

# **RULES**

**PITTWATER AQUATIC CLUB CO-OPERATIVE LIMITED**

**(A NON-DISTRIBUTING CO-OPERATIVE WITH SHARE CAPITAL)**

**Registered by Registrar of Co-operatives**

**25 January 2017**

**Rule 6(2) 15 August 2019**

**Rule 30(1) 29 July 2020**

Contents	Page
Part 1	Preliminary ..... 5
1	Application of these rules ..... 5
2	Definitions..... 5
3	Name of the co-operative ..... 5
3A	Objects ..... 5
Part 2	Membership..... 6
Division 1	Membership generally ..... 6
4	Active membership provisions..... 6
5	Qualifications for membership..... 6
6	Entry fees and regular subscriptions ..... 6
7	Membership applications ..... 7
7A	Life Membership..... 7
8	Cessation of membership ..... 7
9	Expulsion of members ..... 8
10	Resignation of members..... 9
11	Monetary consequences of expulsion or resignation ..... 9
12	Suspension of members ..... 9
Division 2	Dispute resolution..... 10
13	Disputes and mediation..... 10
14	Fines payable by members ..... 11
15	Liability of members to co-operatives ..... 11
Division 4	Shares..... 11
16	Capital and shares ..... 11
17	Calls on shares ..... 12
18	Repurchase of members' shares..... 12
19	Transfer of shares..... 13
20	Effect of sale, transfer or disposal of shares ..... 14
Division 5	Member cancellations..... 14
21	Forfeiture and cancellations—inactive members ..... 14
22	Forfeiture of shares ..... 14
23	Forfeited shares—liability of members..... 15
Division 6	Deceased or incapacitated members..... 15
24	Death of member..... 15
25	Rights and liabilities of members under bankruptcy or mental incapacity ..... 16
26	Entitlements and liabilities of person registered as trustee, administrator etc. .... 16
Division 7	Transfer of securities other than shares ..... 17

	27	Transfer and transmission of debentures.....	17
	28	Issue of Co-operative Capital Units .....	18
	29	Transfer and transmission of CCUs .....	18
Part 3		General meetings, resolutions and voting .....	18
	30	Annual general meeting .....	18
	31	Members' power to requisition a general meeting.....	18
	32	Notice of general meetings .....	19
	33	Business of general meetings .....	19
	34	Quorum at general meetings .....	20
	35	Chairperson at general meetings .....	20
	36	Attendance and voting at general meetings .....	20
	37	Voting on a show of hands.....	21
	38	Voting on a poll.....	21
	39	Determining the outcome where equality of votes .....	22
	40	Proxy votes.....	22
	41	Postal ballots (other than special postal ballots) .....	22
	42	Special postal ballots.....	23
	43	Special resolutions .....	23
Part 4		Board of directors .....	24
	44	Board.....	24
	45	Qualifications of directors.....	24
	46	Chief executive officer.....	24
	47	First directors and election of directors.....	25
	48	Removal from office of director .....	26
	49	Vacation of office of director .....	26
	50	Casual vacancies and alternate directors.....	26
	51	Remuneration of directors.....	26
	52	Proceedings of the board.....	27
	53	Quorum for board meetings .....	27
	53A	Appointment of directors to constitute a quorum .....	27
	54	Chairperson of board.....	27
	55	Delegation and board committees.....	28
	56	Other committees .....	28
	57	Minutes .....	29
Part 5		Rules.....	29
	58	Amendments and copies of rules .....	29
Part 6		Administrative matters .....	29

59	Seal.....	29
60	Inspection of records and registers.....	30
61	Safe keeping of securities .....	30
62	Notices to members.....	30
Part 7	Accounting and financial matters .....	31
63	Financial year.....	31
64	Accounts .....	31
65	Appointing an auditor or reviewer for small co-operative .....	31
66	Appointing an auditor or reviewer for a small co-operative if there is a direction under the Law.....	31
67	Disposal of surplus funds during a financial year .....	32
68	Provision for loss .....	32
69	Financial reports to members .....	32
Part 8	Winding up.....	32
70	Winding up.....	32

## Part 1 Preliminary

### 1 Application of these rules

These rules are the rules of the Pittwater Aquatic Club Co-operative Limited a non-distributing co-operative with share capital.

### 2 Definitions

#### (1) In these rules:

**ballot paper** means a ballot paper in paper or electronic form.

**basic minimum financial statements** means the financial statement required of a small co-operative under the National Regulations.

**board** means the board of the co-operative.

**CNL** is a reference to the Co-operatives National Law as applying in this jurisdiction.

**director** means a director of the co-operative.

**member** means a member of the co-operative.

**member director** and **non-member director**—see section 174 of the Law and rule 45.

**standard postal times** means the times when properly addressed and prepaid letters would be delivered in the ordinary course of post.

**the co-operative** means the Pittwater Aquatic Club Co-operative Limited a non-distributing co-operative with share capital

**the Law** means the Co-operatives National Law as applying in this jurisdiction.

**the National Regulations** means the Co-operatives National Regulations as applying in this jurisdiction.

#### (2) Except so far as the contrary intention appears in these rules, words and expressions used in these rules have the same meanings as they have, from time to time, in the Law or relevant provisions of the Law.

### 3 Name of the co-operative (**CNL ss220-222 & 224**)

The name of the co-operative is Pittwater Aquatic Club Co-operative Limited.

#### 3A Objects

The objects of the co-operative are:

- (a) To encourage, develop, and promote aquatic activities.
- (b) To provide, construct and maintain the clubhouse and other buildings, grounds and equipment for use in connection with the activities specified in (a) to furnish, equip, maintain and repair the same and to make the same available for use by members of the

co-operative, by their guests or other person nominated by a member and approved by the co-operative either gratuitously or by payment.

- (c) To promote, organise and hold sports meetings in conjunction with the activities specified in (a) for the members and others as the co-operative may think fit.
- (d) To do any such lawful acts as are incidental to the attainment or maintenance of any of the above.

## Part 2 Membership

### Division 1 Membership generally

#### 4 Active membership provisions (CNL ss112(2), 144, 148 & 156–166)

##### (1) Primary activity

For the purposes of Part 2.6 of the Law, the primary activities of the co-operative are:

The operation, maintenance and carrying on of a club to encourage, develop and promote aquatic activities.

##### (2) Active membership requirements

A member must pay the regular subscription to establish and maintain active membership of the co-operative, but a member who is a life member shall be deemed to be an active member without payment of such fee.

**Note.** Failure to maintain active membership may lead to cancellation of membership (see rule 21).

#### 5 Qualifications for membership (CNL s112)

An individual qualifies for membership of the co-operative if the individual is able to use or contribute to the services of the co-operative.

#### 6 Entry fees and regular subscriptions (CNL s124)

- (1) The application for membership fee is determined each year by the board, announced at a general meeting and published on the website of the co-operative.
- (2) The entry fee on acceptance of membership is determined each year by the board, announced at a general meeting and published on the website of the co-operative.
- (3) Members may be required to pay a regular subscription (also known as the annual subscription fee) which shall:
  - (a) be in addition to any other charges payable under the rules;
  - (b) be determined each year by the board, announced at a general meeting and published on the website of the co-operative;
  - (c) be invoiced to members annually; and
  - (d) be payable, in advance of the close of business on the 31st March.

- (4) Notwithstanding paragraph (3)(d), the board may in the event of unusual circumstances, either generally or in a specific case, extend a period for the payment of the regular subscription, even though the previous period has expired.

These fees may be adjusted each year at the board's discretion, by no more than 5% or by an amount greater than 5% if approved by the members at a general meeting.

## 7 Membership applications

- (1) Applications for membership must be lodged at the registered office in the application form approved by the board, and should be accompanied by payment of any applicable application fee set under rule 6;
- (2) Every application with payment attached must be considered by the board.
- (3) If the board approves of the application, the applicant's name and any other information required under the Law must be entered in the waitlist register of members within 28 days of the board's approval.
- (4) The board may, at its discretion, refuse an application for membership.
- (5) The board need not assign reasons for the refusal. On refusal any amounts accompanying the application for membership must be refunded within 28 days without interest.
- (6) When membership is offered by the board the applicant must be notified in writing of the induction date, entrance and regular subscription fees and payment details for allotment of the minimum number of shares in the co-operative as specified in rule 16. After induction and on receipt of payment, entries into the membership registers are made and the applicant is then entitled to the privileges attaching to membership. Applicants, who choose not to accept the offer of membership, within 28 days of induction date, are removed from the waitlist membership applicants register.
- (7) The Board, at its discretion, can reinstate an applicant removed from the waitlist.

## 7A Life membership

- (1) The co-operative may by resolution of members, at a general meeting, resolve that a member be classed as a life member
- (2) Life members shall have all the rights and liabilities attaching to membership of the co-operative, with the exemption provided under Rule 4.
- (3) Nominations for life membership must be completed in accordance with the Clubs By-laws.

## 8 Cessation of membership (CNL s117)

A person ceases to be a member in any of the following circumstances:

- (a) if the membership ceases in any circumstances specified in section 117 of the Law;
- (b) if the member's total shareholding is transferred to another person and the transferee is registered as the holder of the shareholding;
- (c) if the member's total shareholding is forfeited under the Law or these rules;

- (d) if the member's total shareholding is purchased by the co-operative under the Law or these rules;
- (e) if the member's total shareholding is sold by the co-operative under any power in the Law or these rules and the purchaser is registered as shareholder in the member's place.

## 9 Expulsion of members (CNL s117)

- (1) A member may be expelled from the co-operative by special resolution to the effect:
  - (a) that the member has seriously or repetitively failed to discharge the member's obligations to the co-operative under these rules or a contract entered into with the co-operative under section 125 of the Law; or
  - (b) that the member has acted in a way that has:
    - (i) prevented or hindered the co-operative in carrying out its primary activity or one or more of its primary activities; or
    - (ii) brought the co-operative into disrepute; or
    - (iii) been contrary to one or more of the co-operative principles as described in section 10 of the Law and has caused the co-operative harm.
- (2) Written notice of the proposed special resolution must be given to the member at least 28 days before the date of the general meeting at which the special resolution is to be moved, and the member must be given a reasonable opportunity of being heard at the meeting.
- (3) At the general meeting when the special resolution for expulsion is proposed the following procedures apply:
  - (a) at the meeting, the member must be afforded a full opportunity to be heard and is entitled to call witnesses and cross-examine witnesses called against the member;
  - (b) if the member fails to attend at the time and place mentioned, without reasonable excuse, the member's alleged conduct must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
  - (c) once the alleged conduct is considered, the co-operative may decide to expel the member concerned;
  - (d) the co-operative must not make a decision on the alleged conduct or on expulsion, except by vote by secret ballot of the members present, in person or represented by proxy or by attorney, and entitled to vote;
  - (e) a motion for the decision is not taken to be passed unless two-thirds of the members present, in person or represented by proxy or by attorney, vote in favour of the motion.
- (4) Expulsion of one joint member means expulsion of all members holding membership jointly with the expelled member.
- (5) An expelled member must not be re-admitted as a member unless the re-admission is approved by special resolution.
- (6) A member re-admitted must not have restored to him or her any non-membership shares that were cancelled on his or her expulsion.

## 10 Resignation of members (CNL s117)

A member may resign from the co-operative on receipt of the member's intention to resign from membership given by the member, to a member of the Board.

## 11 Monetary consequences of expulsion or resignation (CNL s128)

(1) In this rule:

*deficiency* means the amount of accumulated loss, deficiency or significant change disclosed in the last balance sheet of the co-operative, or later reported before expulsion.

- (2) If a member is expelled or resigns from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.
- (3) The shares of an expelled or resigning member must be cancelled as at the day of expulsion or resignation, and the cancellation must be noted in the register of shares.
- (4) Subject to subrule (5) and the written terms of a class of share issued, the co-operative must, however, pay to the expelled or resigning member the amount of capital paid up on the former member's shares at the time of expulsion or resignation (less any amount owing by the former member to the co-operative). Excluding the minimum shareholding required under Rule 16.
- (5) If a deficiency exists, an appropriate proportion of the loss, deficiency or significant change may be deducted from the amount of capital paid up on the shares of the expelled or resigning member. This is done having regard to the number of shares held by the expelled or resigning member immediately before expulsion or resignation in relation to the number of shares in the co-operative.
- (6) Subject to section 128 of the Law, payment to the expelled or resigning member of any amount owing by the co-operative to the former member:
  - (a) must be made at the time decided by the board but within one year from the date of expulsion or resignation; or
  - (b) may be applied at the time decided by the board, but within one year from the date of expulsion or resignation, in the manner set out in section 128 of the Law, if there is agreement by the board and former member or if the board considers that repayment would adversely affect the financial position of the co-operative.

## 12 Suspension of members

- (1) The co-operative may suspend a member for not more than one year, who does any of the following:
  - (a) contravenes any of these rules;
  - (b) fails to discharge obligations to the co-operative, whether under these rules or a contract;
  - (c) acts detrimentally to the interests of the co-operative.
- (2) In order to suspend a member, the procedure for expulsion of a member set out in rule 9 is to be followed as if references to expulsion were references to suspension.
- (3) During the period of suspension, the member:

- (a) loses any rights (except the right to vote) arising as a result of membership; and
- (b) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the co-operative; and
- (c) remains liable for any fine that may be imposed.

## Division 2 Dispute resolution

### 13 Disputes and mediation (CNL s129)

- (1) The grievance procedure set out in this rule applies to disputes under these rules between:
  - (a) a member and another member; or
  - (b) a member (including a former member) and the co-operative.
- (2) If a dispute arises, a party cannot commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this rule, except where a person seeks urgent interlocutory relief.
- (3) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days of:
  - (a) the dispute coming to the attention of each party; or
  - (b) a party giving notice, to each of the other parties involved, of the dispute or grievance.
- (4) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.
- (5) The mediator is, where possible, to be a person chosen by agreement between the parties, but in the absence of agreement between the parties:
  - (a) for a dispute between a member and another member, a person appointed by the board; or
  - (b) for a dispute between a member (including a former member) and the co-operative, a person appointed by the Australian Mediation Association.
- (6) The mediator may (but need not) be a member of the co-operative, unless the member is a party to the dispute.
- (7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (8) The mediator, in conducting the mediation, must:
  - (a) give the parties to the mediation process every opportunity to be heard; and
  - (b) allow due consideration by all parties of any written statement submitted by any party; and
  - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (9) The mediator cannot determine the dispute.

- (10) The mediation must be confidential and without prejudice.
- (11) The costs of the mediation are to be shared equally between the parties unless otherwise agreed.
- (12) Nothing in this rule applies to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.
- (13) Nothing in this rule applies to any dispute involving the expulsion or suspension of a member or the imposition of a fine.
- (14) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the Law or otherwise at law.

**Note.** Section 130 of the Law applies if mediation does not resolve the dispute

## Division 3 Members' liability

### 14 Fines payable by members (CNL ss56 & 126, NR 2.1)

- (1) The board may impose on a member a fine up to the maximum as set by the National Regulations for a contravention of these rules.
- (2) A fine must not be imposed on a member under subrule (1) unless:
  - (a) written notice of intention to impose the fine and the reason for it has been given to the member; and
  - (b) 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, to show cause why the fine should not be imposed.

### 15 Liability of members to co-operatives (CNL ss117(2) & 121)

- (1) A member is liable to the co-operative for the amount, if any, unpaid on the shares held by the member, together with any charges, including but not limited to regular subscriptions, payable by the member to the co-operative under these rules.
- (2) Joint members are jointly and severally liable for any amount unpaid on shares and to any such charges mentioned in subrule (1).

## Division 4 Shares

### 16 Capital and shares (CNL ss76–82)

- (1) The capital of the co-operative must be raised by the issue of shares of nominal value of \$2.00 each.
- (2) A member must hold a minimum of one share in the co-operative and must not hold or have a relevant interest in more than 20% of the nominal value of issued share capital of the co-operative unless permitted to do so under section 363 of the Law.
- (3) No share is to be allotted unless 100% of the nominal value of the share has been paid.

- (4) A share in the co-operative does not carry a vote.
- (5) The right to vote in the co-operative is attached to membership and governed by section 228 of the Law.

## 17 Calls on shares

- (1) The board may from time to time make calls on the members for any amounts unpaid on the shares of the members (whether on the nominal value of the shares or by way of premium), regardless of the share subscription amount (if any) specified in the terms of issue of the shares.
- (2) Each member must, on receiving at least 14 days' notice of the time and place of payment, pay to the co-operative, at the time and place specified, the amount called on the shares.
- (3) The directors may revoke or postpone a call.
- (4) A call is taken to have been made when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.
- (5) The joint holders of a share are jointly and severally liable to pay all calls for the share.
- (6) If an amount called for a share is not paid before or on the day fixed for payment of the amount, the person from whom the amount is due must pay interest on the amount from the day fixed for the payment of the amount to the time of actual payment at the rate, not more than 16% per annum, the directors decide, but the directors may waive payment of all or part of the interest.
- (7) An amount that, under the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal value of the share or by way of premium, is for these rules taken to be a call made and payable on the day that, under the terms of issue, the amount becomes payable. If the amount is not paid, all relevant provisions of these rules about payment of interest and expenses, forfeiture or otherwise apply as if the amount had become payable under a call properly made and notified.
- (8) The board may, in relation to the issue of shares, differentiate between the holders in the amount of calls to be paid and the times of payment.
- (9) The board may accept from a member all or part of the money uncalled and unpaid on shares held by the member.
- (10) The board may authorise payment by the co-operative of interest on all or part of an amount accepted under subrule (9) until the amount becomes payable, at a rate agreed between the board and the member paying the amount, of not more than 8% per annum or another rate fixed by the co-operative by special resolution.

## 18 Repurchase of members' shares (CNL ss99, 107, 109 & 118)

- (1) Members' shares held in excess of the minimum shareholding required under rule 16(2) may be repurchased in accordance with the Law.
- (2) A member who wishes the co-operative to repurchase any shares must do so by submitting a request to the board in the following form:

I/We ..... being members of the .....(co-operative name) and the holders of  
 .....(number of shares) in the co-operative that are fully/partly paid, request that the

co-operative repurchase .....(number of shares). I/We are aware of the conditions of repayment under the Co-operatives National Law or relevant Act.

Signed.....

Dated.....

Witness (name and signature).....

- (3) The board of the co-operative must consider each request for repurchase in accordance with the Law and cancel any shares that have been repurchased.

**19 Transfer of shares (CNL ss100 & 101)**

- (1) Members' shares held in excess of the minimum shareholding required under rule 16(2) may be transferred in accordance with the Law.
- (2) The instrument of transfer of a share must be signed by or for the transferor and the transferee.
- (3) The transferor is taken to remain the holder of the share until the name of the transferee is entered in the register of members.
- (4) Shares must be transferred in the following form or another form approved by the board:

I, A.B. (the transferor) of ..... in the State/Territory of

..... in consideration of the sum of \$ ..... paid to me by C.D.

(the transferee), of ..... in the State/Territory of

..... transfer to the transferee the share (or shares) numbered

..... in the..... (name of co-operative) to hold for the transferee, the transferee's executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution.

And I, the transferee, agree to take the said share (or shares) subject to the conditions previously mentioned in this document.

Dated this ..... day of ..... 20 .....

Signed by ..... transferor.

In the presence of ..... witness.

Signed by ..... transferee.

In the presence of ..... witness.

- (5) A share may not be sold or transferred except:
  - (a) with the consent of the board, and to a person who is qualified to be admitted to membership of the co-operative under rules 4 and 5; or
  - (b) as otherwise provided by these rules or the Law.

- (6) The board may decline to register a transfer of shares to a person not qualified to be a member or of whom they do not approve. The board may also decline to register a transfer of shares on which the co-operative has a lien or charge. If the board refuses to register a transfer of shares it must send notice of the refusal to the transferee within 28 days after the day the board declined to register the transfer.
- (7) The board of the co-operative must not consent to the sale or transfer of shares that would result in more than the nominal value of shares permitted under section 363 of the Law.
- (8) The board may decline to recognise an instrument of transfer unless:
  - (a) a fee of \$1,000.00 (or a smaller amount decided by the board from time to time) is paid to the co-operative for the transfer; and
  - (b) the instrument of transfer is accompanied by any evidence the board may require to show the right of the transferor to make the transfer.
- (9) The board must maintain a record of all transfers made in the proper books of the cooperative.
- (10) The board may suspend the registration of transfers during the 45 days immediately before the annual general meeting in each year.

## 20 Effect of sale, transfer or disposal of shares (CNL ss232 & 233)

This rule does not apply to the minimum shareholding requirement under rule 16(2), as this share cannot be sold transferred or disposed of by the member. A member who has sold or transferred, or disposed of the beneficial interest in, all the member's other shares, or has agreed to do any of those things, is not entitled to vote at any meeting of the co-operative for these shares.

## Division 5 Member cancellations

### 21 Forfeiture and cancellations—inactive members (CNL ss156–163)

The board must, after giving notice in accordance with section 161 of the Law, declare the membership of a member cancelled if:

- (a) 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 at least one year; or
- (b) the member is not presently active and has not been active within the meaning of rule 4 in the 30 days immediately prior to cancellation.

The Board, at its discretion, may reinstate a member to active status, that has appealed to the board with explanation and/or paid all membership and related fees.

### 22 Forfeiture of shares (CNL s109)

- (1) If a member fails to pay a call or instalment of a call by the day appointed for payment, the board may, at any time that any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that may have accrued.

- (2) The notice must name a further day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares for which the call was made will be liable to be forfeited.
- (3) If the requirements of the notice served under this rule are not complied with, any share in respect of which the notice has been given may at any time (but before the payment required by the notice has been made) be forfeited by a resolution of the board.
- (4) Forfeited shares must be cancelled.

23 Forfeited shares—liability of members

- (1) A person whose shares have been forfeited under these rules stops being a member if membership is conditional on the holding of the shares or membership has otherwise been cancelled under the Law. The person nevertheless remains liable to pay to the co-operative all amounts that are (as at the date of forfeiture) payable by him or her to the co-operative for the shares.
- (2) A statutory declaration in writing by a director, the chief executive officer or secretary of the co-operative stating that a share in the co-operative has been forfeited and cancelled on a date stated in the declaration, is proof of that fact as against all persons claiming to be entitled to the share.
- (3) The co-operative has set-off rights against share capital as specified in section 127 of the Law.

Division 6 Deceased or incapacitated members

24 Death of member (CNL ss93 & 102–106)

A person’s membership ceases on death and the member’s minimum shareholding required under rule 16(2) in the co-operative cannot be transferred to any person. Members’ shares held in excess of the minimum shareholding may be transferred in accordance with the Law.

The legal personal representative of a deceased member may apply to the board for a transfer of the deceased member’s shares in the following form:

I, ....., am the legal personal representative of .....  
 (a member of the co-operative) who died on .....

Copies of my appointment as executor/administrator of the estate are attached.

I request that the board transfer all shares attaching to the membership of

.....being shares numbered .... in the cooperative, to me.

- A. I intend to hold the shares subject to the deceased member’s last will and testament / letters of administration and will notify the board of any proposal to transfer the shares to any beneficiary/ies *OR*
- B. I am also the beneficiary of the estate of the deceased member and I am aware of the requirements for active membership under the rules of the co-operative.

*(Include any additional information to enable the board to consider whether the transferee is likely to be an active member of the co-operative.)*

Dated .....

Signed by .....

Legal personal representative

In the presence of ..... witness.

**25 Rights and liabilities of members under bankruptcy or mental incapacity (CNL ss95, 96 & 117)**

- (1) A person's membership will not cease upon bankruptcy. That person's shares, held in excess of the minimum shareholding required under rule 16(2), may be transferred to the Official Trustee in Bankruptcy and dealt with under the provisions of section 95 of the Law.
- (2) A person appointed under a law of a State or Territory to administer the estate of a member who, through mental or physical infirmity, is incapable of managing his or her affairs, may be registered as the holder of the member's shares held in excess of the minimum shareholding required under rule 16(2).
- (3) The liabilities attaching to the shares of a person under bankruptcy or mental incapacity continue in accordance with section 96 of the Law.
- (4) Upon application by a person appointed to manage the affairs of a member referred to in subrule (2), the board may decide to suspend some or all active membership obligations if there are grounds to believe that the member's physical or mental infirmity is temporary.

**26 Entitlements and liabilities of person registered as trustee, administrator etc.**

- (1) A person becoming entitled to be a shareholder because of the death, bankruptcy or incapacity of the holder is entitled to the dividends and other advantages to which the person would be entitled if he or she were the registered holder of the share or shares. However, before being registered as a member, the person is not entitled to exercise any right conferred by membership in relation to meetings of the co-operative.
- (2) A person registered as holder of the shares of a member who has died, or is bankrupt or incapable of managing his or her affairs, has the same liabilities in relation to the share or shares as those to which the deceased, bankrupt or incapable person would have been liable if he or she had remained a member with full legal capacity.
- (3) The board has the same right to decline or to suspend registration of a share as it would have had for a transfer of a share by the bankrupt or incapacitated person before the bankruptcy or incapacity.

## Division 7 Transfer of securities other than shares

### 27 Transfer and transmission of debentures

- (1) On the written request of the transferor (the giver) of a debenture, the co-operative must enter in the appropriate register the name of the transferee (the receiver) in the same way and on the same conditions as if the application for entry were made by the transferee.
- (2) If the co-operative refuses to register a transfer of debentures, it must, within 28 days after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.
- (3) An instrument of transfer of a debenture must be executed by or on behalf of the transferor and the transferee. The transferor is taken to remain the holder of the debenture until the debenture in the name of the transferee is entered in the register of debentures.
- (4) The board may decline to recognise an instrument of debenture and may decline to register a debenture unless:
  - (a) a fee of \$1,000 (or a lesser amount decided by the board) is paid to the cooperative for the transfer of registration; and
  - (b) the instrument of transfer is accompanied by the relevant debenture(s) and any other evidence the board reasonably requires (in particular, evidence showing the right of the transferor to make the transfer); and
  - (c) any government stamp duty payable is paid.

- (5) Debentures must be transferred in the following form or in a form approved by the board:

I, A.B. (the transferor) of ..... in the State/Territory of

..... in consideration of the sum of \$ ..... paid

to me by C.D (the transferee), of ..... in the State of

..... transfer to the transferee the debenture(s)

numbered .....

to be held by the transferee, the transferee's executors, administrators and assigns, subject to any conditions on which I hold the debenture(s) and any other conditions being terms of the transfer of the debenture(s).

And I, the transferee, agree to take the debenture(s) subject to the conditions mentioned.

Dated this ..... day of .....20 .....

Signed by ..... transferor.

In the presence of .....witness.

Signed by..... transferee.

In the presence of .....witness.

## 28 Issue of Co-operative Capital Units (CCUs) (CNL ss345–354)

- (1) The board may confer an interest in the capital of the co-operative by issuing CCUs in accordance with the Law.
- (2) Each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCU's
- (3) The rights of the holders of CCUs may be varied only in the way and to the extent provided by their terms of issue and only with the consent of at least 75% of those holders of CCUs who, being entitled to do so, cast a formal vote to accept the variation at a meeting.
- (4) The holder of a CCU has, in the person's capacity as a holder of a CCU, none of the rights or entitlements of a member of the co-operative.
- (5) The holder of a CCU is entitled to receive notice of all relevant meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative.

**Note.** Debenture holders receive notice of meetings of debenture holders, not general meetings of the co-operative.

## 29 Transfer and transmission of CCUs

- (1) Subject to subrule (2), the transfer and transmission of a CCU is to follow the same process as for a debenture under rule 27.
- (2) If the terms of issue of a CCU differ from rule 27 in respect of the manner of transfer or transmission, the terms of its issue prevail.

## Part 3 General meetings, resolutions and voting

### 30 Annual general meeting (CNL s252)

- (1) General meetings may be held using technology that permits a member to participate contemporaneously in the meeting and enables the member to hear proceedings, ask questions and cast a vote.
- (2) An annual general meeting must be held each year, at a place and on a date and a time decided by the board, within 5 months after the close of the financial year of the co-operative or within the further time allowed by the Registrar.

### 31 Members' power to requisition a general meeting (CNL s257)

- (1) The board may, whenever it considers appropriate, call a special general meeting of the co-operative.
- (2) The board must call a general meeting of the co-operative on the requisition in writing by members who together are able to cast at least 10% of the total number of votes able to be cast at a meeting of the co-operative.
- (3) The provisions of section 257 of the Law apply to a meeting requisitioned by members.

**Note.** The board is not required to call a general meeting of members to consider matters that are not matters for decision by the members in general meeting.

### 32 Notice of general meetings (CNL ss239, 254 & 611)

- (1) At least 14 days' notice of a general meeting (not including the day on which the notice is served or taken to be served, but including the day for which notice is given) must be given.
- (2) Notice must be given to each member of the co-operative and any other persons who are, under these rules or the Law, entitled to receive notices from the co-operative.
- (3) The notice must state the place, day and hour of the meeting and include ordinary business as specified in rule 33 and, for special business, the general nature of any special business.
- (4) The notice must also include any business members have notified their intention to move at the meeting under subrule (6) (but only if the members' notification has been made under these rules and within time).
- (5) The notice must be served in the manner provided in the Law or rule 62.
- (6) Members who together are able to cast at least 10% of the total number of votes that are able to be cast at a meeting of the co-operative and who have a resolution to submit to a general meeting must give written notice of it to the co-operative at least 45 days before the day of the meeting.

**Note.** This does not prevent an individual member from requesting that the board propose a particular resolution at the next meeting.

### 33 Business of general meetings

- (1) The ordinary business of the annual general meeting of a large co-operative must be:
  - (a) to confirm minutes of the last preceding general meeting (whether annual or special); and
  - (b) to receive from the board, auditors or officers of the co-operative:
    - (i) the financial reports of the co-operative for the financial year;
    - (ii) a report on the state of affairs of the co-operative; and
  - (c) to approve any payments of fees to directors.
- (2) The ordinary business of the annual general meeting of a small co-operative must be:
  - (a) to confirm the notice of meeting, then the minutes and matter arising of the last preceding general meeting (whether annual or special); and
  - (b) to receive from the board, auditors or officers of the co-operative:
    - (i) the financial reports of the co-operative for the financial year;
    - (ii) a report on the state of affairs of the co-operative; and
  - (c) to approve any payments of fees or remuneration to directors.

**Note.** As a small co-operative the co-operative has chosen to appoint an auditor to have its financial statements to members audited. While a small co-operative there is no requirement to appoint an auditor and at any future annual general meeting the co-operative may choose to change to have no audit or a review and change the level of financial reporting required.

- (3) The annual general meeting may also transact special business of which notice has been given to members under these rules.
- (4) All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.

#### 34 Quorum at general meetings

- (1) An item of business cannot be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item.
- (2) Unless these rules state otherwise, 20 members present in person, each being entitled to exercise a vote, constitute a quorum.
- (3) If a quorum is not present within half an hour after the appointed time for a meeting, the meeting, if called on the requisition of members, must be dissolved. In any other case it must be adjourned to the same day, time and place in the next week.
- (4) If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the members present constitute a quorum.

#### 35 Chairperson at general meetings

- (1) The chairperson, if any, of the board may preside as chairperson at every general meeting of the co-operative.
- (2) If there is no chairperson, or if at a 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, the members present must choose someone from their number to be chairperson (until the chairperson attends and is willing to act).
- (3) The chairperson may, with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place. However, the only business that can be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given just as for the original meeting. Apart from this it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.
- (4) The chairperson will determine the standing orders for a general meeting principally in the form recorded in the co-operatives by-laws.

#### 36 Attendance and voting at general meetings **(CNL ss228 & 256)**

- (1) The right to vote attaches to membership and not shareholding.
- (2) Joint members have only one vote between them.
- (3) Every joint member is entitled to attend and be heard at a general meeting.
- (4) In the event of a dispute between joint members as to which member will vote (subject to the grant of any proxy or power of attorney), the joint member whose name appears first in the register of members is entitled to vote.

- (5) A resolution, other than a special resolution, must be decided by simple majority.
- (6) Subject to subrules (7) and (8), a question for decision at any general meeting must be decided on a show of hands of members present at the meeting.
- (7) A poll may be demanded on any question for decision.
- (8) If before a vote is taken or before or immediately after the declaration of the result on a show of hands:
  - (a) the chairperson directs that the question is to be determined by a poll; or
  - (b) at least 5 members present in person or represented by proxy demand a poll, the question for decision must be determined by a poll.
- (9) The poll must be taken when and in the manner that the chairperson directs.
- (10) A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
- (11) Once the votes on a show of hands or on a poll have been counted then, subject to subrule (8), a declaration by the chairperson that a resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.
- (12) The result of the vote must be entered in the minute book.

**37 Voting on a show of hands (CNL ss234 & 256)**

On a show of hands at a general meeting, each member:

- (a) present; or
  - (b) represented by a non-member acting under a power of attorney; or
  - (c) represented by a non-member appointed under the provisions of the Law; or
  - (d) represented by a proxy;
- may exercise only one vote.

**38 Voting on a poll**

On a poll called at a general meeting, each member:

- (a) present; or
  - (b) represented by a person acting under a power of attorney; or
  - (c) represented by a person appointed under the provisions of the Law; or
  - (d) represented by a proxy;
- has one vote.

### 39 Determining the outcome where equality of votes **(s228)**

- (1) This rule applies where the votes in favour and against a resolution are equal.
- (2) If the chairperson of the meeting is a member of the co-operative, he or she may exercise a second or casting vote.
- (3) If the chairperson is not a member of the co-operative or decides not to exercise a second or casting vote, the outcome of an equality of votes is taken to have been decided in the negative.

### 40 Proxy votes **(s229)**

- (1) Voting may be by proxy at a general meeting
- (2) The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (3) An instrument appointing a proxy may direct the way the proxy is to vote in relation to a particular resolution and, if an instrument of proxy directs, the proxy is not entitled to vote on the resolution other than as directed in the instrument.
- (4) A person may be appointed as a proxy by more than one member.
- (5) No person shall act as proxy for more than 10 persons. To be clear this excludes those proxies appointing the chair of the meeting.
- (6) An instrument appointing a proxy will be in a form the board approves.
- (7) An instrument appointing a proxy is not valid until the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of the power or authority, are deposited, at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the registered office of the co-operative or at another place specified for the purpose in the notice calling the meeting.
- (8) A vote given in accordance with an instrument of proxy or a power of attorney is valid despite 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 start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

### 41 Postal ballots (other than special postal ballots) **(CNL ss247 & 250)**

- (1) The board may call a postal ballot or a postal ballot must be held in respect of a special resolution where members who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the co-operative may requisition the board to conduct the special resolution by postal ballot.
- (2) If a postal ballot is requisitioned by members under subrule (1), the requisition should specify whether the postal ballot is to be a secret ballot.
- (3) A postal ballot requisitioned under subrule (1) is to be conducted in accordance with the National Regulations and in the form and manner determined by board.

- (4) The board may determine in a particular case whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
- (5) If the board decides to conduct a secret postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each member has voted.
- (6) The board is to appoint a returning officer to conduct the postal ballot. In default of such an appointment, the secretary is the returning officer.
- (7) Ballot papers (in such form and with such content as the board may approve) must be sent to all voting members giving:
  - (a) particulars of the business in relation to which the postal ballot is being conducted; and
  - (b) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
  - (c) notice of the closing date and closing time of the postal ballot;
 and must be sent to members so that they arrive (assuming standard postal times) at least 21 days before the closing date of the postal ballot.
- (8) This rule does not apply in relation to special postal ballots.

#### 42 Special postal ballots (CNL ss248 & 249)

- (1) This rule applies where a special postal ballot is required.
- (2) Ballot papers (in such form and with such content as the board may approve) must be sent to all voting members so that they arrive (assuming standard postal times) at least 28 days before the closing date of the special postal ballot.
- (3) The board may determine in a particular case whether the special resolution by special postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
- (4) If the board decides to conduct a secret special postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each member has voted.

#### 43 Special resolutions (CNL ss238–241)

- (1) A special resolution is a resolution that is passed:
  - (a) by a two-thirds majority - at a general meeting; or
  - (b) by a two-thirds majority - in a postal ballot (other than a special postal ballot) of members;  
or
  - (c) by a three-quarters majority - in a special postal ballot of members.
- (2) A notice of special resolution is required to be given to members at least 21 days before the vote or ballot time (or 28 days notice in the case of a special postal ballot).
- (3) The notice of special resolution must state:

- (a) the intention to propose the special resolution; and
- (b) the reasons for proposing the special resolution; and
- (c) the effect of the special resolution being passed.

## Part 4 Board of directors

### 44 Board (CNL s172)

- (1) The business of the co-operative are to be managed by or under the direction of the board of directors, and for that purpose the board has and may exercise all the powers of the co-operative that are not required to be exercised by the co-operative in general meeting.
- (2) The board must have nine directors.

### 45 Qualifications of directors (CNL s174)

- (1) A person is not qualified to be a director of the co-operative unless the person is an individual over the age of 18 years and is either:
  - (a) an active member of the co-operative or a representative of a corporation that is an active member of the co-operative; or
  - (b) not an active member but who possesses special skills in management or other technical areas of benefit to the co-operative as specified by the board from time to time.
- (2) A person qualified to be a director under subrule (1)(a) is known as a “member director”. A person qualified under subrule (1)(b) is known as a “non-member director”.
- (3) The board of directors must have a majority of member directors.

### 46 Chief executive officer (CNL ss172 & 178)

- (1) With member’s agreement the board may, if it considers appropriate, appoint a person to be responsible for the day to day management of the co-operative. The person may be a director or the secretary or a member of the co-operative or some other person.
- (2) The appointed person is the chief executive officer of the co-operative, and may be called the chief executive officer or (if a director of the board) the managing director.
- (3) The conditions and the period of appointment including termination must be decided by the board.
- (4) The chief executive officer is not entitled to be present or to vote at a meeting of directors on a motion concerning the conditions of his or her own appointment, conditions of service or termination of service.
- (5) The chief executive officer cannot be required to be an active member of the co- operative.
- (6) In the event of any conflict between the terms of the appointment of a person as the chief executive officer and that person’s obligations or privileges under the Law, the terms of the Law prevail over the terms of appointment.

47 First directors and election of directors (CNL ss173 & 179)

- (1) The first directors are elected by poll at the formation meeting of the co-operative (except as provided by section 173(2)(b) of the Law).
- (2) The term of office of the first directors is to be not more than 1 year ending on the day of the first annual general meeting after the formation meeting.
- (3) The term of office of directors elected thereafter, is to commence from the dissolution of the annual general meeting at which they are elected and ends at the dissolution of the third annual general meeting thereafter.
- (4) Each year one third of the directors, or if their number is not a multiple of three, then the number nearest to but not less than one third, shall retire. The directors to retire are the directors or director longest in office since last being elected. As between directors elected on the same day the directors to retire are (in default of agreement between them) determined by a board ballot.
- (5) Nominations will identify the nominees who will be standing for the executive positions of: - chairman of the board and president of the co-operative, the secretary of the co-operative and the treasurer of the co-operative
- (6) The members of the board are to be elected or re-elected in the manner specified in this rule.
- (7) At an annual general meeting at which a director retires, the vacated office may be filled in the following manner:
  - (a) Nominations for candidates to fill the vacant positions shall be sought in such manner as the board determines.
  - (b) A nomination must:
    - (i) be signed by 2 or more members; and
    - (ii) provide details of the qualifications and experience of the person nominated, length of any previous service as a director of the cooperative or with any other co-operative; and
    - (iii) be accompanied by a notice in writing signed by the nominee consenting to their nomination.
  - (c) The nomination and the notice of consent must be lodged with the secretary of the co-operative at least 30 days before the annual general meeting.
  - (d) Details, as provided by the nominee, are to be provided to members,:
    - (i) the nominee's name; and
    - (ii) the nominee's qualifications and experience; and
    - (iii) the nominee's length of any previous service as a director of the cooperative or with any other co-operative.
- (8) If the number of nominees equals the number of vacancies, the nominees must be declared elected at the annual general meeting.

- (9) If the number of nominees exceeds the number of vacancies, the election of directors must be conducted at the meeting as the board shall direct.
- (10) If any vacancies remain at the end of the meeting, the vacancies are to be casual vacancies and must be filled in accordance with rule 50.

#### 48 Removal from office of director (CNL s180)

The co-operative may by resolution under section 180 of the Law, with special notice as required by that section, remove a director before the end of the director's period of office, and may by a simple majority appoint another person in place of the removed director. The person appointed must retire when the removed director would otherwise have retired.

#### 49 Vacation of office of director (CNL s179)

In addition to the circumstances set out in the Law, a director vacates office if the director dies.

#### 50 Casual vacancies and alternate directors (CNL ss173 & 177)

- (1) The board may appoint a qualified person to fill a casual vacancy in the office of director until the next annual general meeting.
- (2) The board may appoint a person to act as a director (an *alternate director*) in the place of an absent director.
- (3) A person is not qualified to be appointed as an alternate director for:
  - (a) a member director—unless the person is qualified for appointment as a member director; or
  - (b) a non-member director—unless the person is qualified for appointment as a non-member director.
- (4) An alternate director holds office until the next annual general meeting or until the next general meeting held to elect directors to fill any vacancies (whichever is earlier).
- (5) An alternate director for a director (the *principal director*) vacates office:
  - (a) in similar circumstances or cases to those in which the principal director would vacate office (and for that purpose the provisions of these rules and Division 1 of Part 3.1 of the Law accordingly apply in relation to the alternate director); or
  - (b) if the alternate director is removed from office by the board as alternate director for failure, without its leave, to attend a meeting of the board at which the principal director is absent (and for that purpose the provisions of section 179(2)(b) of the Law do not apply in relation to the alternate director).

#### 51 Remuneration of directors (CNL s203)

- (1) Directors' remuneration must comply with the provisions of the Law.
- (2) The members may, at a general meeting without notice of motion, grant an honorarium to any member of the co-operative, whether a director or not, for services which may have been rendered

## 52 Proceedings of the board (CNL ss175 & 176)

- (1) Meetings of the board (including meetings conducted outside board meetings pursuant to section 176 of the Law) are to be held as often as may be necessary for properly conducting the business of the co-operative and must be held at least every 3 months.
- (2) A meeting may be held with one or more of the directors participating by using a form of communication that allows reasonably contemporaneous and continuous communication between the directors taking part in the meeting.
- (3) Questions arising at a meeting must be decided by a majority of votes.
- (4) If votes are equal, the chairperson, if a member director, has a second or casting vote.
- (5) Other than in special circumstances decided by the chairperson, at least 48 hours notice must be given to the directors of all meetings of the board, without which the meeting cannot be held.

## 53 Quorum for board meetings (CNL s175)

- (1) The quorum for a meeting of the board is 50% of the number of directors (or if that percentage of the number of directors is not a whole number, the whole number next higher than one half).
- (2) For a quorum, the number of member directors must outnumber the non-member directors by at least one.

## 53A Appointment of directors to constitute a quorum

- (1) If at any time the number of directors is the same or less than the number of directors required to constitute a quorum of the board, the board may appoint sufficient directors so that the number of directors is one more than a quorum.
- (2) For the purpose of enabling the board to make such appointment(s), the number of directors at that time is deemed to be a quorum.
- (3) In all other circumstances where a casual vacancy occurs, Rule 50 applies.

## 54 Chairperson of board (CNL s175)

- (1) The chairperson of the board is to be elected at a general meeting of the co-operative.
- (2) If no chairperson is elected or the chairperson is not present within 15 minutes after the time fixed 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 the chairperson attends and is willing to act as chairperson.
- (3) The chairperson may be removed, and a new chairperson elected, by:
  - (a) ordinary resolution of the board, unless paragraph (b) applies; or
  - (b) ordinary resolution at a general meeting, if these rules provide that the chairperson is elected at a general meeting of the co-operative.

**Note.** Subrule (3) does not affect the requirements of section 180 of the Law in respect of the removal of a director.

## 55 Delegation and board committees (CNL s178)

- (1) The board may by resolution delegate to:
  - (a) a director; or
  - (b) a committee of 2 or more directors; or
  - (c) a committee of members of the co-operative; or
  - (d) a committee of members of the co-operative and other persons if members form the majority of persons on the committee; or
  - (e) a committee of directors and other persons; or
  - (f) a committee of directors and members;

the exercise of the board's powers (other than this power of delegation) specified in the resolution. The co-operative or the board may by resolution revoke all or part of the delegation.

- (2) A power delegated under this rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (3) A delegation under this rule may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (4) Despite any delegation under this rule, the board may continue to exercise the power delegated.
- (5) If a power is exercised by a director (alone or with another director) and the exercise of the power is evidenced in writing, signed by the director in the name of the board or in his or her own name on behalf of the board, the power is taken 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 mentioned in subrule (3) were observed by the director exercising the powers.
- (6) A committee may elect a chairperson of their meetings. If no chairperson is elected, or, if at a meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- (7) A committee may meet and adjourn as it thinks appropriate. Questions arising at a meeting must be decided by a majority of votes of the members present and voting and if the votes are equal, the chairperson has a second or casting vote.

## 56 Other committees

- (1) The board may by resolution appoint committees of members or other persons or both, to act in an advisory role to the board and to committees of directors.
- (2) Rule 55 (6) and (7) apply to committees appointed under this rule, with the changes approved by the board.
- (3) The quorum for a meeting of the committee is half the number of committee members (or if half is not a whole number the whole number next higher than one half).

## 57 Minutes

- (1) The board must keep minutes of meetings and, in particular, of:
  - (a) all appointments of officers and employees made by the directors; and
  - (b) the names of the directors present at each meeting of the board and of a committee of the board; and
  - (c) all resolutions and proceedings at all meetings of the co-operative and of directors and of committees of directors.
- (2) Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate was held.
- (3) The minutes are to be signed within a reasonable time after the meeting to which they relate by either the chairperson of that meeting or the chairperson of the next meeting.

## Part 5 Rules

### 58 Amendments and copies of rules (CNL ss57 & 60–63)

- (1) Any amendment of the rules must be approved by special resolution or by board resolution in accordance with section 62 of the Law.
- (2) A proposal to amend the rules of the co-operative must be made in a form approved by the board which clearly shows the existing rule or rules concerned and any proposed amendment to the rules.
- (3) A member is entitled to a copy of the rules upon payment of the amount of \$5 (for a copy provided electronically to the member) to the co-operative.
- (4) The board shall have power to make by-laws, not inconsistent with the Law, the National Regulations or these rules, relating to the conduct of members of the co-operative or to the operations of the co-operative's facilities. However, any by-law that affects members by way of a new type of facility charge, or an adjustment to a facility charge, other than an adjustment to a percentage consistent with Rule 6, must be approved by the members at a general meeting.

## Part 6 Administrative matters

### 59 Seal (CNL ss49 & 223)

- (1) This rule applies if the co-operative chooses to authenticate a document under the common seal of the co-operative.
- (2) The co-operative's name and registration number must appear on its common seal and any official seal. The common seal must be kept at the registered office in the custody that the board directs.
- (3) The co-operative may have one or more official seals for use outside the State or Territory in place of its common seal. 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.

- (4) The seal of the co-operative must not be affixed to an instrument other than under a resolution of the board. Two directors, or one director and the secretary, must be present and must sign all instruments sealed while they are present.

## 60 Inspection of records and registers (CNL ss214 & 215)

- (1) Members of the co-operative have free access to the records and registers referred to in section 214 (1) of the Law and they may make a copy of any entry in the registers at the rate per the current Co-operatives (New South Wales) Regulation Part 3 Fees.

**Note.** Members and other persons accessing records and registers under section 214 of the Law are restricted in the use of any information obtained.

- (2) Members do not have access to the minutes of board or committee meetings, but may request access to any such minutes in writing addressed to the board.

## 61 Safe keeping of securities

Shares, debentures, charges and any other certificates or documents or duplicates of them pertaining to securities must be safely kept by the co-operative in the way and with the provision for their security as the board directs.

## 62 Notices to members (CNL s611)

- (1) This rule applies in addition to section 611 of the Law regarding how a notice or other document may be given to a member of the co-operative.
- (2) A notice or other document required to be given to a member of the co-operative may be given by the co-operative to any member by any form of technology (for example, by fax or email), where the member has notified the co-operative of the relevant contact details.
- (3) If a notice is sent by post, service is taken to be effected at the time at which the properly addressed and prepaid letter would be delivered in the ordinary course of post. In proving service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (4) A notice forwarded by some other form of technology is taken to have been served, unless the sender is notified of a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.
- (5) A notice may be given by the co-operative to joint members by giving the notice to the joint member named first in the register of members.
- (6) 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 or to the relevant contact details as supplied to the co-operative (for example, by fax or email). 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, and:
  - (a) the address should be that supplied for the purpose by the person claiming to be entitled; or
  - (b) 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.

## Part 7 Accounting and financial matters

### 63 Financial year

The financial year of the co-operative ends on the thirty first of March.

### 64 Accounts

- (1) The board must have at least one financial institution account, electronic or otherwise, in the name of the co-operative, into which all amounts received by the co-operative must be paid as soon as possible after receipt.
- (2) All cheques drawn on the accounts, and all drafts, bills of exchange, promissory notes and other negotiable instruments, of the co-operative, to a third party, must be signed by 2 authorised persons.
- (3) The operation of any electronic accounts requires the authorisation by 2 authorised persons except for linked electronic accounts.
- (4) For the purposes of this rule, an *authorised person* is:
  - (a) a director; or
  - (b) a person approved by the board.

### 65 Appointing an auditor or reviewer for small co-operative (CNL s298)

- (1) The co-operative chooses to appoint an auditor in respect of its financial statements.
- (2) An auditor appointed under this rule is to conduct an audit of the cooperative's financial statements as presented to members.
- (3) The appointment of an auditor under this rule is made at an annual general meeting.
- (4) The co-operative may appoint another auditor at a subsequent annual general meeting if there is a vacancy in the office of the auditor.
- (5) The provisions of section 300(2) of the Law apply to an auditor appointed under this rule in the same way (but with any necessary adaptations) as they apply to an auditor appointed for a large co-operative.

### 66 Appointing an auditor or reviewer for a small co-operative if there is a direction under the Law (CNL ss271 & 272)

- (1) If a small co-operative is directed to prepare a financial report under section 271 or 272 of the Law and the direction requires that the financial report be audited or reviewed, the board must appoint an auditor or reviewer (as the case may be) within one month of the direction.
- (2) An auditor or reviewer appointed under this rule holds office until the financial report prepared as a result of the direction has been audited or reviewed and sent to members.

## 67 Disposal of surplus funds during a financial year **(CNL ss355–358)**

- (1) The board may retain all or part of the surplus arising in any year from the business of the co-operative, to be applied for the benefit of the co-operative.
- (2) No part of the surplus may be paid or transferred directly or indirectly, by way of profit, to members of the co-operative.
- (3) A part of the surplus, but not more than 0%, arising in any year from the business of the co-operative may be applied for charitable purposes.

## 68 Provision for loss

The board must make appropriate provision for losses in the co-operative's accounts and when reporting to members is to indicate whether the loss is expected to continue and whether there is any real prejudice to the co-operative's solvency.

## 69 Financial reports to members **(CNL Part 3.3)**

The co-operative must prepare financial reports and statements in accordance with the Law, the National Regulations and these rules.

# Part 8 Winding up

## 70 Winding up **(CNL Part 4.5)**

- (1) The winding up of the co-operative must be in accordance with Part 4.5 of the Law.
- (2) If, on the winding up or dissolution, there remains any property after the satisfaction of all its debts and liabilities, this must not be paid to or distributed among the members of the co-operative but must be given or transferred to an institution or institutions:
  - (a) With objects similar to those of the co-operative; and
  - (b) Whose constitution prohibits the distribution of its property among its members; and
  - (c) Chosen by the members of the co-operative at or before the dissolution or, in default, by a judge of the court with jurisdiction in the matter.
- (3) If the entity specified in subrule (2) does not exist at the time of the winding up or dissolution of the co-operative, any surplus property after the satisfaction of all its debts and liabilities must be given or transferred to an institution or institutions:
  - (a) With objects similar to those of the co-operative; and
  - (b) Whose constitution prohibits the distribution of its property among its members; and
  - (c) Chosen by the members of the co-operative at or before the dissolution or, in default, by a judge of the court with jurisdiction in the matter.