote in favour of the motion.

## **CEASING MEMBERSHIP**

27. A person shall cease to be a member in any of the following circumstances :

- (a) if the member's membership is cancelled under Rule 15;
- (b) if the member is expelled in accordance with Rule 26;
- (c) if the member becomes bankrupt or becomes subject to control under the law relating to bankruptcy;
- (d) on death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) on the expiration of one months notice in writing of the member's intention to resign from membership given by the member, to the Secretary.

## **ANNUAL GENERAL MEETINGS**

28. (a) The first annual general meeting of a co-operative must be held at any time within 19 months (or such other period as may be permitted under the Act) after the incorporation of the co-operative.
- (b) A general meeting of the co-operative to be known as the "annual general meeting" shall, as provided in Section 198 of the Act, be held each year on a date and a time determined by the board as long as it is within five (5) months after the close of the financial year of the co-operative, or within such further time as may be allowed by the Registrar.
- (c) All general meetings of the co-operative other than the annual general meeting shall be special general meetings.
- (d) If an annual general meeting is not held in accordance with paragraph (a) of this rule, the members may, in accordance with Section 202 of the Act and Rule 30, requisition such a meeting.

## **CONVENING GENERAL MEETINGS**

29. The board may, whenever it thinks fit, convene a special general meeting of the co-operative.

## **REQUISITION OF GENERAL MEETINGS**

30. (a) The board must convene a general meeting of the co-operative on the requisition in writing by active members who together are able to cast at least 20% of the total number of votes to be cast at a meeting of the co-operative.
- (b) The requisition must:

- (i) state the objects of the meeting; and
- (ii) be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members; and
- (iii) be served on the co-operative by being lodged at the registered office of the co-operative.

### **REQUISITIONED MEETING MUST BE CONVENED AS SOON AS PRACTICAL**

31. (a) A meeting requisitioned by members in accordance with Rule 30 must be convened and held as soon as practicable and, in any case, must be held within 2 months after the requisition is served.
- (b) Where the board does not convene a meeting twenty one (21) days after the requisition is served, the following provisions apply :
- (i) the requisitioning members (or any of them representing at least half their aggregate voting rights) may convene the meeting in the same manner as nearly as possible as meetings are convened by the board;
  - (ii) for that purpose they may request the co-operative to supply a written statement setting out the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the co-operative;
  - (iii) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made.
  - (iv) the meeting convened by the requisitioning members must be held not later than 3 months after the requisition is served;
  - (v) any reasonable expenses incurred by the requisitioning members because of the board's failure to convene the meeting must be paid by the co-operative;
  - (vi) any such amount required to be paid by the co-operative is to be retained by the co-operative out of any money due from the co-operative by way of fees or other remuneration in respect of their services to such of the directors as were in default.

### **NOTICE OF GENERAL MEETINGS**

32. (a) Subject to Rule 33, at least 14 days notice (not including the day on which the notice is served or deemed to be served, but including the day for which notice is given) shall be given of any general meeting in the manner stipulated in Rule 75.
- (b) Notice must be given to those persons who are, under these rules entitled to receive such notices from the co-operative, but the non-receipt of the notice by any member shall not invalidate the proceedings at such general meeting. The notice must specify

the place, the day and the hour of the meeting and, in the case of special business, the general nature of that business.

- (c) Any member who has a resolution to submit to a general meeting must give written notice of the terms of the resolution to the co-operative not less than 28 days prior to the date of the meeting.
- (d) The board shall have inserted in any notice convening a general meeting any business which a member has notified of intention to move and for which notification has been given in accordance with this rule.
- (e) Notice of every general meeting shall be given in same manner as authorised in Rule 75 to:
  - (i) every member of the co-operative, except those members who have not supplied to the co-operative an address or facsimile number for the giving of notices to them; and
  - (ii) the auditor or auditors of the co-operative.
- (f) Except as provided in this rule, no other persons shall be entitled to receive notices of general meetings.

#### **NOTICE OF SPECIAL RESOLUTIONS**

- 33. Notice of a special resolution shall be given to those persons, entitled to receive notice under Rule 32, at least 21 days before the general meeting and shall specify the intention to propose the resolution as a special resolution at that meeting and specify the terms of the special resolution.

#### **BUSINESS OF GENERAL MEETINGS**

- 34. (a) The ordinary business of the annual general meeting shall be :
  - (i) to confirm minutes of the last preceding general meeting (whether annual or special); and
  - (ii) to receive from the board, auditors, or any officers of the co-operative reports upon the transactions of the co-operative during the financial year, including balance sheet, trading account, profit and loss account, statement of source and application of funds, and the state of affairs at the end of that year; and
  - (iii) to elect and determine the remuneration of directors; and
  - (iv) to elect (if necessary) an auditor, or to determine the auditor's remuneration, or both.
- (b) The annual general meeting may also transact special business of which notice has been given to members in accordance with these rules.



- (c) All business of a general meeting, other than business of the annual general meeting that is by this rule termed ordinary business, should be deemed special business.

## TREASURER

- 34A. The members shall elect a Treasurer for the Co-operative at the annual general meeting or at any general meeting in the year in which there is a vacancy in that office.

## QUORUM AT GENERAL MEETINGS

35. (a) No item of business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting is considering that item.
- (b) Except where these rules state otherwise ..... **members** present in person and entitled to exercise a total of ..... **votes** constitute a quorum. If within half an hour after the appointed time for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall be adjourned to the same day of the next week at the same time and place. If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present shall constitute a quorum.

**NOTE : The quorum should not be less than the number of directors plus one other, except where all of the members are directors. In that case the quorum should be one or more than the directors quorum.**

## CHAIRPERSON AT GENERAL MEETINGS

36. (a) The chairperson, if any, of the board shall preside as chairperson at every general meeting of the co-operative.
- (b) If there is no such chairperson, or if at any meeting the chairperson is either not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, then the members present shall choose someone from their number to be chairperson until such time as the chairperson attends or is willing to act.
- (c) The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place. The only business that can be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place. Where a meeting is adjourned for 14 days or more notice of the adjourned meeting shall be given just as in the case of the original meeting. Apart from this requirement it shall not be necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

## STANDING ORDERS AT GENERAL MEETINGS

37. The following standing orders shall be observed at the co-operative's meetings, subject to any suspension of, or amendment of, or addition to, these orders adopted for the purposes of that meeting by the members present at a meeting:
- (i) the mover of a motion shall not speak for more than 10 minutes. Subsequent speakers shall be allowed 5 minutes, and the mover of the proposition 5 minutes to reply. The meeting may however by simple majority extend in a particular instance the time permitted by this rule;
  - (ii) whenever an amendment to an original motion is proposed, no second amendment shall be considered until the first amendment is disposed of;
  - (iii) if an amendment is carried, the motion as so amended shall displace the original motion and may itself be amended;
  - (iv) if an amendment is defeated, then a further amendment may be moved to the original motion. However, only one amendment shall be submitted to the meeting for discussion at one time;
  - (v) the mover of every original motion, but not of an amendment, shall have the right to reply. Immediately after this the question shall be put from the chair. No other member shall speak more than once on the same question, unless permission is given for an explanation, or where the attention of the chairperson is called to a point of order;
  - (vi) motions and amendments shall be submitted in writing, if requested by the chairperson;
  - (vii) any discussion on a motion or amendment may be closed by a resolution "that the question be now put" being moved seconded, and carried. Such resolution shall be put to the meeting without debate;
  - (viii) any member, or visitor invited to attend the meeting by the board, may speak on any issue at a meeting with the permission of the chairman provided that the permission may be conditional;
  - (ix) standing orders may be suspended for any period by ordinary resolution.

## ATTENDANCE AND VOTING AT GENERAL MEETINGS

38. (a) At any meeting of the co-operative a member, whose membership is required to be forfeited under Rule 15, is not entitled to attend.
- (b) A member of the co-operative is not entitled to vote at a meeting of the co-operative:
- (i) if the person is not an active member of the co-operative;
  - (ii) the person is excluded from voting under the Act or these rules.

- (c) At any general meeting a resolution put to the vote of the meeting shall (as provided in Section 201 of the Act) be decided on a show of hands. This is unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least 5 members. If no poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the co-operative shall be evidence of the fact. No proof is needed of the number of proportion of the votes recorded in favour of, or against, that resolution.
- (d) If a poll is demanded, in accordance with Rule 38 (c), it shall be taken in a manner which the chairperson directs. Unless the meeting is adjourned the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a chairperson, or on a question of adjournment, shall be taken immediately.

A poll demanded in accordance with Rule 38 (c) may be withdrawn.

- (e) On a show of hands, or on a poll, every representative of a body corporate appointed in accordance with Section 68 of the Act, or every member who is present at a meeting in person or represented by proxy or attorney, shall have one vote. However, no member shall have a vote, or be entitled to vote, contrary to the Act.
- (f) In the case of joint membership, the joint members have 1 vote only between them and that vote may be exercised (subject to the grant of any proxy or power of attorney) only by whichever of the joint members is the member whose name appears first in the register of members.
- (g) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- (h) All resolutions, except special resolutions, shall be determined by a simple majority.

## **POSTAL BALLOT**

- 39. The co-operative may hold a postal ballot to determine any issue or proposal by the members in the manner prescribed in Schedule 2 of the Co-operatives Regulation 1997.

## **SPECIAL RESOLUTION**

- 40. (a) A special resolution means a resolution of which notice has been given of the intention to propose the resolution as a special resolution and which is passed either by two-thirds of the members who vote at a general meeting in person or by proxy in accordance with Rule 22; two-thirds in a postal ballot; or by three quarters of the members who cast votes in a special postal ballot of members.
- (b) A special postal ballot for the purposes of passing a special resolution must be conducted in relation to the following matters:
  - (i) a conversion of a trading co-operative to a non-trading co-operative,

- (ii) transfer of incorporation,
  - (iii) an acquisition or disposal of assets referred to in section 285,
  - (iv) takeover,
  - (v) merger,
  - (vi) transfer of engagements,
  - (vii) members' voluntary winding up.
- (c) A special resolution has effect from the date it is passed except in the following circumstances:
- (i) the removal of an auditor,
  - (ii) the expulsion of a member,
  - (iii) the alteration of a rule,
  - (iv) any matter for which a special resolution is required to be passed by special postal ballot (other than a special postal ballot in favour of a voluntary winding up).

in which case it has effect from the time it is registered by the Registrar.

## **BOARD OF DIRECTORS**

41. (a) There shall be a board of ..... directors each of whom shall be a natural person and at least 18 years old.
- (b) The business of the co-operative is to be managed by the board of directors, and for that purpose the board may exercise all the powers of the co-operative that are not, by the Act or these rules, required to be exercised by the co-operative in general meeting.
- (c) The acts of a director are valid despite any defect that may afterwards be discovered in the appointment or qualification of the director.

## **QUALIFICATIONS OF DIRECTORS**

42. A person is not eligible to be elected as director of the co-operative unless:
- (i) the person is an active member of the co-operative, or a representative of a body corporate which is an active member of the co-operative (active member director);
  - (ii) the person is an employee of the co-operative or a person qualified as provided by the rules (independent director).

**(The rule may specify the qualifications for independent directors.)**

## **FIRST AND SUBSEQUENT DIRECTORS**

43. The first directors are to be elected at the formation meeting of the co-operative.
44. At the first annual general meeting of the co-operative .....of the directors shall retire. At the annual general meeting in each subsequent year the directors shall retire in rotation of ..... and ..... / OR all directors shall retire.  
(Cross out whichever does not apply to your co-operative).

## **RETIREMENT AND ELECTION OF DIRECTORS**

45. The directors to retire in any year shall (subject to the provision as to filling casual vacancies) be those who have been longest in office since their last election. As between persons who became directors on the same day to retire shall (unless they otherwise agree among themselves) be determined by lot. In such case, the order for retirement shall be the order in which the names are withdrawn.
46. A retiring director shall be eligible for re-election without nomination, subject to the person holding the qualifications specified in Rule 42.
47. (a) At an annual general meeting at which a director retires or a casual vacancy occurs the vacated office may be filled by electing a person to it.
- (b) Nominations for candidates to fill the vacant positions shall be sought in such manner as the board determines.
- (c). The election of directors shall be conducted at the meeting in such usual and proper manner as the board shall direct.

## **DIRECTORS' REMUNERATION**

48. (a) The directors shall not receive remuneration for their services, but all necessary expenses incurred by them in the business of the co-operative shall be refunded to them.
- (b) For the purposes of this rule "remuneration" means any money, consideration or benefit but does not include:
- (i) amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the co-operative or any subsidiary of the co-operative;
- (ii) in relation to an employee director - remuneration received or due and receivable as an employee.

## **REQUISITION AND NOTICE OF BOARD MEETING**

49. (a) A meeting of the board of directors may be called by a director giving notice individually to every other director.

- (b) Except in special circumstances determined by the chairperson, at least 48 hours notice shall be given to the directors of all meetings of the board.
- (c) Meetings of the board (including those conducted in accordance with Rule 51) must be held at least once every 3 months and may be held as often as may be necessary for properly conducting the business and operations of the co-operative.

#### PROCEEDINGS OF THE BOARD

- 50.
- (a) Questions arising at any meeting shall be decided by a majority of votes.
  - (b) In the case of an equality of votes, the chairperson *\*may/may not* have a casting vote.  
*\*(Cross out whichever does not apply.)*
  - (c) A director shall not vote in respect of any contract or proposed contract with the co-operative in which he is in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract and, if he votes in contravention of this Rule, his vote shall not be counted.

#### TRANSACTION OF BUSINESS OUTSIDE BOARD MEETINGS

51. The board may in accordance with Section 210 of the Act transact any of its business:
- (a)
    - (i) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of those members is to be taken to be a decision of the board;
    - (ii) at a meeting at which board members (or some board members) participate by telephone, closed-circuit television or other means, but only if any board member who speaks on a matter before the meeting, can be heard by the other members of the board.
  - (b) For the purposes of this rule the chairperson of the board and each member of the board have the same voting rights as they have at an ordinary meeting of the board.
  - (c) A resolution approved under paragraph (a)(i) is to be recorded in the minutes of the meetings of the board.
  - (d) The secretary may circulate papers among members of the board for the purposes of paragraph (a)(i) by facsimile or other transmission of the information in the papers concerned.

#### QUORUM FOR BOARD MEETINGS

52. The quorum for a meeting of the board shall be.....directors, being 50% or more of the number of directors, in accordance with Section 209(4) of the Act.

## **APPOINTMENT OF DIRECTORS TO CONSTITUTE A QUORUM**

53. A casual vacancy on the board may be filled by the directors appointing a person to constitute a quorum until the next annual general meeting. In all other circumstances where a casual vacancy occurs, Rule 59 applies.

## **CHAIRPERSON OF BOARD**

54. (a) The chairperson of the board may be elected either by the board or at a general meeting of the co-operative. However, if no such chairperson is elected, or if at any meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the directors present may choose one of their number to be chairperson of the meeting, until such time as the chairperson attends and is willing to act in that capacity.
- (b) The chairperson \* may/may not have a casting vote.  
(\* please indicate whether chairperson is to have a casting vote or not)

## **DELEGATION AND BOARD COMMITTEES**

55. (a) The board may (in accordance with Section 213 of the Act) by resolution delegate the exercise of such of the board's functions (other than this power of delegation) as are specified in the resolution:
- (i) to a director, or
  - (ii) to a committee of 2 or more directors, or
  - (iii) to a committee of members of the co-operative, or
  - (iv) to a committee of members of the co-operative and other persons if members comprise the majority of persons on the committee.

The co-operative or the board may by resolution revoke wholly or in part any such delegation.

- (b) A power, the exercise of which has been delegated under this rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (c) A delegation under this rule may be made subject to conditions or limitations as to the exercise of any of the powers delegated, or as to time or circumstances.
- (d) Notwithstanding any delegation under this rule, the board may continue to exercise all or any of the powers delegated.

## **EXERCISE OF DELEGATED POWER BY DIRECTORS**

56. (a) Where a power is exercised by a director (either alone or with other directors) and the exercise of the power is evidenced in writing, signed by the director in the name of the board or in the director's own name on behalf of the board, then the power shall be deemed to have been exercised by the board. This is so whether or not a resolution delegating the exercise of the power to the director was in force when the

power was exercised, and whether or not any conditions or limitations referred to in paragraph (c) of Rule 55 were observed by the director exercising the powers.

- (b) An instrument purporting to be signed by a director as referred to in Section 214(1) of the Act shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the co-operative under seal. Furthermore, until the contrary is proved, it shall be deemed to be an instrument signed by a delegate of the board under Section 213 of the Act.
- (c) A committee may elect a chairperson of their meetings. If no such chairperson is elected, or, if at any meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting, then the members present may choose one of their number to be chairperson of the meeting.
- (d) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and voting and in case of an equality of votes the chairperson shall have a second or casting vote.

## **REMOVAL OF DIRECTOR FROM OFFICE**

57. The co-operative may, by ordinary resolution, remove any director before the expiration of the director's period of office, and may by a simple majority appoint another person in place of the director. The person so appointed shall retire at the same time as the removed director would have done if not removed.

## **VACATION OF OFFICE OF DIRECTOR**

58. A director vacates office in such circumstances (if any) as are provided in the rules of the co-operative and in any of the following cases :

- (a) if the person is an insolvent under administration (as defined in the Law);
- (b) if the person is mentally incapacitated or the subject of an order under a law of another State or of a Territory relating to mental health;
- (c) if the person has been convicted of an offence and that conviction disqualifies a person from being a director, as provided by Section 208(2) of the Act;
- (d) if the director absents himself/herself from 3 consecutive ordinary meetings of the board without its leave;
- (e) if the director resigns from office by notice in writing given by the director to the co-operative;
- (f) if the director is removed from office by ordinary resolution of the co-operative;
- (g) if the person ceases to hold the qualification by reason of which the person was qualified to be a director;



- (h) if the director becomes an employee of the co-operative, unless elected under Section 216 of the Act;
- (i) if an administrator of the co-operative's affairs is appointed under Division 6 of Part 12 of the Act;
- (j) as provided by Section 217 of the Act;
- (k) if the director is directly or indirectly interested in any contract or proposed contract with the co-operative and fails to declare his/her interest as required under Section 234 of the Act;
- (l) if the director is removed from office, by a voluntary administrator of the co-operative appointed under Part 5.3A of the Law, as applying under Section 332 of the Act.

### **FILLING OF CASUAL VACANCIES**

59. (a) In the event that the board does not make an appointment under Rule 53, a casual vacancy is to be filled:
- (i) by election by the members held:
    - (A) at a meeting of the co-operative; or
    - (B) by means of a postal ballot; or
    - (C) in the manner specified in the rules of the co-operative for the ordinary election of directors; or
  - (ii) in such other manner as the Registrar may approve in a particular case.
- (b) The person so chosen shall retire at the same time as the director who vacated the office would have done if that director had not vacated it.
- (c) For the purposes of this rule, a casual vacancy shall arise where the office of a director is vacated in accordance with Rule 58.

### **DEPUTY DIRECTORS**

60. (a) Any director may from time to time apply, in writing, for any active member (other than an employee of the co-operative, the auditor or a partner or employer or employee of the auditor) to be appointed by the board as a deputy director to sit in the director's place on the board.
- (b) A deputy director appointed by the board shall be entitled to notice of meetings of the directors and, in the absence of the nominating director, to attend and vote at those meetings and to sign resolutions and to exercise such powers, authorities and discretions as are vested in or would otherwise be exercisable by the nominating director.
- (c) A deputy director shall vacate office if the nominating director ceases to be a director or on a majority of the other directors removing him/her from office.

- (d) An appointment or removal under this rule must be in writing and notice thereof must be served on the deputy director and the appointment or removal shall take effect forthwith upon the service thereof. Service of any such notice may be effected in accordance with Rule 75.
- (e) A deputy director whilst acting in the absence of the nominating director shall not be an agent of the nominating director and the nominating director shall not be liable for the actions of the deputy director.
- (f) The remuneration of any such deputy director shall be payable out of the remuneration payable to the nominating director and shall consist of such portion of the last mentioned remuneration as shall be agreed between the deputy director and the nominating director. The attendance of the deputy director at any meeting of the board shall be deemed to be attendance by the nominating director.
- (g) For purposes of this rule a meeting of the directors shall include a meeting conducted pursuant to Rule 51.

#### **OTHER COMMITTEES**

- 61. (a) The board may by resolution appoint committees comprising of members or other persons or both, to act in an advisory role to the board and to any committees of directors.
- (b) The provisions of Rule 56 (c) and (d) apply to committees appointed under this rule, subject to any variations approved of by the board.
- (c) The quorum for any meeting of the committee shall be one-half (or where one-half is not a whole number the whole number next higher than one-half) of the number of members in the committee.

#### **MINUTES OF MEETINGS**

- 62. (a) The board shall have minutes of meetings made in books provided for the purpose, and, in particular:
  - (i) of all appointments of officers and employees made by the directors;
  - (ii) of the names of the directors present at each meeting of the board and of any committee of the board;
  - (iii) of all resolutions and proceedings at all meetings of the co-operative and of directors and of committees of directors.
- (b) Minutes must be recorded in the minute book within 28 days of the date of the meeting to which they relate.
- (c) The confirmation of such minutes, signed by the chairperson, shall be taken as the first business at the next succeeding meeting of the co-operative, board or committee

to which the minutes relate. If it is impracticable for the minutes to be confirmed at that meeting, then the minutes shall be confirmed at the next succeeding meeting.

- (d) Every director present at any meeting shall sign their name in a book to be kept for that purpose.
- (e) The minutes are to be kept in the English language.

## **OFFICERS**

- 63. (a) Without prejudice to the general powers conferred on the board by the Act or these rules, the board shall, subject to any applicable Industrial Award or Agreement, have power to appoint, remove or suspend officers, servants, agents and contractors, and to fix their powers, duties and remuneration.
- (b) For the purposes of this rule:
  - (i) "Industrial Award or Agreement" means an Award or Enterprise Agreement made or approved under a State or Federal Act regulating industrial relations; and
  - (ii) "Enterprise Agreement" includes an Australian Workplace Agreement, Certified Agreement or Enterprise Flexibility Agreement.

## **APPOINTMENT OF SECRETARY**

- 64. (a) The board shall appoint a secretary who shall perform all the functions and duties required by the Act, the Regulations, the rules and the law to be performed or undertaken by the secretary of the co-operative.
- (b) A secretary shall:
  - (i) be appointed to the office on such terms and conditions as the board may determine; and
  - (ii) hold office until death, or removed by the board, or resignation from office.

## **INSURANCE**

- 65. The board shall arrange insurance against loss, damage to or liability of the co-operative by reason of fire, accident or otherwise.

## **FINANCIAL YEAR**

- 66. The financial year of the co-operative shall end on the .....

**ACCOUNTS**

67. (a) The board shall have prepared the accounts, statements and directors' report in accordance with the Corporations Law, as adopted by Clause 15 of the Co-operatives Regulation 1997.
- (b) The board shall submit those accounts, statements and report, together with the auditors' report on those accounts, to the annual general meeting of the co-operative, in accordance with the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997.
- (c) The board shall also have a copy of everything required to be submitted under paragraph (b) displayed at the registered office of the co-operative for a period of not less than 14 days before the date of the annual general meeting of the co-operative.
- (d) The board shall send a copy of everything required to be submitted under paragraph (b) to each member with the notice of the annual general meeting of the co-operative.

**BANKING**

68. (a) The board shall have a banking account or accounts in the name of the co-operative, into which all moneys received shall be paid as soon as possible after receipt.
- (b) All cheques drawn on such accounts and all drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the co-operative, shall be signed by 2 directors or by any 2 persons authorised by the board.

**APPOINTMENT, DUTIES AND RESPONSIBILITIES OF AUDITORS**

69. (a) One or more auditors shall be appointed, hold office, be remunerated, be removed and have qualifications, duties and responsibilities as provided in these rules or as otherwise provided in, or permitted by, the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997, or any order made by the Registrar pursuant to that Regulation or Section 244(1) of the Act.
- (b) Within one month after the date on which the co-operative is registered, the directors shall appoint an auditor of the co-operative, unless the co-operative at a general meeting has already appointed an auditor. An auditor appointed under this clause shall hold office until the first annual general meeting of the co-operative.
- (c) The co-operative shall at its first annual general meeting appoint an auditor of the co-operative; and at each subsequent annual general meeting, if there is a vacancy in the office of auditor, the co-operative shall appoint an auditor to fill the vacancy.
- (d) An auditor appointed under paragraph (c) of this rule shall hold office until death or removal or resignation from office or until ceasing to be capable of acting as auditor in accordance with the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997.
- (e) The board shall fill any vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office, within one month of such vacancy

occurring, unless the co-operative at a general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as Auditor of the co-operative pursuant to this paragraph holds office, subject to the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997 until the next Annual General Meeting of the co-operative.

While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

- (f) The co-operative or the board shall not appoint as auditor a person who has not consented in writing to the appointment or who has withdrawn such consent, or a person of whose nomination notice has not been given in accordance with the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997.
- (g) A person is not qualified to be appointed auditor of the co-operative if:
  - (i) the person is not a registered company auditor;
  - (ii) the person or corporation in which the person is a substantial shareholder, is indebted to the co-operative (or to a subsidiary corporation of the co-operative) for an amount exceeding \$ 5,000; or
  - (iii) the person is:
    - (A) an officer of the co-operative;
    - (B) is a partner, employer or employee of an officer of the co-operative;
    - (C) is a partner of an employee of an officer of the co-operative; or
    - (D) is an employee of an employee of an officer of the co-operative.
- (h) A firm is not qualified to be appointed auditor of the co-operative unless:
  - (i) at least 1 member of the firm is a registered company auditor who is ordinarily resident in New South Wales;
  - (ii) no member of the firm or corporation in which the firm is a substantial shareholder, is indebted to the co-operative (a subsidiary of the co-operative) for an amount exceeding \$5,000; or
  - (iii) no member of the firm is:
    - (A) an officer of the co-operative;
    - (B) is a partner employer or employee of an officer of the co-operative;
    - (C) is a partner of an employee of an officer of the co-operative; or
    - (D) is an employee of an employee of an officer of the co-operative;
  - (iv) no officer of the co-operative receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

- (i) All reasonable fees and expenses of the auditor are payable by the co-operative.
- (j) The board shall enable the auditor to have access to all books, accounts, vouchers, securities and documents of the co-operative, and to be furnished with such information and explanation by the board members or any other officers as may be necessary for the performance of the duties of the auditor.
- (k) The auditor is entitled to attend any general meeting of the co-operative and to receive all notices of and other communications relating to any general meeting which any member of the co-operative is entitled to receive. The auditor is also entitled to be heard, at any general meeting which the auditor attends, on any part of the business of the meeting of concerns to the auditor.

## REMOVAL OF AUDITORS

70. (a) The auditor may be removed from office by resolution at a general meeting.
- (b) Notice of intention to move the resolution must be given to the co-operative not less than 28 days before the meeting at which the resolution is moved, but if, after notice has been given, a meeting is convened for a date 28 days or less after notice has been given, notice shall be deemed to have been properly given.
- (c) Where special notice of a resolution to remove an auditor is received by the co-operative, it shall as soon as possible send a copy of the notice to the auditor and lodge a copy of the notice with the Registrar.
- (d) The co-operative shall give notice of a resolution to remove the auditor to persons entitled to be given notice of a meeting of the co-operative at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give notice of the resolution to them in any manner allowed by these rules not less than 14 days before the meeting.
- (e) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the co-operative and request that before the meeting at which the resolution is to be considered, a copy of the representations be sent by the co-operative at its expense to every member of the co-operative to whom notice of the meeting is sent.
- (f) Unless the Registrar on the application of the co-operative otherwise orders, the co-operative shall send a copy of the representations in accordance with the auditor's request. The auditor may require that the representations be read out at the meeting and may also speak at the meeting.

## RESIGNATION OF AUDITOR

71. (a) The auditor may, by notice in writing given to the co-operative, resign as auditor of the co-operative if:

- (i) the auditor has, by notice in writing given to the Registrar, applied for consent to resign and stated the reasons and, at or about the same time, notified the co-operative in writing of the application; and
  - (ii) the auditor has received the consent of the Registrar.
- (b) The resignation of the auditor takes effect:
  - (i) on the date (if any) specified for the purpose in the notice of resignation;
  - (ii) on the date on which the Registrar consents to the resignation; or
  - (iii) on the date (if any) fixed by the Registrar for the purpose, whichever last occurs.
- (c) Within 14 days after the removal from office of the auditor or after the receipt of a notice of a resignation from an auditor, the Co-operative shall lodge with the Registrar a notice of the removal or resignation on the prescribed form, and, where there is a trustee for the holders of debentures of the co-operative, give to the trustee a copy of the notice lodged with the Registrar.

#### **CO-OPERATIVE FUNDS**

72. (a) The income and property of the co-operative however derived shall be applied solely towards the promotion of the objects of the co-operative and no portion thereof shall be paid or transferred directly or indirectly by way of discount, rebate or otherwise by way of profit to the members of the co-operative.
- (b) Payment shall be made in good faith of:
- (i) any commensurate remuneration of any member or servant of the co-operative or other person in return for any services actually rendered to the co-operative: or
  - (ii) reasonable interest on money lent or reasonable or proper rent for property or premises demised, or let by any member to the co-operative.
- (c) Any surplus resulting from the co-operative's operation during a financial year, after providing for depreciation in value of the co-operative's property or for contingent liability for loss, shall be applied to carrying out the co-operative's objects.
- (d) An amount not exceeding ..... percent of the surplus may be applied to any charitable purpose, or for promoting co-operation or any community advancement object.
- (e) This rule must not be altered without the approval, in writing, of the Registrar and the Director of the Office of Community Housing.

#### **PROVISION FOR LOSS**

73. The board shall make such provisions for loss which may result from the transactions of the co-operative as the Act requires or allows.

**DISPUTES**

74. (a) In this Rule:

(i) "party" includes:

- (A) a member of the co-operative;
- (B) any aggrieved person who has ceased to be a member in the last six months;
- (C) any person claiming through or under a member or any aggrieved person referred to in Rule 74(a)(i)(B); and
- (D) the co-operative, including the board or any other officer of the co-operative;

(ii) "dispute" may only refer to a matter affecting a person of the type mentioned above (A) - (C) in the capacity of such a person as a member or ex-member of the co-operative; or as a person claiming through or under a member of the co-operative in that person's capacity as a member.

- (b) If a dispute arises a party may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of the Rule except where the person seeks urgent interlocutory relief.
- (c) A party claiming that a dispute has arisen must give written notice to the other party or parties specifying the nature of the dispute.
- (d) On receipt of that notice by that other party or parties, the parties must endeavour to resolve the dispute expeditiously, using the mediation rules of the NSW Law Society. (Copy available from the Registry of Co-operatives (02) 6333 1421).
- (e) Nothing in this rule shall extend to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.

**NOTICES**

75. (a) A notice may be given by the co-operative to any member either personally or by sending it by post to the member's registered address, or where the member has notified the co-operative of a facsimile number, by facsimile transmission to the number notified. If the member has no registered address then the notice can be sent to any address supplied by the member to the co-operative for the giving of notices.
- (b) Where a notice is sent by post, service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice. In the case of a notice of a meeting, service is deemed to be effected at the expiration of 24 hours after the letter containing the notice is posted. In every other case service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post and in proving such service it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.



- (c) If a member has no registered address (and has not supplied to the co-operative an address for the giving of notices) a notice addressed to the member and advertised in the newspaper circulating in the neighbourhood of the registered office of the co-operative shall be deemed to be duly given to the member on the date on which the advertisement appears.
- (d) A notice forwarded by facsimile transmission shall be deemed to have been served, unless the sender's facsimile machine indicates a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.
- (e) A notice may be given by the co-operative to the joint holders of a share by giving the notice to the joint holder named first in the register of members and shares in respect of that share.
- (f) A notice may be given by the co-operative to the person entitled to a share in consequence of the death, incapacity or bankruptcy of a member by sending it through the post in a prepaid letter addressed to that person by name. Alternatively it can be addressed to the person by the title of representative of the deceased, or incapacitated person, or trustee of the bankrupt, or by any like description. The address should be that supplied for the purpose by the person claiming to be entitled. Alternatively, if no such address has been supplied, the notice can be given in the manner in which it could have been given if the death, incapacity or bankruptcy had not occurred.
- (g) For the purpose of this rule "registered address" means the address of the member as appearing in the register of members and shares.

## WINDING UP

76. (a) The winding up of the co-operative shall be in accordance with Part 12 of the Act.
- (b) If on the winding up or dissolution of the co-operative there remains after the satisfaction of all its debts and liabilities any property, this shall not be paid or distributed amongst the members of the co-operative but shall be given or transferred to an institution:-
- (i) which has objects similar to those of the co-operative;
  - (ii) whose constitution prohibits the distribution of its property among its members;
  - (iii) which has been chosen by the members of the co-operative at or before the time of dissolution or in default thereof by the Chief Judge of such Court as may have or acquire jurisdiction in the matter; and
  - (iv) which satisfies the relevant sub-section of Section 23 of the Income Tax Assessment Act.
- (c) In paragraph (b), the expression "institution" includes an institution or institutions.
- (d) This rule must not be altered without the approval, in writing, of the Registrar and the Director of the Office of Community Housing.

**FINES PAYABLE BY MEMBERS**

77. (a) The board may impose on a member maximum fine of \$..... for any infringement of the rules.

(The maximum amount which may be imposed under the Rule is \$110.)

- (b) A fine exceeding \$20 shall not be imposed on a member pursuant to Paragraph (a) unless;
- (i) written notice of intention to impose the fine and the reason for it has been given to the member; and
  - (ii) the member has been given a reasonable opportunity to appear before the board in person (with or without witnesses), or to send to the board a written statement, for the purpose of showing cause why the fine should not be imposed.

**SCHEDULE OF CHARGES**

78. Copy book of rules : ..... : Rule 2(b)

Inspection of Register : ..... : Rule 13(b)

Maximum Fine : ..... : Rule 77(a)

**CERTIFICATION**

We the undersigned, certify that this is a copy of the rules which was presented to the formation meeting on ..... (date) at .....

..... (location)

for the purpose of forming a co-operative to be known as:'

..... (name of co-operative)

..... Chairperson of Formation Meeting  
Signature

..... Secretary of Formation Meeting  
Signature

**Note:** This certification is signed at the Formation Meeting which is held after the rules have been approved by the Registry and returned to the sponsors of the proposed co-operative.