

Western Australia

Co-operatives Act 2009

## **Co-operatives Regulations 2010**

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As at 27 Nov 2012

Version 00-e0-01

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## Co-operatives Regulations 2010

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## Co-operatives Regulations 2010

### 1. Citation

These regulations are the *Co-operatives Regulations 2010*.

### 2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Co-operatives Act 2009* section 489 comes into operation.

### 3. Documents that are not debentures (section 4(1))

For the purposes of the definition of *debenture* in section 4(1) of the Act, a document is exempt from the definition if it is —

- (a) a document that —
  - (i) contains all or some of the conditions on which deposits are accepted by, or withdrawn from, a co-operative; and
  - (ii) acknowledges the receipt of a deposit with a co-operative; and
  - (iii) enables further deposits to be made adding to the balance of an existing deposit; and

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- (iv) enables all or part of the balance of a deposit to be withdrawn, whether at call or on the giving of a fixed period of notice; and
- (v) acknowledges the amount of the withdrawal and the balance remaining;

or

- (b) a document acknowledging a debt incurred by a co-operative —
  - (i) in the ordinary course of carrying on so much of a business as is not, or is not part of, a business of borrowing money and providing finance; and
  - (ii) in relation to money that is or may be deposited with or lent to the co-operative by a person in the ordinary course of a business carried on by the co-operative;

or

- (c) a document issued by a company that is evidence of a debt owed by the company to a co-operative that is a holding company (within the meaning of the Corporations Act) of the company; or
- (d) a document issued by a co-operative that is evidence of a debt owed by the co-operative to a corporation that is a subsidiary of the co-operative.

**4. Modifications to the Corporations Act (section 11)**

For the purposes of section 11 of the Act, the modifications to the Corporations Act set out in Schedule 5 Division 1 are prescribed.

**5. Content of rules (section 98)**

- (1) For the purposes of section 98 of the Act, the rules of a co-operative with share capital must state —
  - (a) the minimum number of shares a member of the co-operative must hold; and

- 
- (b) the way in which the minimum number must be decided, including, for example, by reference to the use made of the co-operative by a member.
  - (2) For the purposes of section 98(7) of the Act, the maximum fine a co-operative may impose on a member under its rules is —
    - (a) for a distributing co-operative — a fine of \$1 000; or
    - (b) for a non-distributing co-operative — a fine of \$1 000.
  - (3) For the purposes of section 98 of the Act, the rules of a small co-operative with share capital must make provision for —
    - (a) the information that must be provided to members prior to the annual general meeting; and
    - (b) the appointment of an auditor either at a general meeting or if required to do so as a result of a direction under the Corporations Act section 293 or 294.

**6. Model rules prescribed (section 101)**

The model rules set out in Schedules 1, 2 and 3 to these regulations are prescribed under section 101 of the Act.

**7. Factors and considerations for determining primary activities, etc. (section 115)**

- (1) For the purposes of section 115(2)(c) of the Act, a relevant factor and consideration is that the co-operative actually carries on its primary activities.
- (2) For the purposes of section 115(3) of the Act, an activity makes a significant contribution to the business of a co-operative —
  - (a) if it contributes at least —
    - (i) 10% of the co-operative's turnover; or
    - (ii) 10% of the co-operative's income; or
    - (iii) 10% of the co-operative's expenses; or
    - (iv) 10% of the co-operative's surplus;or

- (b) if, in the Registrar's opinion, failure by the co-operative to conduct the activity would reduce the business conducted by the co-operative by more than 10%.

**8. Particulars for register of cancelled memberships (section 130)**

For the purposes of section 130 of the Act, the particulars for the register of cancelled memberships are those set out in Schedule 4, clause 5 to these regulations.

**9. Valuers who may give certificates of the value of assets for bonus shares (section 149)**

For the purposes of section 149(c) of the Act, each of the following may give a certificate of the value of assets —

- (a) for land — a person licensed under the *Land Valuers Licensing Act 1978*;
- (b) for another kind of asset — a person who has been engaged in valuing assets of the kind, for, or for periods totalling, at least 5 years.

**10. Disqualified persons (section 200)**

For the purposes of section 200(3) of the Act, each of the following is an authority who may give a certificate about a person's release from prison —

- (a) for a person imprisoned in Victoria — the governor of the prison in Victoria that had legal custody of the person on the person's release;
- (b) for a person imprisoned in New South Wales — the Corrective Services Commission of New South Wales;
- (c) for a person imprisoned in Queensland — the manager of the prison in Queensland that had legal custody of the person on the person's release;



- (d) for a person imprisoned in Western Australia — the Commissioner of Corrective Services in Western Australia;
- (e) for a person imprisoned in South Australia — the chief executive of the Department for Correctional Services of South Australia;
- (f) for a person imprisoned in Tasmania — the director of Corrective Services in Tasmania;
- (g) for a person imprisoned in the Australian Capital Territory — the chief executive responsible for the *Corrections Management Act 2007* (Australian Capital Territory);
- (h) for a person imprisoned in the Northern Territory — the director of Correctional Services of the Northern Territory.

**11. Small co-operatives (section 225)**

- (1) For the purposes of section 225(1)(j) of the Act, a distributing co-operative is classified as a small co-operative for a particular financial year, if the distributing co-operative satisfies all of the following criteria in that financial year —
  - (a) the distributing co-operative has no more than 30 employees at the end of the financial year;
  - (b) the consolidated gross assets of the distributing co-operative are no more than \$4 000 000;
  - (c) the consolidated gross revenue of the distributing co-operative is no more than \$8 000 000.
- (2) In counting employees for the purposes of subregulation (1)(a), part-time employees are taken into account as an appropriate fraction of the full-time equivalent.
- (3) For the purposes of section 225(1)(j) of the Act, a non-distributing co-operative is classified as a small co-operative for a particular financial year, unless the

non-distributing co-operative exceeds either of the following thresholds in that financial year —

- (a) consolidated gross assets of \$500 000;
- (b) consolidated gross revenue of \$200 000.

**12. Modifications to the Corporations Act relating to financial records and financial reports (section 225)**

For the purposes of section 225(1)(k) of the Act, the modifications to the Corporations Act set out in Schedule 5 Division 2 are prescribed.

**13. Particulars in registers to be kept by co-operatives (section 230)**

- (1) The registers must contain the particulars in Schedule 4 to these regulations in written or electronic form.
- (2) A register may include any document in the English language in which the required particulars are recorded.

**14. Inspection of registers etc. (section 232)**

- (1) For the purposes of section 232(1) of the Act, the following registers of a co-operative are other registers that are available for inspection —
  - (a) the register of cancelled memberships;
  - (b) the register of notifiable interests.
- (2) For the purposes of section 232(5) of the Act, the maximum amount a co-operative may charge for a copy of an entry in the register is \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60.

**15. Notice of appointment etc. of directors and officers (section 234)**

For the purposes of section 234(2)(c) of the Act, the particulars to be included in a notice of appointment or cessation of

appointment of a director, chief executive officer or secretary are —

- (a) the name of the co-operative or subsidiary; and
- (b) the name and position of the person giving the notice; and
- (c) for a person appointed —
  - (i) the person's full name; and
  - (ii) any former names; and
  - (iii) the person's residential address, including suburb or city, State and postcode, and country (if not Australia); and
  - (iv) date and place of birth; and
  - (v) office held and date appointed; and
- (d) for a person ceasing to hold office —
  - (i) the person's full name; and
  - (ii) the person's date and place of birth; and
  - (iii) the office the person held and date ceased.

**16. Annual report to Registrar (section 235)**

For the purposes of section 235(2)(e) of the Act, the other particulars to be included in a co-operative's annual report are —

- (a) the name of the co-operative; and
- (b) the street address of each of the following places of the co-operative —
  - (i) registered office;
  - (ii) principal place of business;and
- (c) the name, address and position of the person sending the annual report to the Registrar; and

- (d) the date of the report; and
- (e) the number, and the corresponding full-time equivalent number, of persons employed by the co-operative at the end of the financial year; and
- (f) the number of members in the co-operative at the end of the financial year; and
- (g) the number and class of shares forfeited under the Act Part 6 or section 280 in the financial year covered by the report; and
- (h) the number of shares repurchased under the rules of the co-operative in the financial year covered by the report; and
- (i) the number of memberships cancelled under the Act or that otherwise ceased during the financial year covered by the report; and
- (j) the number and class of shares issued to members during the financial year; and
- (k) the date of the annual general meeting.

**17. Unsuitable names (section 238)**

For the purposes of section 238(8) of the Act, a name is an unsuitable name if it contains anything included in Schedule 6 to these regulations.

**18. Advertising a change of name of a co-operative (section 241)**

For the purposes of section 241(2) of the Act, the way a change of name of a co-operative must be advertised is for the co-operative, within 28 days after the Registrar registers the change of name, to advertise the change of name in at least one newspaper circulating in the locality or localities in which the co-operative carries on business.

**19. Requirements and restrictions on deposit taking co-operatives obtaining financial accommodation (section 245)**

- (1) A deposit taking co-operative must not obtain financial accommodation by accepting deposits of money from persons other than its members and employees.  
Penalty: a fine of \$2 000.
- (2) Subregulation (1) does not prevent a person, whose money was deposited with a transferred co-operative immediately before that co-operative became registered under this Act, continuing to deposit money with the co-operative.

**20. Compulsory loan by member to co-operative (section 255)**

For the purposes of section 255(2) of the Act, the maximum term of a proposal by a co-operative requiring its members to lend money to the co-operative is 10 years.

**21. Charges required to be registered (section 267)**

For the purposes of section 267 of the Act and Schedule 3 clause 8 to the Act, each of the following laws is a law of a State or Territory under which a lien or charge on a crop, a lien or charge on wool or a stock mortgage is registrable —

- (a) *Liens on Crops and Wool and Stock Mortgages Act 1898* (New South Wales) (Parts 2 and 3);
- (b) *Instruments Act 1958* (Victoria) (Parts 7 and 8);
- (c) *Bills of Sale and Other Instruments Act 1955* (Queensland) (Part 2, to the extent to which it relates to the registration of stock mortgages, liens on crops and liens on wool, and Part 4);
- (d) *Liens on Crops of Sugar Cane Act 1931* (Queensland);
- (e) *Bills of Sale Act 1899* (sections 7 and 8 and Parts 9, 10 and 11);
- (f) *Liens on Fruit Act 1923* (South Australia);

- (g) *Stock Mortgages and Wool Liens Act 1924* (South Australia);
- (h) *Bills of Sale Act 1900* (Tasmania) (section 36);
- (i) *Stock, Wool and Crop Mortgages Act 1930* (Tasmania);
- (j) *Instruments Act 1933* (Australian Capital Territory) (Parts 4 and 5);
- (k) *Instruments Act* (Northern Territory).

**22. Inspection of register of charges (section 267)**

For the purposes of section 267 of the Act and Schedule 3 clause 41(4)(b) to the Act, the maximum amount payable for each inspection of a co-operative's register of charges is \$10.00.

**23. Copies of register of charges (section 267)**

For the purposes of section 267 of the Act and Schedule 3 clause 41(6)(a) to the Act, the maximum amount payable for a copy of the register of charges or a part of the register is \$1.00 per page, up to a maximum of \$20.00.

**24. Limited dividend (section 271)**

Under section 271(1) of the Act, the amount prescribed for the purpose of the definition of *limited dividend* (as a percentage of the nominal value of the shares held by a member) is calculated by taking a starting figure of 10% and adding to that the maximum percentage rate payable on a Commonwealth Bank of Australia (ABN 48 123 123 124) 5 year term deposit of \$100 000 offered during the relevant financial year.

**25. Acquisition and disposal of assets that require special postal ballots (section 273)**

- (1) For the purposes of section 273(2)(a)(ii) of the Act, the prescribed percentage is 50%.
- (2) For the purposes of section 273(2)(b) of the Act, the prescribed percentage is 5%.

- (3) For the purposes of section 273(2)(c) of the Act, the prescribed percentage is 50%.

**26. Particulars in notice of change of voting interest (section 275)**

- (1) Under section 277 of the Act, the particulars in subregulation (2) must be included in a notice, given under section 275 of the Act, of —
- (a) acquisition of a relevant interest in the right to vote of a member of a co-operative; or
  - (b) a change in the relevant interest in the right to vote of a member of a co-operative.
- (2) The particulars are as follows —
- (a) the name of the co-operative to which the notice is given;
  - (b) the full name and address of the person giving notice;
  - (c) the date the person acquired or ceased to have the relevant interest;
  - (d) the name of the member whose right to vote was affected;
  - (e) the nature of the relevant interest, including the nature of any change in the relevant interest;
  - (f) the date of giving notice.

**27. Particulars in notice of substantial share interest (section 276(1))**

Under section 277 of the Act, the particulars to be included in a notice, given under section 276(1) of the Act, that a person has a substantial share interest are as follows —

- (a) the name of the co-operative to which the notice is given;
- (b) the name and address of the person giving notice;
- (c) the date the relevant interest was acquired;

- (d) in relation to each holder of the relevant interest —
  - (i) the name and address of the holder; and
  - (ii) the number and description of the shares in which the interest is held; and
  - (iii) the name and address of each person registered as the holder of the shares in which the interest is held; and
  - (iv) the name and address of each person entitled to be registered as the holder of the shares in which the interest is held; and
  - (v) the date of each acquisition of a relevant interest in the previous year and the number of shares acquired at that date (if any); and
  - (vi) the valuable consideration for each acquisition in the previous year, including the nature of consideration that did not consist of money; and
  - (vii) the total number of shares in which the holder has a substantial interest;
- (e) particulars of any contract, scheme, arrangement or other circumstance because of which the holder of the relevant interest acquired the relevant interest (but not interests acquired more than a year earlier) if the holder has, for the year immediately before the date of the notice, been the registered shareholder of those shares;
- (f) particulars of the nature of the relevant interest;
- (g) particulars of any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers of the relevant shares;
- (h) particulars of any additional benefit (other than valuable consideration mentioned in paragraph (d)(vi)) anyone from whom a relevant interest was acquired has or may become entitled to receive, whether or not on a contingency happening, in relation to the acquisition;
- (i) the date the notice is given.



**28. Particulars in notice of change in substantial share interest (section 276(2))**

Under section 277 of the Act, the particulars to be included in a notice, given under section 276(2) of the Act, of a substantial change in a substantial share interest are as follows —

- (a) the name of the co-operative to which notice is being given;
- (b) the full name and address of the person giving notice;
- (c) the following particulars applicable before the change —
  - (i) the name and address of the holder of the relevant interest;
  - (ii) the number and description of the shares in which the relevant interest was held;
  - (iii) the name and address of the person registered as the holder of the shares;
  - (iv) the name and address of the person entitled to become registered as the holder of the shares;
  - (v) the total number of shares in which the holder of the relevant interest held the relevant interest;
- (d) the following particulars relating to the change —
  - (i) the date of the change;
  - (ii) particulars of the valuable consideration given in relation to the change, including the nature of consideration that did not consist of money;
  - (iii) particulars of any contract, scheme, arrangement or other circumstance because of which the change happened;
  - (iv) particulars of any qualification of the power of a person to exercise, control the exercise of, or influence, voting powers in the shares in relation to which the change in the relevant interest happened is held;

- (v) particulars of any additional benefit a person has or may become entitled to receive, whether on the happening of a contingency or not, because of a change in the relevant interest;
- (e) the following particulars applicable after the change —
  - (i) the name and address of the holder of the relevant interest;
  - (ii) the number and description of the shares in which the relevant interest is held;
  - (iii) the name and address of the person entitled to be registered as the holder of the shares;
- (f) the date the notice is given.

**29. Particulars in notice of cessation of substantial share interest (section 276(3))**

Under section 277 of the Act, the particulars to be included in a notice, given under section 276(3) of the Act, of cessation of a substantial share interest in a co-operative are as follows —

- (a) the name of the co-operative to which notice is given;
- (b) the full name and address of the person giving notice;
- (c) the full name and address of the person ceasing to have the substantial share interest;
- (d) the date the person ceased to have the substantial share interest;
- (e) particulars of any agreement or other circumstance because of which the person ceased to hold the substantial share interest;
- (f) in relation to each change in a substantial share interest of the person since the person was last required to give notice of a change in a substantial share interest to the co-operative —
  - (i) the date of the change; and
  - (ii) the nature of the change; and

- (iii) the consideration given in relation to the change;  
and
- (iv) the class and number of shares affected by the change;
- (g) the date the notice is given.

**30. Maximum fee for inspection of notifiable interests register (section 284)**

For the purposes of section 284(3)(b) of the Act, the maximum fee a co-operative may charge for inspection of the register of notifiable interests is \$10.00.

**31. Application for transfer — prescribed law (section 305)**

For the purposes of section 305(1)(c) of the Act, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth) is a law under which a co-operative may, if approved, become registered or incorporated.

**32. Security to be given by liquidator (section 314)**

For the purposes of section 314(6) of the Act, the security a liquidator must give is \$50 000 in the form of —

- (a) cash; or
- (b) a cheque drawn on or that permits or enables payment to be made by a financial institution; or
- (c) a certificate of deposit issued by a financial institution;  
or
- (d) a debenture or security guaranteed by the Commonwealth or a State; or
- (e) a surety issued by a financial institution or a body corporate authorised to carry on insurance business under the *Insurance Act 1973* (Commonwealth).

**33. Application of Corporations Act to winding-up (section 316)**

For the purposes of section 316(i) of the Act, the changes to the Corporations Act set out in Schedule 5 Division 3 to these regulations are prescribed.

**34. Information to be set out in an explanatory statement (section 349)**

For the purposes of section 349(3)(b)(i) of the Act, the information that must be in an explanatory statement is the information in Schedule 7 to these regulations.

**35. Manner of giving notice to dissenting shareholder (section 355)**

For the purposes of section 355(1) of the Act, a compulsory acquisition notice must be given in a form approved by the Registrar.

Penalty: a fine of \$1 000.

**36. Manner of giving notice to remaining shareholders (section 357)**

For the purposes of section 357(1)(a) of the Act, a notice to a remaining shareholder must be given in a form approved by the Registrar.

Penalty: a fine of \$1 000.

**37. Out-of-jurisdiction compromise or arrangement — corresponding laws (section 362)**

For the purposes of section 362(2) of the Act, the following provisions of laws of other States and Territories are provisions corresponding to section 338 of the Act —

- (a) the *Co-operatives Act 1992* (New South Wales) section 344;
- (b) the *Co-operatives Act 1996* (Victoria) section 339;
- (c) the *Co-operatives Act* (Northern Territory) section 334;

- (d) the *Cooperatives Act 2002* (Australian Capital Territory) section 362;
- (e) the *Co-operatives Act 1997* (South Australia) section 334;
- (f) the *Cooperatives Act 1997* (Queensland) section 331;
- (g) the *Cooperatives Act 1999* (Tasmania) section 342.

**38. Application of Act and regulations to foreign co-operatives (section 379)**

For the purposes of section 379 of the Act —

- (a) the provisions of the Act set out in Schedule 8 Division 1 to these regulations apply to a participating co-operative; and
- (b) the provisions of the Act and these regulations in Schedule 8 Division 2 to these regulations apply to a non-participating co-operative.

**39. Allowances and expenses for an involved person (section 429)**

For the purposes of section 429(4) of the Act, the allowance and expenses payable to an involved person are the allowance and expenses payable to a witness in a civil proceeding before the District Court.

**40. Documents relating to a co-operative (section 457)**

For the purposes of section 457(1)(b) of the Act, the documents kept by the Registrar relating to a co-operative that a person may inspect are documents given to, or issued by, the Registrar under the Act other than the following —

- (a) a document given to the Registrar under one of the following provisions of the Act —
  - (i) section 236 (*list of members requested by the Registrar*);

- (ii) section 237 (*special return requested by the Registrar*);
- (iii) section 326(4) (*administrator's report to the Registrar showing how the administration was carried out*);
- (iv) section 331 (*administrator's report to the Registrar showing how the administration was carried out, produced at the Registrar's request*);
- (v) section 425(4) (*details given by a legal practitioner to identify privileged communication*);
- (vi) section 430(3) (*details given by a legal practitioner to identify privileged communication*);
- (vii) section 434(1) (*investigator's interim report to the Registrar on an inquiry*);
- (viii) section 434(2) (*investigator's final report to the Registrar on an inquiry*);
- (b) a report made or filed under Schedule 4 clause 13 to the Act;
- (c) a document given to the Registrar under any of the following provisions of the Corporations Act as applied by the Act —
  - (i) section 311;
  - (ii) section 438D;
  - (iii) section 533.

**41. Exclusions — holders of prescribed offices**

For the purposes of Schedule 2 clause 13 to the Act a relevant interest in a share or right to vote held by each person holding an office mentioned in Schedule 9 to these regulations is to be disregarded.

**42. Fees**

- (1) The fees payable under the Act are those set out in Schedule 10 to these regulations.
- (2) The amount of any additional fee the Registrar may impose for late filing of a document required to be filed under the Act is set out in Schedule 10 to these regulations.

**43. Registrar may waive fees in some circumstances**

The Registrar may waive all or part of a fee payable under the Act if, in the Registrar's opinion —

- (a) the fee is payable by a co-operative established mainly for —
  - (i) a charitable purpose; or
  - (ii) advancing the welfare of a disadvantaged class of persons;
- or
- (b) there are special circumstances for waiving the fee or part of it.

**Schedule 1 — Model rules of a non-distributing  
co-operative without share capital**

[r. 6]

**Rules of a non-distributing co-operative without share capital registered  
under the *Co-operatives Act 2009***

**1. Terms used**

In these rules —

***active member*** means a member who is in active membership under clause 5;

***auditor*** means a registered company auditor or auditors (within the meaning of that term in the Corporations Act) for the time being of the co-operative;

***CCU*** means a co-operative capital unit;

***director*** includes alternate director;

***financial institution account*** means an account at a financial institution into which the co-operative's money may be paid;

***financial year*** means the financial year of the co-operative specified in clause 55;

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

***regulations*** means the *Co-operatives Regulations 2010*;

***special resolution*** means a resolution passed in accordance with clause 38.

**2. Rules**

- (1) The rules of the co-operative have the effect of a contract under seal —
- (a) between the co-operative and each member; and
  - (b) between the co-operative and each director, the chief executive officer and the secretary of the co-operative; and
  - (c) between a member and each other member.



- (2) Under the contract, each of those persons agrees to observe and perform the rules as in force for the time being so far as those provisions apply to the person. [s. 97]
- (3) The rules may be altered by a special resolution, [s. 104] by a resolution of the board in accordance with section 105 of the Act or as otherwise permitted by the Act.
- (4) A proposed alteration to these rules cannot be put to a resolution unless it is approved by the Registrar. [s. 103]
- (5) An alteration to these rules does not take effect until it is registered by the Registrar. [s. 106]
- (6) A member is entitled to obtain a copy of the rules on payment of \$ ..... (maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60 or if no fee is fixed, \$5). [s. 99(1)]
- (7) Any person may obtain a copy of these rules from the Registrar on payment of the prescribed fee. [s. 99(3)]

**3. Powers**

The co-operative has the power of an individual and the ability to restrict or place additional powers in the rules. [s. 39]

**4. Name**

- (1) The name of the co-operative is [s. 238] .....
- (2) The co-operative may change its name under section 241 of the Act.
- (3) The co-operative may abbreviate its name under section 239 of the Act.

**5. Active membership provisions**

- (1) Under Part 6 of the Act —

**Primary activity**

.....  
.....

**cl. 6**

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.....  
.....

is a primary activity of the co-operative; and

**Active membership requirements**

a member must —

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

to establish active membership of the co-operative.

- (2) All members of a co-operative must be active members.
- (3) Subject to sections 123 and 124 of the Act, a member who fails to be or stops being an active member must, under the Act, have their membership cancelled.

**6. Qualifications for membership**

- (1) A person is not qualified to be admitted to membership of the co-operative unless there are reasonable grounds for believing the person will be an active member of the co-operative. [s. 58]
- (2) Despite subclause (1), a person who was a member of a co-operative immediately before that co-operative became a transferred co-operative is qualified despite the absence of reasonable grounds for believing that the person will be an active member of the co-operative. [s. 58]

**7. Membership, subscriptions, periodic fees**

- (1) The co-operative must give to a person intending to become a member —
  - (a) a copy of the rules, resolutions and the last annual report if a person requests a copy under section 68 of the Act; and

- (b) written notice of entry fees or regular subscriptions payable by a member of the co-operative. [s. 69]
- (2) Applications for membership must be lodged at the registered office in the application form, approved by the board.
- (3) Every application must be considered by the board.
- (4) If the board approves of the application, the applicant's name and any other information required under the Act must be entered in the register of members within 28 days of the board's approval.
- (5) The applicant must be notified in writing of the entry in the register and the applicant is then entitled to the privileges attaching to membership.
- (6) The board may, at its discretion, refuse an application for membership.
- (7) 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.

**8. Ceasing membership**

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

- (a) if the member's membership is cancelled under Part 6 of the Act (Active membership);
- (b) if the member is expelled under these rules;
- (c) if the member becomes bankrupt and the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the co-operative;
- (d) on death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) on written notice of the member's resignation from membership, given by the member to the secretary;
- (g) for a corporation — if the corporation becomes insolvent or is deregistered. [s. 63, 64]

**cl. 9**

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**9. Expulsion of members**

- (1) A member may be expelled from the co-operative by special resolution to the effect —
  - (a) that the member has failed to discharge the member's obligations to the co-operative under these rules or a contract; 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 co-operative principles as described in section 6 of the Act and has caused the co-operative harm.
- (2) Written notice of the proposed resolution must be given to the member at least 28 days before the date of the 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) If a general meeting is to be called under this clause 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 act must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
  - (c) once the act is considered, the co-operative may decide to expel the member who committed the act;
  - (d) the co-operative must not make a decision on the act 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. 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. [s. 73]

**10. Payments upon expulsion of member**

- (1) If a member is expelled from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.
- (2) If a member who had paid his or her annual subscription in full is expelled from the co-operative, the board may repay either the full annual subscription or a proportion of that annual subscription to the expelled former member.

**11. Payments upon resignation of member**

- (1) If a member resigns from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.
- (2) If a member who had paid his or her annual subscription in full resigns from the co-operative, the board may repay either the full annual subscription or a proportion of that annual subscription to the former member.

**12. Suspension of members**

- (1) The co-operative may suspend a member for not more than one year, who does any of the following acts —
  - (a) contravene any of these rules;
  - (b) fail to discharge obligations to the co-operative, whether under these rules or a contract;
  - (c) act 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 clause 9 is to be followed as if references to expulsion were references to suspension.
- (3) During the period of suspension, the member —

**cl. 13**

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- (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.

**13. Disputes and mediation**

- (1) The grievance procedure set out in this clause applies to disputes under the rules between a —
  - (a) member and another member; or
  - (b) member or members 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, then the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.
- (5) The mediator must be —
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement —
    - (i) for a dispute between a member and another member, a person appointed by the board of the co-operative; or
    - (ii) for a dispute between a member(s) and the co-operative, a person appointed by the Supreme Court of Western Australia.
- (6) A member of the co-operative can be a mediator.

- (7) The mediator cannot be a member who is a party to the dispute.
- (8) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (9) 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.
- (10) The mediator cannot determine the dispute.
- (11) The mediation must be confidential and without prejudice.
- (12) The costs of the mediation are to be shared equally between the parties unless otherwise agreed.
- (13) Nothing in this clause extends to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.
- (14) Nothing in this clause extends to any dispute involving the expulsion or suspension of a member or the imposition of a fine.
- (15) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the Act or otherwise at law.

**14. Fines payable by members**

- (1) The board may impose on a member a maximum fine of \$ ..... (not more than \$1 000) for a contravention of the rules.
- (2) A fine must not be imposed on a member under subclause (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),

**cl. 15**

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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**

- (1) A member is, under section 67 of the Act, liable to pay to the co-operative the charges, including entry and periodic fees, payable by the member to the co-operative under these rules.
- (2) 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. [s. 63(2)]
- (3) Joint members are jointly and severally liable for charges mentioned in subclause (1).

**16. Forfeiture and cancellations — inactive members**

- (1) Subject to sections 123 and 124 of the Act, the board must declare the membership of a member cancelled if — [s. 120]
  - (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 ..... years [not more than 3 years, s. 120]; or
  - (b) the member is not presently an active member and has not been an active member at any time in the past ..... years [not more than 3 years, s. 120].
- (2) Subclause (1) applies to a member if he or she was a member of the co-operative throughout the ..... year period [not more than 3 years, s. 120].
- (3) Unless subclause (4) applies, the board of a co-operative must ensure that notice of its intention to declare the membership of a member to be cancelled is given to the member not less than 28 days prior to the intended day of the cancellation.
- (4) Notice is not required to be given under subclause (3) if —
  - (a) the member's whereabouts are unknown to the co-operative;  
or



- (b) the amount required to be repaid to the member in relation to the cancelled membership does not exceed \$100.00 or such other amount as may be prescribed under section 125(2) of the Act.
- (5) The co-operative must keep a register of cancelled memberships under subclause (1), that must include the particulars in the *Co-operatives Regulations 2010* Schedule 4 clause 5.

**17. Death of member**

- (1) Subject to section 159 of the Act, the board must transfer a deceased member's interest in the co-operative to —
  - (a) the personal representative of the deceased, that is, an executor or administrator of the estate of the deceased; or
  - (b) the person specified by the deceased's personal representative, in an application made to the co-operative within 3 months after the death of the member.
- (2) The board may approve the transfer of the interest to a person other than the executor or administrator if the board is satisfied that —
  - (a) there are reasonable grounds for believing the proposed transferee will be an active member of the co-operative; or
  - (b) the proposed transferee is qualified to be a member of the co-operative under these rules. [s. 75(b) and 159]
- (3) If the total value of the deceased member's interest in the co-operative is less than \$10 000 or another amount fixed by the regulations, the board may transfer the interest under section 76 of the Act if there has not been a grant of letter of administration or probate of the deceased's will. [s. 76]
- (4) Under section 77 of the Act, the board must decide the value of the interest of a deceased member as the amount payable to the deceased member less any amounts owing to the co-operative by the deceased member.

**18. Dealings of members with co-operatives**

- (1) The co-operative may, under section 70 of the Act, make a contract with a member requiring the member to have specified dealings with the co-operative for a fixed period.

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- (2) The contract may require a member —
  - (a) to sell products through or to the co-operative; or
  - (b) to obtain supplies or services through or from the co-operative; or
  - (c) to pay to the co-operative specified amounts as liquidated damages for a contravention of a requirement authorised by this clause.
- (3) Any amount specified as liquidated damages is to be considered as a debt payable to the co-operative for which the co-operative has, under section 72 of the Act, a charge on each of the following —
  - (a) the credit balance and deposits of the member or past member;
  - (b) entry fees and regular subscriptions required to be repaid to a member when the member ceases to be a member.

**19. Registration of Official Trustee in Bankruptcy**

If a member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the interest held by the bankrupt member. [s. 154]

**20. Registration as administrator of estate on incapacity of member**

A person appointed under a law of a State or a 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 interest in the co-operative. [s. 153]

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

- (1) A person entitled to hold the interest of a member because of the death, bankruptcy or incapacity of the holder of the interest, is entitled to the advantages to which that member would be entitled if he or she were the registered holder of the interest. However, before being registered as a member, the person cannot exercise any right conferred by membership in relation to meetings of the co-operative.
- (2) A person registered under clause 17, 19 or 20 has, while registered, the same liabilities the dead person, the bankrupt person or the

incapable person would have been liable if he or she had remained a member with full legal capacity.

**22. 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 \$ ..... (or a lesser amount decided by the board) is paid to the co-operative for the transfer of registration; and
  - (b) the instrument of transfer is accompanied by the relevant debenture 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 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

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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.

**23. Issue of CCUs**

- (1) The board of the co-operative may confer an interest in the capital of the co-operative by issuing CCUs in accordance with the Act.
- (2) The board of the co-operative may issue CCUs to a person, whether or not that person is a member of the co-operative. [s. 260]
- (3) Each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs.
- (4) 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.
- (5) 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.
- (6) 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.

**24. Transfer and transmission of CCUs**

- (1) Subject to this clause, the transfer and transmission of a CCU is to follow the same process as for a debenture under clause 22.
- (2) Where the terms of issue of a CCU differ from clause 22 in respect to the manner of transfer or transmission, the terms of its issue prevail.

**25. Annual general meetings**

- (1) An annual general meeting must, under section 190 of the Act, 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 or fixed under a regulation.[s. 190]

Note: See section 190(1) and (2) for the meeting times for the first AGMs of new and transferred co-operatives.

- (2) A general meeting of the co-operative other than the annual general meeting must be a special general meeting.
- (3) If an annual general meeting is not held as required by subclause (1), the members may, under section 195 of the Act and clause 26 of these rules, requisition a special general meeting.

**26. Special general meetings**

- (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 ..... % (max 20%) of the total number of votes able to be cast at a meeting of the co-operative.
- (3) The requisition must —
  - (a) state the objects of the meeting; and
  - (b) 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
  - (c) be served on the co-operative by being lodged at the co-operative's registered office.

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- (4) A meeting requisitioned by members under these rules must be called and held as soon as practicable and in any case must be held within 2 months after the requisition is served.
- (5) If the board does not call a meeting within 35 days after the requisition is served, the following provisions apply —
  - (a) the requisitioning members (or any of them representing at least half their total voting rights) may call the meeting in the same way, as nearly as possible, as meetings are called by the board;
  - (b) for that purpose they may ask the co-operative to supply a written statement of the names and addresses of the persons entitled, when the requisition was served, to receive notice of general meetings of the co-operative;
  - (c) the board must send the statement to the requisitioning members within 7 days after the request for the statement is made;
  - (d) the meeting called by the requisitioning members must be held within 3 months after the requisition is served;
  - (e) the co-operative must pay the reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting;
  - (f) any amount required to be paid by the co-operative is to be retained by the co-operative out of amounts payable by the co-operative for fees or other remuneration for their services to the directors who were in default. [s. 195]

**27. Notice of general meetings**

- (1) Subject to clause 28, at least 14 days notice (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 to every member of any general meeting, in the way stipulated in clause 65.
- (2) Notice must be given to the persons who are, under these rules, entitled to receive notices from the co-operative, but the non-receipt of the notice does not invalidate the proceedings at the general meeting.

- (3) The notice must state the place, day and hour of the meeting and, for special business, the general nature of the business.
- (4) For a special resolution, notice of —
  - (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,must be given at least 21 days before the meeting. [s. 177]
- (5) Members who together are able to cast at least ..... (max 20%) 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.
- (6) In a notice calling a general meeting, the board must include any business members have notified their intention to move at the meeting under subclause (5) (provided the members' notification has been made under these rules and within time).

**28. Notice of general meetings (small co-operatives)**

- (1) If the co-operative is a small co-operative, at least 14 days notice (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 to every member of any general meeting, in the way stipulated in clause 65.
- (2) Notice must be given to the persons who are, under these rules, entitled to receive the notices from the co-operative, but the non-receipt of the notice does not invalidate the proceedings at the general meeting.
- (3) The notice must state the place, day and hour of the meeting and, for special business, the general nature of the business.
- (4) Subject to clause 37(5), the notice must include —
  - (a) a copy of the financial report (unaudited for the last financial year); and
  - (b) a directors' solvency resolution as to whether or not, in their opinion, there are reasonable grounds to believe that the

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co-operative will be able to pay its debts as and when they become due and payable.

- (5) The copies of the financial report are not required to form a part of the notice if the co-operative has been directed under section 293 or 294 of the Corporations Act to audit its financial statements. [s. 225]

**29. Business of general meetings**

- (1) The ordinary business of the annual general meeting 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; and
    - (ii) a report on the state of affairs of the co-operative.

- (2) The annual general meeting may also transact special business of which notice has been given to members under these rules.

- (3) All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.

**30. 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. [s. 193]
- (2) Unless these rules state otherwise ... members present in person, each being entitled to exercise a vote, constitute a quorum. [s. 193]
- (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.



**31. 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, then 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.

**32. Attendance and voting at general meetings**

- (1) The right to vote attaches to membership.
- (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 will vote.
- (5) A resolution, other than a special resolution, must be decided by simple majority.  
  
Note: The requirements for a special resolution are in section 177 of the Act.
- (6) Subject to subclauses (7) and (8), at any general meeting a question for decision must (as provided in section 194 of the Act) be decided on a show of hands of members present at the meeting.
- (7) A poll may be demanded on any question for decision.

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- (8) Where 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 subclause (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.

**33. Voting on a show of hands**

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 section 61(1) of the Act; or
- (d) represented by a non-member appointed as a proxy under these rules\*.

may exercise only one vote.

\*Note: If the rules do not allow for non-members to be appointed as proxies, paragraph (d) should be omitted.

**34. Voting on a poll**

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

- (a) present; or

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etermining  
the outcome  
where  
equality of  
votes

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- (b) represented by a proxy; or
- (c) represented by a person acting under a power of attorney; or
- (d) represented by a person appointed under section 61(1) of the Act,

has one vote.

**35. Determining the outcome where equality of votes**

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

**36. Proxy votes**

- (1) The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (2) 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.

*\*Optional, select either (3) or (4).*

- (3) A person may act as a proxy despite that person not being a member of the co-operative. \*
- (4) A person must not act as a proxy unless the person is a member of the co-operative. \*
- (5) A person may be appointed as a proxy by more than one member. \*\*

\*\*Note: The rules may impose a limit on the number of members for whom a proxy may act.

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- (6) An instrument appointing a proxy may be in the following form, or another form the board approves\*\*\* —

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

I/we ..... (name) of ..... (address)

being a member(s) of the co-operative appoint .....

..... (name) of ..... (address)

as my/our proxy 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 and on my/our behalf at the \* annual general/\*special general meeting of the co-operative, to be held on the ..... day of ..... 20 ..... and at any adjournment of the meeting.

#This form is to be used \*in favour/\*against the resolution.

Signed this ..... day of ..... 20.....

*\*Strike out if not applicable.*

*#To be inserted if desired.*

\*\*\*Note: The form may also set out the resolutions with provision for the member to give direction to the proxy.

- (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.

**37. Postal ballots**

- (1) A postal ballot or special postal ballot must be held when required by the Act, these rules or when the members by ordinary resolution approve one.\*

\*Notes:

1. Section 187 of the Act lists a number of matters for which a special postal ballot must be conducted.
  2. Section 188(1) of the Act requires the board to conduct a postal ballot or a special postal ballot for the passing of a special resolution on the written requisition of such number of members who together are able to cast at least 20% (or less if the rules provide) of the total number of votes able to be cast at a meeting of the co-operative.
  3. Members proposing to give the board a written requisition should familiarise themselves with the requirements in section 188(2).
- (2) Subject to sections 185 and 186 of the Act and this clause, a postal ballot or special postal ballot is to be conducted using such method, in such form and returnable in such manner, as the board decides.
- (3) A postal ballot or special postal ballot may incorporate one or more methods of electronic voting.
- (4) The board is to appoint a returning officer to conduct the postal ballot or special postal ballot or, in default of such appointment, the secretary is the returning officer.
- (5) At least 21 days prior to the closing date of a postal ballot or special postal ballot\*, the returning officer is to send ballot papers (in the form and with such content as the board may approve) to all voting members giving —
- (a) particulars of the business in relation to which the postal ballot or special 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

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- (c) notice of the closing date and closing time of the postal ballot.

\*Note: Section 186(3) of the Act requires a disclosure statement containing specified information to be included with the other material sent to members in connection with a special postal ballot.

- (6) The returning officer shall receive, validate and count the votes and advise the Board of —
  - (a) the number of formal votes cast in favour of the proposal concerned; and
  - (b) the number of formal votes cast against the proposal concerned; and
  - (c) the number of informal votes cast.
- (7) On declaration of the result of the ballot, the secretary must enter the subclause (6) details in the minute book of the co-operative.
- (8) 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.

**38. Special and ordinary resolutions**

- (1) A special resolution is a resolution of which the notice set out in subclause (2) has been given of the intention to propose the resolution as a special resolution and that is passed —
  - (a) by two-thirds of the members who vote in person or by proxy or attorney, at a general meeting; or
  - (b) by a two-thirds majority in a postal ballot; or
  - (c) by three-quarters of the members who cast formal votes in a special postal ballot of members. [s. 177(1)]
- (2) A resolution is not taken to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the co-operative stating —
  - (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. [s. 177(3)]

- (3) A special resolution has effect from the date it is passed, however a special resolution required to be passed by special postal ballot has no effect until registered by the Registrar [s. 180] and no amendment to these rules is to take effect until the amendment is registered by the Registrar. [s. 106(1)]
- (4) An ordinary resolution is one passed by a simple majority and has effect from the date it is passed.

**39. Board of directors**

- (1) The business and operations of the co-operative are to be managed and controlled by the board of directors, and for that purpose the board has and may exercise the powers of the co-operative as if expressly conferred on the board by a general meeting of the co-operative.
- (2) The board must have ..... member directors each of whom must be an individual, whether as a member of the co-operative, or as a representative of a corporation member, and at least 18 years old.\*  

\*Note: The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.
- (3) The powers of the board are subject to any restrictions imposed by the Act or by these rules.

**40. Qualifications of directors**

A person is not qualified to be a director of the co-operative unless the person is —

- (a) a member of the co-operative or a representative of a corporation that is a member of the co-operative; or
- (b) an employee of the co-operative or a person qualified under clause 41 to be an independent director.

**41. Independent directors**

- (1) The board may appoint persons with special skills to be independent directors of the co-operative on the conditions and for the period the board decides.

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- (2) The special skills required of an independent director may be specified by the board, and may be varied by the board from time to time, or from appointment to appointment. [s. 199(2)(b)]
- (3) An independent director is, subject to this clause, a director of the co-operative for the period of the appointment.
- (4) The majority of directors must be member directors. [s. 199(3)]
- (5) Unless this clause provides otherwise, all other rules relating to directors apply to an independent director.
- (6) On the termination of appointment as independent director by death, retirement, resignation or another way, the independent director stops being a director of the co-operative.
- (7) An independent director is entitled to attend any general meeting of the co-operative and be heard on any part of the business of the meeting.
- (8) An independent director is not entitled to vote at a meeting of directors on a motion about the terms and conditions of his or her appointment, conditions of service or termination of service but may be permitted by the chairperson of the board to speak in relation to the motion.
- (9) Despite anything else in these rules a vote is not valid if taken at a meeting of the board of directors unless, when the vote is taken, the number of independent directors present is less than the number of member directors present.
- (10) Despite the term of appointment fixed under subclause (1), the appointment of an independent director must be ratified by the members of the co-operative at the general meeting next after the appointment of the independent director. Ratification must be by a simple majority of members of the co-operative present and entitled to vote at the meeting.
- (11) If the appointment of an independent director is not ratified by the members of the co-operative, anything done by the independent director since the appointment and up to that time is taken to have been validly done.



- (12) Despite the terms of appointment, the members may, by special resolution at a general meeting of members, terminate the appointment of an independent director.
- (13) An independent director cannot be required to be an active member of the co-operative.

**42. Managing director**

- (1) The board may, if it considers appropriate, appoint a person to be managing director of the co-operative and may from time to time remove the person from office. The conditions and the period of appointment must be decided by the board.
- (2) The managing director is not counted for clause 39(2).
- (3) In all other respects the managing director has all the privileges of a director and all other rules relating to directors apply to the managing director.
- (4) On the termination of the appointment as managing director either by death, retirement, resignation or termination by the board, the managing director stops being a director of the co-operative.
- (5) The managing director 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.
- (6) A managing director cannot be required to be an active member of the co-operative.
- (7) A managing director is classified as an independent director under the Act.

**43. First and subsequent directors**

- (1) The first member directors must be elected by poll at the formation meeting of the co-operative.\*

\*Note: Under section 198(2)(b) of the Act, the first directors of a transferred co-operative are the directors in office at the date of registration under the Act.

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- (2) The term of office of the first member directors is to be not more than 3 years ending on the day of the third annual general meeting after the formation meeting.
- (3) The term of office of member directors elected thereafter, is to commence from the annual general meeting at which they are elected or at which their election is confirmed and ends on the day of the third annual general meeting thereafter.

Note: Each co-operative is to insert its own rules here in relation to the conduct of elections when electing directors, so that the rules reflect the particular circumstances of that co-operative.

**44. Removal from office of member director**

The co-operative may by special resolution remove a member director before the end of the member director's period of office, and may by a simple majority appoint another person in place of the member director. The person appointed must retire when the removed member director would otherwise have retired. [s. 205(2)]

**45. Vacation of office of director**

A director vacates office if —

- (a) the director dies or is permanently incapacitated; or
- (b) the director is disqualified or otherwise unable to be a director under section 200 of the Act; or
- (c) the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave; or
- (d) the director resigns from the office of director by written notice given by the director to the co-operative; or
- (e) the director is removed from office by special resolution of the co-operative; or
- (f) the person ceases to hold a qualification that qualified the person to be a director; or
- (g) an administrator of the co-operative's affairs is appointed under Part 12 Division 5 of the Act.

**46. Filling of casual vacancies**

- (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) For the purposes of this clause, a casual vacancy arises if the office of director is vacated under clause 45. [s. 198(3)]

\*Note: The rules may provide that, in the absence of a director from a meeting of the board, an alternate director may be appointed under section 203 of the Act.

**47. Remuneration**

- (1) Under section 215 of the Act the directors must not receive remuneration for their services as directors other than fees, concessions and other benefits approved at a general meeting of the co-operative.
- (2) All necessary expenses incurred by the board members in the business of the co-operative must be refunded to them.

**48. Proceedings of the board**

- (1) Meetings of the board (including meetings conducted under clause 49) are to be held as often as may be necessary for properly conducting the business and operations of the co-operative and must be held at least quarterly.
- (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) A meeting of the board of directors may be called by a director giving notice individually to every other director. [s. 201(3)]
- (6) 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.

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**49. Transaction of business outside board meetings**

- (1) The board may under section 202 of the Act transact any of its business —
  - (a) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of the members is taken to be a decision of the board; or
  - (b) at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting, can be heard by the other members.
- (2) For the purposes of this clause the chairperson of the board and each member of the board have the voting rights they have at an ordinary meeting of the board.
- (3) A resolution approved under subclause (1)(a) is to be recorded in the minutes of the meetings of the board.
- (4) The secretary may circulate papers among members of the board for the purposes of subclause (1)(a) by email, fax or other transmission of the information in the papers concerned.

**50. Quorum for board meetings**

- (1) The quorum for a meeting of the board is half the number of directors (or if half is not a whole number the whole number next higher than one-half).
- (2) The number of independent directors must be fewer than the number of member directors present at a meeting of the board.

**51. Chairperson of board**

- (1) The chairperson of the board is to be elected by the board.\*

\*Note: The rules of a co-operative may provide that, in the alternative, the chairperson may 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 ordinary resolution of the board.\*

\*Note: If the rules of the co-operative provide that the chairperson is elected at a general meeting of the co-operative, then subclause (3) is to be read so that the removal of a chairperson and the election of a new chairperson is to be done by ordinary resolution at a general meeting.

**52. Delegation and board committees**

- (1) The board may (under section 204 of the Act) 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,

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 clause may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (3) A delegation under this clause may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (4) Despite any delegation under this clause, 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 subclause (3) were observed by the director exercising the powers.

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- (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 5 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.

**53. 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) Clause 52(6) and (7) apply to committees appointed under this clause, with the changes approved of 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).

**54. 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.

Note: Section 221 of the Act also requires any declarations of interest by directors to be recorded in the minutes.

- (2) Minutes must be entered in the appropriate records within one month after the meeting to which they relate is held.
- (3) The minutes are to be confirmed at, and signed by the chair of, the next meeting.

**55. Financial year**

The financial year of the co-operative ends on .....

**56. Seal**

- (1) This clause applies if a co-operative chooses to authenticate a document under the common seal of the co-operative.
- (2) The co-operative must, as required by section 240 of the Act, have the name of the co-operative appear in legible characters on its common seal and on 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, under section 47 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.
- (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.

**57. Custody and inspection of records and registers**

- (1) The co-operative must have at its registered office and available during normal office hours for inspection by any member free of charge [s. 232(1)] the following —
  - (a) a copy of the Act and the regulations;
  - (b) a copy of the rules of the co-operative and any attachments under section 345 of the Act;
  - (c) a copy of the last annual report of the co-operative under section 235 of the Act;
  - (d) the register of directors and members;
  - (e) 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;
  - (f) the register of memberships cancelled under Part 6 of the Act, required to be kept under section 230(1)(g) of the Act;

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- (g) the register of notifiable interests required to be kept under section 284 of the Act;
- (h) a copy of the minutes of each general meeting;
- (i) the other registers required under the Act or the regulations to be open for inspection.

Note: Section 233 of the Act sets out the limitations that apply to the use of information on these registers and provides for recovery of loss, damages or profits arising from misuse.

- (2) A member may make a copy of the entries in a register mentioned in subclause (1) during normal office hours, [free of charge/for the fee of \$ ..... (maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60)].

**58. Accounts**

- (1) The board must have a financial institution account or accounts, electronic or otherwise, in the name of the co-operative, into which all amounts received 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 for the co-operative, must be signed by 2 directors or by any 2 persons authorised by the board or authorised by the chief executive officer.

**59. 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.

**60. Appointing an auditor — co-operatives**

- (1) The board of a co-operative (unless the co-operative is a small co-operative or otherwise exempt from requiring an auditor [s. 226]) must appoint an auditor within one month of being registered under the Act, unless an auditor has already been appointed at a general meeting of the co-operative.
- (2) An auditor appointed under subclause (1) holds office until the first annual general meeting of the co-operative.



- (3) At its first annual general meeting, the co-operative must appoint an auditor of the co-operative and at each subsequent annual general meeting must appoint an auditor to fill any permanent vacancy in the office of the auditor.

**61. Appointing an auditor — small co-operatives**

- (1) The co-operative, if a small co-operative, may appoint an auditor at its first annual general meeting and at subsequent annual general meetings to fill a permanent vacancy in the office of the auditor.
- (2) Subclauses (3) and (4) only apply where no appointment is made under subclause (1).
- (3) The board of a small co-operative must appoint an auditor within one month of being directed to prepare a financial report and have it audited under either section 293 or 294 of the Corporations Act.
- (4) An auditor appointed under subclause (3) holds office until the financial report prepared as a result of the direction has been audited and sent to members.

**62. Terms of appointment, remuneration and removal of auditors**

- (1) The appointment, remuneration and removal of an auditor must comply with those provisions of the Corporations Act that apply under section 225 of the Act.
- (2) An auditor appointed at an annual general meeting holds office until the auditor —
  - (a) dies; or
  - (b) is removed or resigns from office in accordance with section 329 of the Corporations Act; or
  - (c) ceases to be a registered company auditor within the meaning of the Corporations Act; or
  - (d) ceases to be an auditor under section 327B(2A), (2B) or (2C) of the Corporations Act.
- (3) While a casual vacancy in the office of the auditor continues, the surviving or continuing auditor or auditors, if any, may act.

**cl. 62**

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- (4) Where there is no surviving or continuing auditor, the board must fill a casual vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office [s. 225], within one month of the vacancy occurring, unless the co-operative at an annual general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as auditor under this subclause holds office until the next annual general meeting of the co-operative.
- (5) An individual, audit company or audit firm can be appointed as an auditor.
- (6) A co-operative cannot appoint a person —
  - (a) (including a person who is a substantial shareholder in a corporation) who is indebted to the co-operative (or to a subsidiary corporation of the co-operative) for an amount that is more than \$5 000; or
  - (b) who is —
    - (i) an officer of the co-operative; or
    - (ii) a partner, employer or employee of an officer of the co-operative; or
    - (iii) a partner of an employee of an officer of the co-operative; or
    - (iv) an employee of an employee of an officer of the co-operative,to be auditor of the co-operative.
- (7) All reasonable fees and expenses of an auditor are payable by the co-operative.
- (8) The board must enable an auditor to have access to all books, accounts, vouchers, securities and documents of the co-operative and to be given such information as the auditor requires to perform his or her duties as auditor.
- (9) An auditor may attend any general meeting of the co-operative and is entitled to be heard, at any general meeting the auditor attends on any part of the business of the meeting.

- (10) An auditor is entitled to receive all notices and other communications relating to a general meeting that any member of the co-operative is entitled to receive.
- (11) Subject to section 329 of the Corporations Act, an auditor may be removed from office by resolution at a general meeting.
- (12) Subject to section 329 of the Corporations Act, an auditor may resign as auditor.

**63. Co-operative funds**

- (1) The board may resolve to 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. [s. 269]
- (2) No part of the surplus may be paid or transferred directly or indirectly by way of discount, rebate or otherwise by way of profit, to members of the co-operative.
- (3) A part of the surplus, of not more than ....%, arising in any year from the business of the co-operative may be applied for charitable purposes.
- (4) In this clause —  
*surplus* means the excess of income over expenditure after making appropriate allowance for taxation expense, depreciation in value of the property of the co-operative and future contingencies.

**64. Provision for loss**

The board must make provision for loss that may result from transactions of the co-operative.

**65. Notices**

- (1) A notice or other document required under the Act, the regulations or these rules to be given to a member of the co-operative may be given —
  - (a) personally; or
  - (b) by leaving it with a person who appears to be 16 years of age or older at the member's address; or
  - (c) by post; or

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- (d) by faxing it or emailing it to a fax number or email address provided by the person; or
  - (e) by sending it to the member by other electronic means (if any) nominated by the member; or
  - (f) by publishing the notice in a newspaper circulating generally in this State or in the area served by the co-operative.
- (2) A document may be served on the co-operative —
- (a) by post addressed to the registered office; or
  - (b) by leaving it at the registered office of the co-operative with a person who appears to be 16 years of age or older.
- (3) If a notice is sent by post, service is taken to be effected by properly addressing, prepaying and posting a letter containing the notice. For a notice of a meeting service is taken to be effected at the end of 24 hours after the letter containing the notice is posted. Otherwise, service is taken to be effected when the letter would be delivered in the ordinary course of post and in proving service it is enough to prove that the envelope containing the notice was properly addressed and posted.
- (4) A notice or other document directed to a member and advertised in the newspaper is taken to be given to the member on the day the advertisement appears.
- (5) A notice given by fax or other electronic means is taken to have been served, unless the sender's fax or other electronic device indicates a malfunction in transmission, on the day the notice is sent, if sent on a business day, otherwise on the next business day.
- (6) A notice may be given by the co-operative to the person entitled to an interest because of the death, bankruptcy or incapacity of a member by sending it through the post in a prepaid letter addressed to the 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 similar description. The address should be the address given for the purpose by the person claiming to be entitled. Alternatively, if no address has been given, the notice can be given in the way it could have been given if the death, bankruptcy or incapacity had not happened.

- (7) Notice of every general meeting must be given, in the same way as authorised in this clause, to —
  - (a) every member of the co-operative other than members who have not supplied to the co-operative an address for giving notices to them; and
  - (b) every person entitled to an interest because of the death, bankruptcy or incapacity of a member, who, but for the member’s death, bankruptcy or incapacity, would be entitled to receive notice of the meeting; and
  - (c) every independent director.
- (8) Except as provided in this clause and in clause 62(10) no other person is entitled to receive notices of general meetings.

**66. Winding-up**

- (1) The winding-up of the co-operative must be in accordance with Part 12 of the Act.
- (2) If, on the winding-up or dissolution, there remains after the satisfaction of all its debts and liabilities any property, this must not be paid to or distributed among the members of the co-operative but must be given or transferred to ..... \*
- (3) Subject to subclause (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 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 the chief judge of the court with jurisdiction in the matter; and
  - (d) that satisfies the relevant subsection of section 50 of the *Income Tax Assessment Act 1997* (Commonwealth).

\*Note: Subclause (2), and the reference to subclause (2) in subclause (3), may be deleted if the co-operative does not wish to specify a recipient.

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**67. Schedule of charges**

|                                |                     |
|--------------------------------|---------------------|
| Copy book of rules             | clause 2(6) and (7) |
| Copying entries in register    | clause 57(2)        |
| Maximum fine                   | clause 14(1)        |
| Transfer/register of debenture | clause 22(4)        |

**Certification**

We the undersigned, certify that this is a copy of the rules presented to the formation meeting on ..... (date)  
at ..... for 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 that is held after the rules have been approved by the Registrar and returned to the sponsors of the proposed co-operative.

## Schedule 2 — Model rules of a non-distributing co-operative with share capital

[r. 6]

### Rules of a non-distributing co-operative with share capital registered under the *Co-operatives Act 2009*

#### 1. Terms used

In these rules —

**active member** means a member who is in active membership under clause 5;

**auditor** means a registered company auditor or auditors (within the meaning of that term in the Corporations Act) for the time being of the co-operative;

**CCU** means a co-operative capital unit;

**director** includes alternate director;

**financial institution account** means an account at a financial institution into which the co-operative's money may be paid;

**financial year** means the financial year of the co-operative specified in clause 64;

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

**regulations** means the *Co-operatives Regulations 2010*;

**special resolution** means a resolution passed in accordance with clause 47.

#### 2. Rules

- (1) The rules of the co-operative have the effect of a contract under seal —
- (a) between the co-operative and each member; and
  - (b) between the co-operative and each director, the chief executive officer and the secretary of the co-operative; and
  - (c) between a member and each other member.

**cl. 3**

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- (2) Under the contract, each of those persons agrees to observe and perform the rules as in force for the time being so far as those provisions apply to the person. [s. 97]
- (3) The rules may be altered by a special resolution, [s. 104] by a resolution of the board in accordance with section 105 of the Act or as otherwise permitted by the Act.
- (4) A proposed alteration to these rules cannot be put to a resolution unless it is approved by the Registrar. [s. 103]
- (5) An alteration to these rules does not take effect until it is registered by the Registrar. [s. 106]
- (6) A member is entitled to obtain a copy of the rules on payment of \$ ..... (maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60 or if no fee is fixed, \$5). [s. 99(1)]
- (7) Any person may obtain a copy of these rules from the Registrar on payment of the prescribed fee. [s. 99(3)]

**3. Powers**

The co-operative has the power of an individual and the ability to restrict or place additional powers in the rules. [s. 39]

**4. Name**

- (1) The name of the co-operative is [s. 238] .....
- (2) The co-operative may change its name under section 241 of the Act.
- (3) The co-operative may abbreviate its name under section 239 of the Act.

**5. Active membership provisions**

- (1) Under Part 6 of the Act —

**Primary activity**

.....  
.....



.....  
.....

is a primary activity of the co-operative; and

**Active membership requirements**

a member must —

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

to establish active membership of the co-operative.

- (2) All members of a co-operative must be active members.
- (3) Subject to sections 123 and 124 of the Act, a member who fails to be or stops being an active member must, under the Act, have their membership cancelled and, subject to section 127 of the Act, their shares forfeited.

**6. Qualifications for membership**

- (1) Every member must hold at least ..... shares.
- (2) A person is not qualified to be admitted to membership of the co-operative unless there are reasonable grounds for believing the person will be an active member of the co-operative. [s. 58]
- (3) Despite subclause (2), a person who was a member of a co-operative immediately before that co-operative became a transferred co-operative is qualified despite the absence of reasonable grounds for believing that the person will be an active member of the co-operative. [s. 58]

**7. Membership, subscriptions, periodic fees**

- (1) The co-operative must give to a person intending to become a member —

**cl. 8**

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- (a) a copy of the rules, resolutions and the last annual report if a person requests a copy under section 68 of the Act; and
  - (b) written notice of entry fees or regular subscriptions payable by a member of the co-operative. [s. 69]
- (2) Applications for membership or shares must be lodged at the registered office in the application form, approved by the board, together with the amount required to pay the shares fully or, if the shares are to be issued partly paid, a deposit of \$... for each share applied for.
- (3) Every application must be considered by the board.
- (4) If the board approves of the application —
- (a) the board must —
    - (i) allot the shares applied for; or
    - (ii) approve the transfer of the minimum number of shares to be held by a member under these rules from an existing member to the applicant;
  - and
  - (b) the applicant's name, the number of shares allotted or transferred and any other information required under the Act must be entered in the register of members within 28 days of the board's approval.
- (5) The applicant must be notified in writing of the allotment and of the entry in the register and the applicant is then entitled to the privileges attaching to membership, or to the holding of shares, as is appropriate.
- (6) The board may, at its discretion, refuse an application for membership or shares.
- (7) 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.

**8. Ceasing membership**

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

- (a) if the member's membership is cancelled under Part 6 of the Act (Active membership);
- (b) if the member is expelled under these rules;
- (c) if the member becomes bankrupt and the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the co-operative;
- (d) on death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) if the member's total shareholding is transferred to another person and the transferee is registered as the holder of the shareholding;
- (g) if the member's total shareholding is forfeited under the Act or these rules;
- (h) if the member's total shareholding is purchased by the co-operative under these rules;
- (i) if the member's total shareholding is sold by the co-operative under any power in these rules and the purchaser is registered as shareholder in the member's place;
- (j) if the amount paid up on the member's shares is repaid to the member under these rules;
- (k) on written notice of the member's resignation from membership, given by the member to the secretary;
- (l) for a corporation — if the corporation becomes insolvent or is deregistered. [s. 63, 64]

## 9. Expulsion of members

- (1) A member may be expelled from the co-operative by special resolution to the effect —
  - (a) that the member has failed to discharge the member's obligations to the co-operative under these rules or a contract; 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

**cl. 10**

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- (ii) brought the co-operative into disrepute; or
  - (iii) been contrary to one or more co-operative principles as described in section 6 of the Act and has caused the co-operative harm.
- (2) Written notice of the proposed resolution must be given to the member at least 28 days before the date of the 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) If a general meeting is to be called under this clause 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 act must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
  - (c) once the act is considered, the co-operative may decide to expel the member who committed the act;
  - (d) the co-operative must not make a decision on the act 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. 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. A member re-admitted must not have restored to him or her any shares that were cancelled on his or her expulsion. [s. 73]

**10. Monetary consequences of expulsion**

- (1) In this clause —

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

- (2) If a member is expelled 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 member must be cancelled on the date of the expulsion and the cancellation noted in the register of shares.
- (4) Subject to subclause (5) and the written terms of a class of share issued, the co-operative must however pay to the expelled member the amount of capital paid up on the former member's shares at the time of expulsion (less any amount owing by the former member to the co-operative).
- (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 member. This is done having regard to the number of shares held by the expelled member immediately prior to expulsion in relation to the number of shares in the co-operative.
- (6) Payment to the expelled member of any amount owing by the co-operative to the former member —
  - (a) must be made —
    - (i) at the time decided by the board but within one year from the date of expulsion [s. 73(1)(a)]; or
    - (ii) in the case of a transferred co-operative, within 3 years from the date of expulsion and in accordance with the relevant rules of that co-operative [s. 73(1)(b)];
  - or
  - (b) may be applied —
    - (i) at the time decided by the board but within one year from the date of expulsion [s. 73(1)(c)]; and
    - (ii) in the manner set out in section 73(2) to (4) of the Act if there is agreement by the board and former member, or if the board considers that repayment

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would adversely affect the financial position of the co-operative.

**11. Suspension of members**

- (1) The co-operative may suspend a member for not more than one year, who does any of the following acts —
  - (a) contravene any of these rules;
  - (b) fail to discharge obligations to the co-operative, whether under these rules or a contract;
  - (c) act 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 clause 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.

**12. Payments upon resignation of member**

- (1) In this clause —

*deficiency* means the amount of accumulated loss, deficiency or significant change disclosed in the last balance sheet of the co-operative, or subsequently reported prior to resignation.
- (2) If a member 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 a resigning member must be cancelled as at the day of the resignation and the cancellation must be noted in the register of shares.
- (4) 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 resigning member. This is done having

regard to the number of shares held by the resigning member immediately prior to resigning in relation to the number of shares in the co-operative.

- (5) Payment to the resigning member of any amount owing by the co-operative to the former member —
- (a) must be made —
- (i) at the time decided by the board but within one year from the date of resignation [s. 73(1)(a)]; or
  - (ii) in the case of a transferred co-operative, within 3 years from the date of resignation and in accordance with the relevant rules of that co-operative [s. 73(1)(b)];
- or
- (b) may be applied —
- (i) at the time decided by the board but within one year from the date of resignation [s. 73(1)(c)]; and
  - (ii) in the manner set out in section 73(2) to (4) of the Act 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.

### **13. Disputes and mediation**

- (1) The grievance procedure set out in this clause applies to disputes under the rules between a —
- (a) member and another member; or
  - (b) member or members 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

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- (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, then the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.
- (5) The mediator must be —
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement —
    - (i) for a dispute between a member and another member, a person appointed by the board of the co-operative; or
    - (ii) for a dispute between a member(s) and the co-operative, a person appointed by the Supreme Court of Western Australia.
- (6) A member of the co-operative can be a mediator.
- (7) The mediator cannot be a member who is a party to the dispute.
- (8) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (9) 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.
- (10) The mediator cannot determine the dispute.
- (11) The mediation must be confidential and without prejudice.
- (12) The costs of the mediation are to be shared equally between the parties unless otherwise agreed.
- (13) Nothing in this clause extends to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.



- (14) Nothing in this clause extends to any dispute involving the expulsion or suspension of a member or the imposition of a fine.
- (15) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the Act or otherwise at law.

**14. Fines payable by members**

- (1) The board may impose on a member a maximum fine of \$ ..... (not more than \$1 000) for a contravention of the rules.
- (2) A fine must not be imposed on a member under subclause (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. Capital and shares**

- (1) The capital of the co-operative must be raised by the issue of shares of nominal value of \$ ..... each.\* [s. 140(2)]

\*Note: Any shares held by a co-operative in itself at the time the co-operative is registered under the Act are cancelled under section 165.
- (2) A member is not entitled to hold more than 20% of the nominal value of issued share capital of the co-operative other than under section 278 of the Act.
- (3) The capital varies in amount according to the nominal value of shares from time to time subscribed.
- (4) No share is to be allotted unless at least 10% of the nominal value of the share has been paid.\*

\*Note: Subclause (4) does not apply to a transferred co-operative.
- (5) A share must not be issued at a discount.

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- (6) Under section 255 of the Act, the co-operative is authorised to require members to lend money to the co-operative under a proposal approved by special resolution of the co-operative.

**16. Liability of members to co-operatives**

- (1) A member is, under section 67 of the Act, liable to the co-operative for the amount, if any, unpaid on the shares held by the member together with any charges, including entry and periodic fees, payable by the member to the co-operative under these rules.
- (2) 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. [s. 63(2)]
- (3) Joint members are jointly and severally liable for any amount unpaid on shares and any charges mentioned in subclause (1).

**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) and not by the terms of issue of the shares made payable at fixed times.
- (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 instalment.
- (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 date that, under the terms of issue, the amount becomes payable and, 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 subclause (9) until the amount becomes payable, at a rate agreed between the board and the member paying the amount, not more than 8% per annum or another rate fixed by the co-operative by special resolution.

#### **18. Sale of members' shares**

- (1) A member's share may only be sold in accordance with sections 64, 158, 163 and 165 of the Act.
- (2) Subject to section 163 of the Act the co-operative may —
  - (a) purchase any share of a member at the request of the member; and
  - (b) repay to a member, with the member's consent, all or part of the amount paid up to the stated nominal value on any share held by the member when the amount repaid is not required for the activities of the co-operative.
- (3) The co-operative must cancel a share purchased by or forfeited to the co-operative.
- (4) If, in the opinion of the board, payment of the repurchase price would adversely affect the financial position of the co-operative, the board

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may exercise any of the following options instead of paying the sum to the member — [s. 164]

- (a) for a deposit taking co-operative apply the amount as an interest bearing deposit by the member with the co-operative;
  - (b) allot or issue debentures or CCUs of the co-operative to the member in satisfaction of the amount.
- (5) A deposit, debenture or CCU issued under subclause (4) —
- (a) bears interest during any period as decided under section 164 of the Act; and
  - (b) must be repaid to the member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the co-operative, and in any case, within 10 years.

**19. Transfer and transmission of shares**

- (1) The instrument of transfer of a share must be signed by or for the transferor (the *giver*) and the transferee (the *receiver*).
- (2) The transferor is taken to remain the holder of the share until the name of the transferee is entered in the register of members. [s. 161]
- (3) Shares must be transferred in the following form or another form approved by the board —

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

- (4) 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 clauses 5 and 6; or
  - (b) as otherwise provided by these rules or the Act. [s. 158(2)]
- (5) 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.
- (6) 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 278 of the Act to be held by a member.
- (7) The board may decline to recognise an instrument of transfer unless —
  - (a) a fee of \$ ..... (or the lesser sum 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.
- (8) The board must maintain a record of all transfers made in the proper books of the co-operative.
- (9) The board may suspend the registration of transfers during the 45 days immediately preceding the annual general meeting in each year.

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**20. Effect of sale, transfer or disposal of shares**

A member who has sold or transferred, or disposed of the beneficial interest in, the member's shares, or has agreed to do any of those things, is not entitled to vote at any meeting of the co-operative.

**21. Forfeiture and cancellations — inactive members**

- (1) Subject to sections 123 and 124 of the Act, the board must declare the membership of a member cancelled if — [s. 120]
  - (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 ..... years [not more than 3 years, s. 120]; or
  - (b) the member is not presently an active member and has not been an active member at any time in the past ..... years [not more than 3 years, s. 120].
- (2) Subclause (1) applies to a member if he or she was a member of the co-operative throughout the ..... year period [not more than 3 years, section 120].
- (3) Unless subclause (4) applies, the board of a co-operative must ensure that notice of its intention to declare the membership of a member to be cancelled is given to the member not less than 28 days prior to the intended day of the cancellation.
- (4) Notice is not required to be given under subclause (3) if —
  - (a) the member's whereabouts are unknown to the co-operative; or
  - (b) the amount required to be repaid to the member in relation to the cancelled membership, whether because of the cancellation of shares or otherwise, does not exceed \$100.00 or such other amount as may be prescribed under section 125(2) of the Act.
- (5) The board is to declare the shares of a member forfeited at the same time as the membership is cancelled and the amounts payable for the cancellation and forfeiture must be dealt with and repaid under section 127 of the Act.

- (6) The co-operative must keep a register of cancelled memberships under subclause (1), that must include the particulars in the *Co-operatives Regulations 2010*, Schedule 4 clause 5.

**22. Forfeiture of shares**

- (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 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 clause 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.

**23. Forfeited shares**

- (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 Act. 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 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, under clause 27, has a charge on the paid up amounts of the forfeited shares and may appropriate those amounts under clause 27(2). [s. 72(3)]

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**24. Forfeiture for non-payment of subscription**

- (1) The shares of a member whose periodic fee (subscription) under clause 7 has not been paid may be forfeited by resolution of the board.
- (2) Written notice of the proposed forfeiture must be given to the member at least 14 days before the date of the board meeting at which the resolution for forfeiture of the shares is to be moved and the member must be given an opportunity of being heard at the meeting.
- (3) Clause 23 applies to the forfeiture.
- (4) Subject to section 127 of the Act and subclause (5) payment to the member of any amount due under this clause must be made at the time to be decided by the board, but within one year from date of forfeiture.
- (5) Subject to section 127 of the Act, instead of payment of an amount due to a member whose membership is cancelled, the amount due may be applied as a deposit if the co-operative takes deposits, or the co-operative may allot or issue debentures or CCUs in satisfaction of the amount, or if the member consents in writing the amount may be appropriated as a donation.

**25. Death of member**

- (1) Subject to section 159 of the Act the board must transfer the deceased member's share or interest in the co-operative to —
  - (a) the personal representative of the deceased, that is, an executor or administrator of the estate of a deceased member; or
  - (b) the person specified by the deceased's personal representative, in an application made to the co-operative within 3 months after the death of the member.
- (2) The board may approve the transfer of a share or interest to a person other than the executor or administrator if the board is satisfied that —
  - (a) there are reasonable grounds for believing the proposed transferee will be an active member of the co-operative; and
  - (b) the proposed transferee is qualified to be a member of the co-operative under these rules [s. 75(b) and 159]; and



- (c) the transfer would not increase the proposed transferee's holding in the co-operative beyond that allowed by the Act or these rules. [s. 160]
- (3) If the total value of the deceased member's share or interest in the co-operative is less than \$10 000 or another amount fixed by the regulations the board may transfer the share or interest under section 76 of the Act if there has not been a grant of letters of administration or of probate of the deceased's will. [s. 76]
- (4) Under section 77 of the Act, the board must decide the value of the shares and interest of a deceased member as the amount paid up on the shares together with any other amounts due to the deceased member less any amounts owing to the co-operative by the deceased member.

**26. Dealings of members with co-operatives**

- (1) The co-operative may, under section 70 of the Act, make a contract with a member requiring the member to have specified dealings with the co-operative for a fixed period.
- (2) The contract may require a member —
  - (a) to sell products through or to the co-operative; or
  - (b) to obtain supplies or services through or from the co-operative; or
  - (c) to pay to the co-operative specified amounts as liquidated damages a contravention of a requirement authorised by this clause.
- (3) Any amount specified as liquidated damages is to be considered as a debt payable to the co-operative for which the co-operative has, under section 72 of the Act, a charge on each of the following —
  - (a) the share or interest in the capital and the credit balance and deposits of the member or past member;
  - (b) any dividend, interest, bonus or rebate payable to the member or past member;
  - (c) any entry and periodic fees required to be repaid to a member when the member ceases to be a member.

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- (4) The charge created under section 72 of the Act may be enforced under that section and clause 27.

**27. Charges on shares**

- (1) The co-operative, as provided in section 72 of the Act, has a charge on the share or interest in the capital, and on the credit balance and deposits of a member or past member, and on any dividend, interest, bonus or rebate payable to a member or past member, in respect of any debt due from the member or past member to the co-operative. The co-operative may also set-off any amount paid on account of that share or otherwise or an amount credited or payable to the member or past member in or towards payment of the debt.
- (2) The charge may be enforced at any time after 7 days notice to the member or past member, by appropriation by the co-operative of the capital, interest or deposit subject to the charge. Any share for which capital has been appropriated must be cancelled.
- (3) The co-operative may sell, in the way the directors consider appropriate, all or any shares on which the co-operative has a charge. However, no sale can be made unless some amount for which the charge exists is payable at the date of the sale. Also no sale can be made until the end of 14 days after a written notice (stating, and demanding payment of, the part of the amount for which the charge exists as is payable at the date the notice is given) has been given to the registered holder of the share or the person entitled to it because of death or bankruptcy. The notice must indicate that, on failure to make payment of the amount demanded within the time stipulated, the shares will be sold by the board.
- (4) If the highest offer received by the board is less than the amount paid up on shares to be sold, the board must, before accepting the offer, notify the member of the receipt of the offer and the amount of the offer, and of the board's intention to accept the offer at the end of 14 days, if no payment is made before then to the co-operative of all amounts for which the charge exists.
- (5) From the proceeds of the sale the co-operative may deduct the expenses, if any, associated with the sale and may apply the balance to reduce the liability of the member. However, if a surplus remains

after the deduction the surplus is payable to the member whose shares were sold.

- (6) For giving effect to a sale the board may authorise a person to transfer the shares sold to the purchaser of them.

**28. Registration of Official Trustee in Bankruptcy**

- (1) If a member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the shares or other interests held by the bankrupt member. [s. 154]
- (2) The board may register the Official Trustee in Bankruptcy as the holder of a share in which a bankrupt member has an entitlement in equity, with the consent of both the co-operative and the holder of the share. [s. 154]

**29. Registration as administrator of estate on incapacity of member**

A person appointed under a law of a State or a 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 share. [s. 153, 158]

**30. 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 that 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 under clause 25, 28 or 29 has, while registered, the same liabilities in relation to the share or shares as those to which the dead person, the bankrupt person or the incapable person would have been liable if he or she had remained a member with full legal capacity.

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- (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.

**31. 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 \$ ..... (or a lesser amount decided by the board from time to time) is paid to the co-operative 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 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.

**32. Issue of CCUs**

- (1) The board of the co-operative may confer an interest in the capital of the co-operative by issuing CCUs in accordance with the Act.
- (2) The board of the co-operative may issue CCUs to a person, whether or not that person is a member of the co-operative. [s. 260]
- (3) Each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs.
- (4) 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.
- (5) 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.
- (6) 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.

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**33. Transfer and transmission of CCUs**

- (1) Subject to this clause, the transfer and transmission of a CCU is to follow the same process as for a debenture under clause 31.
- (2) Where the terms of issue of a CCU differ from clause 31 in respect to the manner of transfer or transmission, the terms of its issue prevail.

**34. Annual general meetings**

- (1) An annual general meeting must, under section 190 of the Act, 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 or fixed under a regulation. [s. 190]

Note: See section 190(1) and (2) for the meeting times for the first AGMs of new and transferred co-operatives.

- (2) A general meeting of the co-operative other than the annual general meeting must be a special general meeting.
- (3) If an annual general meeting is not held under subclause (1), the members may, under section 195 of the Act and clause 35 of these rules, requisition a special general meeting.

**35. Special general meetings**

- (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 ..... % (max 20%) of the total number of votes able to be cast at a meeting of the co-operative.
- (3) The requisition must —
  - (a) state the objects of the meeting; and
  - (b) 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
  - (c) be served on the co-operative by being lodged at the co-operative's registered office.

- (4) A meeting requisitioned by members under these rules must be called and held as soon as practicable and in any case must be held within 2 months after the requisition is served.
- (5) If the board does not call a meeting within 35 days after the requisition is served, the following provisions apply —
- (a) the requisitioning members (or any of them representing at least half their total voting rights) may call the meeting in the same way, as nearly as possible, as meetings are called by the board;
  - (b) for that purpose they may ask the co-operative to supply a written statement of the names and addresses of the persons entitled, when the requisition was served, to receive notice of general meetings of the co-operative;
  - (c) the board must send the statement to the requisitioning members within 7 days after the request for the statement is made;
  - (d) the meeting called by the requisitioning members must be held within 3 months after the requisition is served;
  - (e) the co-operative must pay the reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting;
  - (f) any amount required to be paid by the co-operative is to be retained by the co-operative out of amounts payable by the co-operative, for fees or other remuneration for their services, to the directors who were in default. [s. 195]

**36. Notice of general meetings**

- (1) Subject to clause 37, at least 14 days notice (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 to every member of a general meeting, in the way stipulated in clause 74.
- (2) Notice must be given to the persons who are, under these rules, entitled to receive notices from the co-operative, but the non-receipt of the notice does not invalidate the proceedings at the general meeting.

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- (3) The notice must state the place, day and hour of the meeting and, for special business, the general nature of the business.
- (4) For a special resolution, notice of —
  - (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,must be given at least 21 days before the meeting. [s. 177]
- (5) Members who together are able to cast at least ..... % (max 20%) 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.
- (6) In a notice calling a general meeting, the board must include any business members have notified their intention to move at the meeting under subclause (5) (provided the members' notification has been made under these rules and within time).

**37. Notice of general meetings (small co-operatives)**

- (1) If the co-operative is a small co-operative, at least 14 days notice (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 to every member of any general meeting, in the way stipulated in clause 74.
- (2) Notice must be given to the persons who are, under these rules, entitled to receive the notices from the co-operative, but the non-receipt of the notice does not invalidate the proceedings at the general meeting.
- (3) The notice must state the place, day and hour of the meeting and, for special business, the general nature of the business.
- (4) Subject to subclause (5), the notice must include —
  - (a) a copy of the financial report (unaudited for the last financial year); and
  - (b) a directors' solvency resolution as to whether or not, in their opinion, there are reasonable grounds to believe that the



co-operative will be able to pay its debts as and when they become due and payable.

- (5) The copies of the financial report are not required to form a part of the notice if the co-operative has been directed under section 293 or 294 of the Corporations Act to audit its financial statements. [s. 225]

**38. Business of general meetings**

- (1) The ordinary business of the annual general meeting must be —
- (a) to confirm minutes of the last 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; and
    - (ii) a report on the state of affairs of the co-operative.
- (2) The annual general meeting may also transact special business of which notice has been given to members under these rules.
- (3) All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.

**39. 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. [s. 193]
- (2) Unless these rules state otherwise ..... members present in person, each being entitled to exercise a vote, constitute a quorum. [s. 193]
- (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.

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**40. 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, then 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 of the business to be transacted at an adjourned meeting.

**41. Attendance and voting at general meetings**

- (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 will vote.
- (5) A resolution, other than a special resolution, must be decided by simple majority.

Note: The requirements for a special resolution are in section 177 of the Act.

- (6) Subject to subclauses (7) and (8), at any general meeting a question for decision must (as provided in section 194 of the Act) 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) Where 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 subclause (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.

**42. Voting on a show of hands**

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 section 61(1) of the Act; or
- (d) represented by a non-member appointed as a proxy under these rules\*;

may exercise only one vote.

Note: If the rules do not allow for non-members to be appointed as proxies, paragraph (d) should be omitted.

**43. Voting on a poll**

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

- (a) present; or

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- (b) represented by a proxy; or
- (c) represented by a person acting under a power of attorney; or
- (d) represented by a person appointed under section 61(1) of the Act,

has one vote.

**44. Determining the outcome where equality of votes**

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

**45. Proxy votes**

- (1) The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (2) 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.

*\*Optional, select either (3) or (4).*

- (3) A person may act as a proxy despite that person not being a member of the co-operative. \*
- (4) A person must not act as a proxy unless the person is a member of the co-operative. \*
- (5) A person may be appointed as a proxy by more than one member. \*\*

**\*\*Note:** The rules may impose a limit on the number of members for whom a proxy may act.

(6) An instrument appointing a proxy may be in the following form or any other form the board approves\*\*\* —

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

I/we ..... (name) of ..... (address)

being a member(s) of the co-operative appoint .....

..... (name) of ..... (address)

as my/our proxy 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 and on my/our behalf at the \*annual general/\*special general meeting of the co-operative, to be held on the ..... day of ..... 20..... and at any adjournment of the meeting.

#This form is to be used \*in favour/\*against the resolution.

Signed this ..... day of ..... 20.....

*\*Strike out if not applicable.*

*#To be inserted if desired.*

\*\*\*Note: The form may also set out the resolutions with provision for the member to give direction to the proxy.

(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 under the terms of an instrument of proxy or of 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

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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.

**46. Postal ballots**

- (1) A postal ballot or special postal ballot must be held when required by the Act, these rules or when the members by ordinary resolution approve one.\*

\*Notes:

1. Section 187 of the Act lists a number of matters for which a special postal ballot must be conducted.
  2. Section 188(1) of the Act requires the board to conduct a postal ballot or a special postal ballot for the passing of a special resolution on the written requisition of such number of members who together are able to cast at least 20% (or less if the rules provide) of the total number of votes able to be cast at a meeting of the co-operative.
  3. Members proposing to give the board a written requisition should familiarise themselves with the requirements in section 188(2).
- (2) Subject to sections 185 and 186 of the Act and this clause, a postal ballot or special postal ballot is to be conducted using such method, in such form and returnable in such manner, as the board decides.
- (3) A postal ballot or special postal ballot may incorporate one or more methods of electronic voting.
- (4) The board is to appoint a returning officer to conduct the postal ballot or special postal ballot or, in default of such appointment, the secretary is the returning officer.
- (5) At least 21 days prior to the closing date of a postal ballot or special postal ballot\*, the returning officer is to send ballot papers (in the form and with such content as the board may approve) to all voting members giving —
- (a) particulars of the business in relation to which the postal ballot or special 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.

\*Note: Section 186(3) of the Act requires a disclosure statement containing specified information to be included with the other material sent to members in connection with a special postal ballot.

- (6) The returning officer shall receive, validate and count the votes and advise the Board of —
  - (a) the number of formal votes cast in favour of the proposal concerned; and
  - (b) the number of formal votes cast against the proposal concerned; and
  - (c) the number of informal votes cast.
- (7) On declaration of the result of the ballot, the secretary must enter the subclause (6) details in the minute book of the co-operative.
- (8) 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.

#### **47. Special and ordinary resolutions**

- (1) A special resolution is a resolution of which the notice set out in subclause (2) has been given of the intention to propose the resolution as a special resolution and that is passed —
  - (a) by two-thirds of the members who vote in person or by proxy or attorney, at a general meeting; or
  - (b) by a two-thirds majority in a postal ballot; or
  - (c) by three-quarters of the members who cast formal votes in a special postal ballot of members. [s. 177(1)]
- (2) A resolution is not taken to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the co-operative stating —
  - (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. [s. 177(3)]

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- (3) A special resolution has effect from the date it is passed, however a special resolution required to be passed by special postal ballot has no effect until registered by the Registrar [s. 180] and no amendment to these rules is to take effect until the amendment is registered by the Registrar. [s. 106(1)]
- (4) An ordinary resolution is one passed by a simple majority and has effect from the date it is passed.

**48. Board of directors**

- (1) The business and operations of the co-operative are to be managed and controlled by the board of directors, and for that purpose the board has and may exercise the powers of the co-operative as if expressly conferred on the board by a general meeting of the co-operative.
- (2) The board must have ..... member directors each of whom must be an individual, whether as a member of the co-operative, or as a representative of a corporation member, and at least 18 years old.\*  

\*Note: The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.
- (3) The powers of the board are subject to any restrictions imposed by the Act or by these rules.

**49. Qualifications of directors**

A person is not qualified to be a director of the co-operative unless the person is —

- (a) a member of the co-operative or a representative of a corporation that is a member of the co-operative; or
- (b) an employee of the co-operative or a person qualified under clause 50 to be an independent director.

**50. Independent directors**

- (1) The board may appoint persons with special skills to be independent directors of the co-operative on the conditions and for the period the board decides.



- (2) The special skills required of an independent director may be specified by the board, and may be varied by the board from time to time, or from appointment to appointment. [s. 199(2)(b)]
- (3) An independent director is, subject to this clause, director of the co-operative for the term of the appointment.
- (4) The majority of directors must be member directors. [s. 199(3)]
- (5) Unless this clause provides otherwise, an independent director is subject to all other rules relating to directors.
- (6) On the termination of appointment as independent director by death, retirement, resignation or in another way the independent director stops being a director of the co-operative.
- (7) An independent director is entitled to attend any general meeting of the co-operative and be heard on any part of the business of the meeting.
- (8) An independent director is not entitled to vote at a meeting of directors on a motion about the terms and conditions of his or her own appointment, conditions of service or termination of service but may be permitted by the chairperson of the board to speak in relation to the matters.
- (9) Despite anything else in these rules a vote is not valid if taken at a meeting of the board of directors unless, when the vote is taken, the number of independent directors present is less than the number of member directors present.
- (10) Despite the term of appointment fixed under subclause (1), the appointment of an independent director must be ratified by the members of the co-operative at the general meeting next after the appointment of the independent director. Ratification must be by a simple majority of members of the co-operative present and entitled to vote at the meeting.
- (11) If the appointment of an independent director is not ratified by the members of the co-operative anything done by the independent director since the appointment and up to that time is taken to have been validly done.

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- (12) Despite the terms of appointment, the members may, by special resolution at a general meeting of members, terminate the appointment of an independent director.
- (13) An independent director cannot be required to be an active member of the co-operative.

**51. Managing director**

- (1) The board may, if it considers appropriate, appoint a person to be managing director of the co-operative and may from time to time remove the person from office. The conditions and the period of appointment must be decided by the board.
- (2) The managing director is not counted for clause 48(2).
- (3) In all other respects the managing director has all the privileges of a director and all other rules relating to directors apply to the managing director.
- (4) On the termination of the appointment as managing director either by death, retirement, resignation or termination by the board, the managing director stops being a director of the co-operative.
- (5) The managing director 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.
- (6) A managing director cannot be required to be an active member of the co-operative.
- (7) A managing director is classified as an independent director under the Act.

**52. First and subsequent directors**

- (1) The first member directors must be elected by poll at the formation meeting of the co-operative.\*

\*Note: Under section 198(2)(b) of the Act, the first directors of a transferred co-operative are the directors in office at the date of registration under the Act.

- (2) The term of office of the first member directors is to be not more than 3 years ending on the day of the third annual general meeting after the formation meeting.
- (3) The term of office of member directors elected thereafter, is to commence from the annual general meeting at which they are elected or at which their election is confirmed and ends on the day of the third annual general meeting thereafter.

Note: Each co-operative is to insert its own rules here in relation to the conduct of elections when electing directors, so that the rules reflect the particular circumstances of that co-operative.

**53. Removal from office of member director**

The co-operative may by special resolution remove a member director before the end of the member director's period of office, and may by a simple majority appoint another person in place of the member director. The person appointed must retire when the removed member director would otherwise have retired. [s. 205(2)]

**54. Vacation of office of director**

A director vacates office if —

- (a) the director dies or is permanently incapacitated; or
- (b) the director is disqualified or otherwise unable to be a director under section 200 of the Act; or
- (c) the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave; or
- (d) the director resigns from the office of director by written notice given by the director to the co-operative; or
- (e) the director is removed from office by special resolution of the co-operative; or
- (f) the person ceases to hold a qualification that qualified the person to be a director; or
- (g) an administrator of the co-operative's affairs is appointed under of Part 12 Division 5 of the Act.

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**55. Filling of casual vacancies**

- (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) For the purposes of this clause, a casual vacancy arises if the office of director is vacated under clause 54. [s. 198(3)]

\*Note: The rules may provide that, in the absence of a director from a meeting of the board, an alternate director may be appointed under section 203 of the Act.

**56. Remuneration**

- (1) Under section 215 of the Act, the directors must not receive remuneration for their services as directors other than fees, concessions and other benefits approved at a general meeting of the co-operative.
- (2) All necessary expenses incurred by the board members in the business of the co-operative must be refunded to them.

**57. Proceedings of the board**

- (1) Meetings of the board (including meetings conducted under clause 58) are to be held as often as may be necessary for properly conducting the business and operations of the co-operative and must be held at least quarterly.
- (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) A meeting of the board of directors may be called by a director giving notice individually to every other director. [s. 201(3)]
- (6) 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.

**58. Transaction of business outside board meetings**

- (1) The board may under section 202 of the Act transact any of its business —
  - (a) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of the members is taken to be a decision of the board; or
  - (b) at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting, can be heard by the other members.
- (2) For the purposes of this clause, the chairperson of the board and each member of the board have the voting rights they have at an ordinary meeting of the board.
- (3) A resolution approved under subclause (1)(a) is to be recorded in the minutes of the meetings of the board.
- (4) The secretary may circulate papers among members of the board for the purposes of subclause (1)(a) by email, fax or other transmission of the information in the papers concerned.

**59. Quorum for board meetings**

- (1) The quorum for a meeting of the board is half the number of directors (or if half is not a whole number the whole number next higher than one-half).
- (2) The number of independent directors must be fewer than the number of member directors present at a meeting of the board.

**60. Chairperson of board**

- (1) The chairperson of the board is to be elected by the board.\*

\*Note: The rules of a co-operative may provide that, in the alternative, the chairperson may be elected at a general meeting of the co-operative.
- (2) If no chairperson is elected or the chairperson is not present within 5 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.

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- (3) The chairperson may be removed, and a new chairperson elected by ordinary resolution of the board.\*

\*Note: If the rules of the co-operative provide that the chairperson is elected at a general meeting of the co-operative, then subclause (3) is to be read so that the removal of a chairperson and the election of a new chairperson is to be done by ordinary resolution at a general meeting.

**61. Delegation and board committees**

- (1) The board may (under section 204 of the Act) 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,

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 clause may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (3) A delegation under this clause may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (4) Despite any delegation under this clause, 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 subclause (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 5 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 considers 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.

**62. 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) Clause 61(6) and (7) apply to committees appointed under this clause, with any changes approved of 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).

**63. 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.

Note: Section 221 of the Act also requires any declarations of interest by directors to be recorded in the minutes.

- (2) Minutes must be entered in the appropriate records within one month after the meeting to which they relate is held.
- (3) The minutes are to be confirmed at, and signed by the chair of, the next meeting.

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**64. Financial year**

The financial year of the co-operative ends on .....

**65. Seal**

- (1) This clause applies if a co-operative chooses to authenticate a document under the common seal of the co-operative.
- (2) The co-operative must, as required by section 240 of the Act, have the name of the co-operative appear in legible characters on its common seal and on 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, under section 47 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.
- (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.

**66. Custody and inspection of records and registers**

- (1) The co-operative must have at its registered office and available during normal office hours for inspection by any member free of charge [s. 232(1)] the following —
  - (a) a copy of the Act and the regulations;
  - (b) a copy of the rules of the co-operative and any attachments under section 345 of the Act;
  - (c) a copy of the last annual report of the co-operative under section 235 of the Act;
  - (d) the register of directors, members and shares;
  - (e) 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;
  - (f) the register of memberships cancelled under Part 6 of the Act, required to be kept under section 230(1)(g) of the Act;



- (g) the register of notifiable interests required to be kept under section 284 of the Act;
- (h) a copy of the minutes of each general meeting;
- (i) the other registers required under the Act or the regulations to be open for inspection.

Note: Section 233 of the Act sets out the limitations that apply to the use of information on these registers and provides for recovery of loss, damages or profits arising from misuse.

- (2) A member may make a copy of the entries in a register mentioned in subclause (1) during normal office hours, [free of charge/for the fee of \$ ..... (maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60)].

#### **67. Accounts**

- (1) The board must have a financial institution account or accounts, electronic or otherwise, in the name of the co-operative, into which all amounts received 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 for the co-operative, must be signed by 2 directors or by any 2 persons authorised by the board or authorised by the chief executive officer.

#### **68. 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.

#### **69. Appointing an auditor — co-operatives**

- (1) The board of a co-operative (unless the co-operative is a small co-operative or otherwise exempt from requiring an auditor [s. 226]) must appoint an auditor within one month of being registered under the Act, unless an auditor has already been appointed at a general meeting of the co-operative.
- (2) An auditor appointed under subclause (1) holds office until the first annual general meeting of the co-operative.

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- (3) At its first annual general meeting, the co-operative must appoint an auditor of the co-operative and at each subsequent annual general meeting must appoint an auditor to fill any permanent vacancy in the office of the auditor.

**70. Appointing an auditor — small co-operatives**

- (1) The co-operative, if a small co-operative, may appoint an auditor at its first annual general meeting and at subsequent annual general meetings to fill a permanent vacancy in the office of the auditor.
- (2) Subclauses (3) and (4) only apply where no appointment is made under subclause (1).
- (3) The board of a small co-operative must appoint an auditor within one month of being directed to prepare a financial report and have it audited under either section 293 or 294 of the Corporations Act.
- (4) An auditor appointed under subclause (3) holds office until the financial report prepared as a result of the direction has been audited and sent to members.

**71. Terms of appointment, remuneration and removal of auditors**

- (1) The appointment, remuneration and removal of an auditor must comply with those provisions of the Corporations Act that apply under section 225 of the Act.
- (2) An auditor appointed at an annual general meeting holds office until the auditor —
  - (a) dies; or
  - (b) is removed or resigns from office in accordance with section 329 of the Corporations Act; or
  - (c) ceases to be a registered company auditor within the meaning of the Corporations Act; or
  - (d) ceases to be an auditor under section 327B(2A), (2B) or (2C) of the Corporations Act.
- (3) While a casual vacancy in the office of the auditor continues, the surviving or continuing auditor or auditors, if any, may act.

- (4) Where there is no surviving or continuing auditor, the board must fill a casual vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office [s. 225], within one month of the vacancy occurring, unless the co-operative at an annual general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as auditor under this subclause holds office until the next annual general meeting of the co-operative.
- (5) An individual, audit company or audit firm can be appointed as an auditor.
- (6) A co-operative cannot appoint a person —
- (a) (including a person who is a substantial shareholder in a corporation) who is indebted to the co-operative (or to a subsidiary corporation of the co-operative) for an amount that is more than \$5 000; or
  - (b) who is —
    - (i) an officer of the co-operative; or
    - (ii) a partner, employer or employee of an officer of the co-operative; or
    - (iii) a partner of an employee of an officer of the co-operative; or
    - (iv) an employee of an employee of an officer of the co-operative,to be auditor of the co-operative.
- (7) All reasonable fees and expenses of an auditor are payable by the co-operative.
- (8) The board must enable an auditor to have access to all books, accounts, vouchers, securities and documents of the co-operative and to be given such information as the auditor requires to perform his or her duties as auditor.
- (9) An auditor may attend any general meeting of the co-operative and is entitled to be heard, at any general meeting the auditor attends on any part of the business of the meeting.

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- (10) An auditor is entitled to receive all notices and other communications relating to a general meeting that any member of the co-operative is entitled to receive.
- (11) Subject to section 329 of the Corporations Act, an auditor may be removed from office by resolution at a general meeting.
- (12) Subject to section 329 of the Corporations Act, an auditor may resign as auditor.

**72. Co-operative funds**

- (1) The board may resolve to retain all or any 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. [s. 269]
- (2) No part of the surplus may be paid or transferred directly or indirectly by way of discount, rebate or otherwise by way of profit to members of the co-operative.
- (3) A part of the surplus, of not more than ..... %, arising in any year from the business of the co-operative may be applied for charitable purposes.
- (4) In this clause —  
*surplus* means the excess of income over expenditure after making appropriate allowance for taxation expense, depreciation in value of the property of the co-operative and future contingencies.

**73. Provision for loss**

The board must make provision for loss that may result from transactions of the co-operative.

**74. Notices**

- (1) A notice or other document required under this Act, the regulations or these rules to be given to a member of the co-operative may be given —
  - (a) personally; or
  - (b) by leaving it with a person who appears to be 16 years of age or older at the member's address; or
  - (c) by post; or

- (d) by faxing it or emailing it to a fax number or email address provided by the person; or
  - (e) by sending it to the member by other electronic means (if any) nominated by the member; or
  - (f) by publishing the notice in a newspaper circulating generally in this State or in the area served by the co-operative.
- (2) A document may be served on the co-operative —
- (a) by post addressed to the registered office; or
  - (b) by leaving it at the registered office of the co-operative with a person who appears to be 16 years of age or older.
- (3) If a notice is sent by post, service is taken to be effected by properly addressing, prepaying and posting a letter containing the notice. For a notice of a meeting service is taken to be effected at the end of 24 hours after the letter containing the notice is posted. Otherwise, service is taken to be effected when the letter would be delivered in the ordinary course of post and, in proving service, it is enough to prove the envelope containing the notice was properly addressed and posted.
- (4) A notice or other document directed to a member and advertised in the newspaper is taken to be given to the member on the day the advertisement appears.
- (5) A notice given by fax or other electronic means is taken to have been served, unless the sender's fax or other electronic device indicates a malfunction in transmission, on the day the notice is sent, if sent on a business day, otherwise on the next business day.
- (6) 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 for the share.
- (7) A notice may be given by the co-operative to the person entitled to a share because of the death, bankruptcy or incapacity of a member by sending it through the post in a prepaid letter addressed to the 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 similar description. The address should be the address given for the purpose by the person claiming to be entitled.

**cl. 75**

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Alternatively, if no address has been given, the notice can be given in the way it could have been given if the death, bankruptcy or incapacity had not happened.

- (8) Notice of every general meeting must be given, in the same way as authorised in this clause, to —
  - (a) every member of the co-operative other than members who have not supplied to the co-operative an address for giving notices to them; and
  - (b) every person entitled to a share because of the death, bankruptcy or incapacity of a member, who, but for the member's death, bankruptcy or incapacity, would be entitled to receive notice of the meeting; and
  - (c) every independent director.
- (9) Except as provided in this clause and clause 71(10) no other person is entitled to receive notices of general meetings.

**75. Winding-up**

- (1) The winding-up of the co-operative must be in accordance with Part 12 of the Act.
- (2) If, on the winding-up or dissolution, there remains after the satisfaction of all its debts and liabilities (including the refund of the amounts paid up on the shares) any property, this must not be paid to or distributed among the members of the co-operative but must be given or transferred to .....\*.
- (3) Subject to subclause (2),\* if on the winding-up or dissolution there remains any property after the satisfaction of all its debts and liabilities (including the refund of the amounts paid up on the shares), 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 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 the chief judge of the court with jurisdiction in the matter; and

(d) that satisfies the relevant subsection of section 50 of the *Income Tax Assessment Act 1997* (Commonwealth).

\*Note: Subclause (2), and the reference to subclause (2) in subclause (3), may be deleted if the co-operative does not wish to specify a recipient.

**76. Schedule of charges**

|                                |                     |
|--------------------------------|---------------------|
| Copy book of rules             | clause 2(6) and (7) |
| Copying entries in register    | clause 66(2)        |
| Transfer of shares             | clause 19(7)        |
| Maximum fine                   | clause 14(1)        |
| Transfer/register of debenture | clause 31(4)        |

**Certification**

We the undersigned, certify that this is a copy of the rules presented to the formation meeting on ..... (date) at ..... for 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 that is held after the rules have been approved by the Registrar and returned to the sponsors of the proposed co-operative.

**Schedule 3 — Model rules of a distributing co-operative  
with share capital**

[r. 6]

**Rules of a distributing co-operative with share capital registered under the  
*Co-operatives Act 2009***

**1. Terms used**

In these rules —

*active member* means a member who is in active membership under clause 5;

*auditor* means a registered company auditor or auditors (within the meaning of that term in the Corporations Act) for the time being of the co-operative;

*CCU* means a co-operative capital unit;

*director* includes alternate director;

*financial institution account* means an account at a financial institution into which the co-operative's money may be paid;

*financial year* means the financial year of the co-operative specified in clause 64;

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

*regulations* means the *Co-operatives Regulations 2010*;

*special resolution* means a resolution passed in accordance with clause 47.

**2. Rules**

- (1) The rules of the co-operative have the effect of a contract under seal —
- (a) between the co-operative and each member; and
  - (b) between the co-operative and each director, the chief executive officer and the secretary of the co-operative; and
  - (c) between a member and each other member.



- (2) Under the contract, each of those persons agrees to observe and perform the rules as in force for the time being so far as those provisions apply to the person. [s. 97]
- (3) The rules may be altered by a special resolution, [s. 104] by a resolution of the board in accordance with section 105 of the Act or as otherwise permitted by the Act.
- (4) A proposed alteration to these rules cannot be put to a resolution unless it is approved by the Registrar. [s. 103]
- (5) An alteration to these rules does not take effect until it is registered by the Registrar. [s. 106]
- (6) A member is entitled to obtain a copy of the rules on payment of \$ ..... (maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60 or if no fee is fixed, \$5.00). [s. 99(1)]
- (7) Any person may obtain a copy of these rules from the Registrar on payment of the prescribed fee. [s. 99(3)]

**3. Powers**

The co-operative has the power of an individual and the ability to restrict or place additional powers in the rules. [s. 39]

**4. Name**

- (1) The name of the co-operative is [s. 238] .....
- (2) The co-operative may change its name under section 241 of the Act.
- (3) The co-operative may abbreviate its name under section 239 of the Act.

**5. Active membership provisions**

- (1) Under Part 6 of the Act —

**Primary activity**

.....  
.....

**cl. 6**

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.....  
.....

is a primary activity of the co-operative; and

**Active membership requirements**

a member must —

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

to establish active membership of the co-operative.

- (2) All members of a co-operative must be active members.
- (3) Subject to sections 123 and 124 of the Act, a member who fails to be or ceases to be an active member must, under the Act, have their membership cancelled and, subject to section 127 of the Act, their shares forfeited.

**6. Qualifications for membership**

- (1) Every member must hold at least ..... shares.
- (2) A person is not qualified to be admitted to membership of the co-operative unless there are reasonable grounds for believing the person will be an active member of the co-operative. [s. 58]
- (3) Despite subclause (2), a person who was a member of a co-operative immediately before that co-operative became a transferred co-operative is qualified despite the absence of reasonable grounds for believing that the person will be an active member of the co-operative. [s. 58]

**7. Membership, subscriptions, periodic fees**

- (1) The co-operative must give to a person intending to become a member —

- (a) a copy of the rules, resolutions and the last annual report if a person requests a copy under section 68 of the Act; and
  - (b) written notice of entry fees or regular subscriptions payable by a member of the co-operative. [s. 69]
- (2) Applications for membership, shares or bonus shares or additional shares must be lodged at the registered office in the application form approved by the board, together with the amount required to pay the shares fully or, if the shares are to be issued partly paid, a deposit of \$ ..... for each share applied for.
- (3) Every application must be considered by the board.
- (4) If the board approves of the application —
  - (a) the board must —
    - (i) allot the shares applied for; or
    - (ii) approve the transfer of the minimum number of shares to be held by a member under these rules from an existing member to the applicant;
  - and
  - (b) the applicant's name, the number of shares allotted or transferred and any other information required under the Act must be entered in the register of members within 28 days of the board's approval.
- (5) The applicant must be notified in writing of the allotment and of the entry in the register and the applicant is then entitled to the privileges attaching to membership, or to the holding of shares, or bonus or additional shares, as is appropriate.
- (6) The board may, at its discretion, refuse an application for membership or shares (other than additional shares the subject of a compulsory issue under section 146 of the Act).
- (7) 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.

**cl. 8**

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**8. Ceasing membership**

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

- (a) if the member's membership is cancelled under the Act Part 6 (Active membership);
- (b) if the member is expelled under these rules;
- (c) if the member becomes bankrupt and the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the co-operative;
- (d) on death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) if the member's total shareholding is transferred to another person and the transferee is registered as the holder of the shareholding;
- (g) if the member's total shareholding is forfeited under the Act or these rules;
- (h) if the member's total shareholding is purchased by the co-operative under these rules;
- (i) if the member's total shareholding is sold by the co-operative under any power in these rules and the purchaser is registered as shareholder in the member's place;
- (j) if the amount paid up on the member's shares is repaid to the member under these rules;
- (k) on written notice of the member's resignation from membership, given by the member to the secretary;
- (l) for a corporation — if the corporation becomes insolvent or is deregistered. [s. 63, 64]

**9. Expulsion of members**

- (1) A member may be expelled from the co-operative by special resolution to the effect —
  - (a) that the member has failed to discharge the member's obligations to the co-operative under these rules or a contract;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 co-operative principles as described in section 6 of the Act and has caused the co-operative harm.
- (2) Written notice of the proposed resolution must be given to the member at least 28 days before the date of the 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) If a general meeting is to be called under this clause 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 act must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
  - (c) once the act is considered, the co-operative may decide to expel the member who committed the act;
  - (d) the co-operative must not make a decision on the act 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. 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. A member re-admitted must not have restored to him or her any shares that were cancelled on his or her expulsion. [s. 73]

**cl. 10**

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**10. Monetary consequences of expulsion**

- (1) In this clause —  
*deficiency* means the amount of accumulated loss, deficiency or significant change disclosed in the last balance sheet of the co-operative, or subsequently reported prior to expulsion.
- (2) If a member is expelled 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 member must be cancelled as at the day of expulsion and the cancellation must be noted in the register of shares.
- (4) Subject to subclause (5) and the written terms of a class of share issued, the co-operative must, however, pay to the expelled member the amount of capital paid up on the former member's shares at the time of expulsion (less any amount owing by the former member to the co-operative).
- (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 member. This is done having regard to the number of shares held by the expelled member immediately prior to expulsion in relation to the number of shares in the co-operative.
- (6) Payment to the expelled member of any amount owing by the co-operative to the former member —
  - (a) must be made —
    - (i) at the time decided by the board but within one year from the date of expulsion [s. 73(1)(a)]; or
    - (ii) in the case of a transferred co-operative, within 3 years from the date of expulsion and in accordance with the relevant rules of that co-operative [s. 73(1)(b)];
  - or
  - (b) may be applied —
    - (i) at the time decided by the board but within one year from the date of expulsion [s. 73(1)(c)]; and

- (ii) in the manner set out in section 73(2) to (4) of the Act 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.

#### **11. Suspension of members**

- (1) The co-operative may suspend a member for not more than one year, who does any of the following acts —
  - (a) contravene any of these rules;
  - (b) fail to discharge obligations to the co-operative, whether under these rules or a contract;
  - (c) act 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 clause 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.

#### **12. Payments upon resignation of member**

- (1) In this clause —

*deficiency* means the amount of accumulated loss, deficiency or significant change disclosed in the last balance sheet of the co-operative, or subsequently reported prior to resignation.
- (2) If a member 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 a resigning member must be cancelled as at the day of the resignation and the cancellation must be noted in the register of shares.

**cl. 13**

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- (4) 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 resigning member. This is done having regard to the number of shares held by the resigning member immediately prior to resigning in relation to the number of shares in the co-operative.
- (5) Payment to the resigning member of any amount owing by the co-operative to the former member —
  - (a) must be made —
    - (i) at the time decided by the board but within one year from the date of resignation [s. 73(1)(a)]; or
    - (ii) in the case of a transferred co-operative, within 3 years from the date of resignation and in accordance with the relevant rules of that co-operative [s. 73(1)(b)];
  - or
  - (b) may be applied —
    - (i) at the time decided by the board but within one year from the date of resignation [s. 73(1)(c)]; and
    - (ii) in the manner set out in section 73(2) to (4) of the Act 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.

**13. Disputes and mediation**

- (1) The grievance procedure set out in this clause applies to disputes under the rules between a —
  - (a) member and another member; or
  - (b) member or members 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, then the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.
- (5) The mediator must be —
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement —
    - (i) for a dispute between a member and another member, a person appointed by the board of the co-operative; or
    - (ii) for a dispute between a member(s) and the co-operative, a person appointed by the Supreme Court of Western Australia.
- (6) A member of the co-operative can be a mediator.
- (7) The mediator cannot be a member who is a party to the dispute.
- (8) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (9) 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.
- (10) The mediator cannot determine the dispute.
- (11) The mediation must be confidential and without prejudice.
- (12) The costs of the mediation are to be shared equally between the parties unless otherwise agreed.

**cl. 14**

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- (13) Nothing in this clause extends to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.
- (14) Nothing in this clause extends to any dispute involving the expulsion or suspension of a member or the imposition of a fine.
- (15) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the Act or otherwise at law.

**14. Fines payable by members**

- (1) The board may impose on a member a maximum fine of \$ ..... (not more than \$1 000) for a contravention of the rules.
- (2) A fine must not be imposed on a member under subclause (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. Capital and shares**

- (1) The capital of the co-operative must be raised by the issue of shares of nominal value of \$ ..... each.\* [s. 140(2)]

\*Note: Any shares held by a co-operative in itself at the time the co-operative is registered under the Act are cancelled under section 165.
- (2) A member is not entitled to hold more than 20% of the nominal value of issued share capital of the co-operative other than under section 278 of the Act.
- (3) The capital varies in amount according to the nominal value of shares from time to time subscribed.
- (4) No share is to be allotted unless at least 10% of the nominal value of the share has been paid.\*

\*Note: Subclause (4) does not apply to a transferred co-operative.

- (5) A share must not be issued at a discount.
- (6) The board may require a member to take up or subscribe for additional shares under a proposal approved of by the members by special resolution under section 146 of the Act.
- (7) Bonus shares may be issued by the co-operative under sections 147 and 271 of the Act.
- (8) Shares of the co-operative must not be quoted for sale or purchase at any stock exchange or in any other public manner whatsoever (within the meaning of the *Income Tax Assessment Act 1936* (Commonwealth)).
- (9) Under section 255 of the Act, the co-operative is authorised to require members to lend money to the co-operative, under a proposal approved by special resolution of the co-operative.

**16. Liability of members to co-operatives**

- (1) A member is, under section 67 of the Act, liable to the co-operative for the amount, if any, unpaid on the shares held by the member, together with any charges, including entry and periodic fees, payable by the member to the co-operative under these rules.
- (2) 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. [s. 63(2)]
- (3) Joint members are jointly and severally liable for any amount unpaid on shares and to any such charges mentioned in subclause (1).

**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) and not by the terms of issue of the shares made payable at fixed times.
- (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.

**cl. 18**

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- (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 instalment.
- (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 and, 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 subclause (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. Sale of members' shares**

- (1) A member's share may only be sold in accordance with sections 64, 158, 163 and 165 of the Act.
- (2) Subject to section 163 of the Act the co-operative may —

- (a) purchase any share of a member at the request of the member; and
  - (b) repay to a member, with the member’s consent, all or part of the amount paid up to the stated nominal value on any share held by the member when the amount repaid is not required for the activities of the co-operative.
- (3) The co-operative must cancel a share purchased by or forfeited to the co-operative.
- (4) If, in the opinion of the board, payment of the repurchase price would adversely affect the financial position of the co-operative, the board may exercise any of the following options instead of paying the sum to the member — [s. 164]
- (a) for a deposit taking co-operative apply the amount as an interest bearing deposit by the member with the co-operative;
  - (b) allot or issue debentures or CCUs of the co-operative to the member in satisfaction of the amount.
- (5) A deposit, debenture or CCU issued under subclause (4) —
- (a) bears interest during any period as decided under section 164 of the Act; and
  - (b) must be repaid to the member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the co-operative, and in any case, within 10 years.

**19. Transfer and transmission of shares**

- (1) The instrument of transfer of a share must be signed by or for the transferor (the *giver*) and the transferee (the *receiver*).
- (2) The transferor is taken to remain the holder of the share until the name of the transferee is entered in the register of members. [s. 161]
- (3) Shares must be transferred in the following form or another form approved by the board —
- I, A.B. (the transferor) of ..... in the State of ..... in consideration of the sum of \$ ..... paid to me by C.D. (the transferee), of .....

**cl. 19**

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in the State 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.

- (4) 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 clauses 5 and 6; or
  - (b) as otherwise provided by these rules or the Act. [s. 158(2)]
- (5) 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.
- (6) 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 278 of the Act to be held by a member.
- (7) The board may decline to recognise an instrument of transfer unless —
  - (a) a fee of \$ ..... (or the lesser sum 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.
- (8) The board must maintain a record of all transfers made in the proper books of the co-operative.
- (9) The board may suspend the registration of transfers during the 45 days immediately preceding the annual general meeting in each year.

**20. Effect of sale, transfer or disposal of shares**

A member who has sold or transferred, or disposed of the beneficial interest in, the member's shares, or has agreed to do any of those things, is not entitled to vote at any meeting of the co-operative.

**21. Forfeiture and cancellations — inactive members**

- (1) Subject to sections 123 and 124 of the Act, the board must declare the membership of a member cancelled if — [s. 120]
  - (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 ..... years [not more than 3 years, s. 120]; or
  - (b) the member is not presently an active member and has not been an active member at any time in the past ..... years [not more than 3 years, s. 120].
- (2) Subclause (1) applies to a member if he or she was a member of the co-operative throughout the ..... year period [not more than 3 years, s. 120].
- (3) Unless subclause (4) applies, the board of a co-operative must ensure that notice of its intention to declare the membership of a member to be cancelled is given to the member not less than 28 days prior to the intended day of the cancellation.
- (4) Notice is not required to be given under subclause (3) if —
  - (a) the member's whereabouts are unknown to the co-operative;  
or

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- (b) the amount required to be repaid to the member in relation to the cancelled membership, whether because of the cancellation of shares or otherwise, does not exceed \$100 or such other amount as may be prescribed under section 125(2) of the Act.
- (5) The board is to declare the shares of a member forfeited at the same time as the membership is cancelled and the amounts payable for the cancellation and forfeiture must be dealt with and repaid under section 127 of the Act.
- (6) The co-operative must keep a register of cancelled memberships under subclause (1), that must include the particulars in the *Co-operatives Regulations 2010*, Schedule 4 clause 5.

**22. Forfeiture of shares**

- (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 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 clause 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) Such a forfeiture must include all dividends declared for the forfeited shares and not actually paid before forfeiture.

**23. Forfeited shares**

- (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 Act. 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 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, under clause 27, has a charge on the paid up amounts of the forfeited shares and may appropriate those amounts under clause 27(2). [s. 72(3)]

**24. Forfeiture for non-payment of subscription**

- (1) The shares of a member whose periodic fee (subscription) under clause 7 has not been paid may be forfeited by resolution of the board.
- (2) Written notice of the proposed forfeiture must be given to the member at least 14 days before the date of the board meeting at which the resolution for forfeiture of the shares is to be moved and the member must be given an opportunity of being heard at the meeting.
- (3) Clause 23 applies to the forfeiture.
- (4) Subject to section 127 of the Act and subclause (5), payment to the member of any amount due under this clause must be made at the time decided by the board, but within one year from the date of forfeiture.
- (5) Subject to section 127 of the Act, instead of payment of an amount due to a member whose membership is cancelled, the amount due may be applied as a deposit if the co-operative takes deposits, or the co-operative may allot or issue debentures or CCUs in satisfaction of the amount, or if the member consents in writing the amount may be appropriated as a donation.

**25. Death of member**

- (1) Subject to section 159 of the Act, the board must transfer a deceased member's share or interest in the co-operative to —
  - (a) the personal representative of the deceased, that is, an executor or administrator of the estate of the deceased; or

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- (b) the person specified by the deceased's personal representative, in an application made to the co-operative within 3 months after the death of the member.
- (2) The board may approve the transfer of a share or interest to a person other than the executor or administrator if the board is satisfied that —
  - (a) there are reasonable grounds for believing the proposed transferee will be an active member of the co-operative; or
  - (b) the proposed transferee is qualified to be a member of the co-operative under these rules; [s. 75(b) & 159] or
  - (c) the transfer would not increase the proposed transferee's holding in the co-operative beyond that allowed by the Act or these rules. [s. 160]
- (3) If the total value of the deceased member's share or interest in the co-operative is less than \$10 000 or another amount fixed by the regulations, the board may transfer the share or interest under section 76 of the Act if there has not been a grant of letter of administration or of probate of the deceased's will. [s. 76]
- (4) Under section 77 of the Act, the board must decide the value of the shares and interest of a deceased member as the amount paid up on the shares together with any other amounts due to the deceased member less any amounts owing to the co-operative by the deceased member.

**26. Dealings of members with co-operatives**

- (1) The co-operative may, under section 70 of the Act, make a contract with a member requiring the member to have specified dealings with the co-operative for a fixed period.
- (2) The contract may require a member —
  - (a) to sell products through or to the co-operative; or
  - (b) to obtain supplies or services through or from the co-operative; or
  - (c) to pay to the co-operative specified amounts as liquidated damages for a contravention of a requirement authorised by this clause.

- (3) Any amount specified as liquidated damages is to be considered as a debt payable to the co-operative for which the co-operative has, under section 72 of the Act, a charge on each of the following —
- (a) the share or interest in the capital and the credit balance and deposits of the member or past member;
  - (b) any dividend, interest, bonus or rebate payable to the member or past member;
  - (c) any entry and periodic fees required to be repaid to a member when the member ceases to be a member.
- (4) The charge created under section 72 of the Act shall be enforced under that section and clause 27.

**27. Charges on shares**

- (1) The co-operative, as provided in section 72 of the Act, has a charge on the share or interest in the capital, and on the credit balance and deposits of a member or past member, and on any dividend, interest, bonus or rebate payable to a member or past member, in respect of any debt due from the member or past member to the co-operative. The co-operative may also set off any amount paid on account of that share or otherwise or any amount credited or payable to the member or past member in or towards payment of the debt.
- (2) The charge may be enforced at any time after 7 days notice to the member or past member, by the appropriation by the co-operative of the capital, interest or deposit subject to the charge. Any share for which capital has been appropriated must be cancelled.
- (3) The co-operative may sell, in the way the directors consider appropriate, all or any shares on which the co-operative has a charge. However, no sale can be made unless some amount for which the charge exists is payable at the date of the sale. Also no sale can be made until the end of 14 days after a written notice (stating, and demanding payment of, the part of the amount for which the charge exists as is payable at the day the notice is given) has been given to the registered holder of the share or the person entitled to it because of death or bankruptcy. The notice must indicate that, on failure to make payment of the amount demanded within the time stipulated, the shares will be sold by the board.

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- (4) If the highest offer received by the board is less than the amount paid up on shares to be sold, the board must, before accepting the offer, notify the member of the receipt of the offer and the amount of the offer, and of the board's intention to accept the offer at the end of 14 days, if no payment is made before then to the co-operative of all amounts for which the charge exists.
- (5) From the proceeds of any such sale the co-operative may deduct the expenses, if any, associated with the sale and may apply the balance to reduce the liability of the member. However, if a surplus remains after such deduction, the surplus is payable to the member whose shares were sold.
- (6) For giving effect to a sale the board may authorise a person to transfer the shares sold to the purchaser of them.

**28. Registration of Official Trustee in Bankruptcy**

- (1) If a member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the shares or other interests held by the bankrupt member. [s. 154]
- (2) The board may register the Official Trustee in Bankruptcy as the holder of a share in which a bankrupt member has an entitlement in equity, with the consent of both the co-operative and the holder of the share. [s. 154]

**29. Registration as administrator of estate on incapacity of member**

A person appointed under a law of a State or a 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 share. [s. 153, 158]

**30. 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 that 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 under clause 25, 28 or 29 has, while registered, the same liabilities in relation to the share or shares as those to which the dead person, the bankrupt person or the 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.

### 31. 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 \$ ..... (or a lesser amount decided by the board) is paid to the co-operative 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 of

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..... 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.

**32. Issue of CCUs**

- (1) The board of the co-operative may confer an interest in the capital of the co-operative by issuing CCUs in accordance with the Act.
- (2) The board of the co-operative may issue CCUs to a person, whether or not that person is a member of the co-operative. [s. 260]
- (3) Each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs.
- (4) 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.
- (5) 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.

- (6) 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.

### **33. Transfer and transmission of CCUs**

- (1) Subject to this clause, the transfer and transmission of a CCU is to follow the same process as for a debenture under clause 31.
- (2) Where the terms of issue of a CCU differ from clause 31 in respect to the manner of transfer or transmission, the terms of its issue prevail.

### **34. Annual general meetings**

- (1) An annual general meeting must, under section 190 of the Act, 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 or fixed under a regulation. [s. 190]

Note: See section 190(1) and (2) for the meeting times for the first AGMs of new and transferred co-operatives.

- (2) A general meeting of the co-operative other than the annual general meeting must be a special general meeting.
- (3) If an annual general meeting is not held as required by subclause (1), the members may, under section 195 of the Act and clause 35 of these rules, requisition a special general meeting.

### **35. Special general meetings**

- (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 .....% (max 20%) of the total number of votes able to be cast at a meeting of the co-operative.
- (3) The requisition must —
- (a) state the objects of the meeting; and

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- (b) 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
  - (c) be served on the co-operative by being lodged at the co-operative's registered office.
- (4) A meeting requisitioned by members under these rules must be called and held as soon as practicable and in any case must be held within 2 months after the requisition is served.
- (5) If the board does not call a meeting within 35 days after the requisition is served, the following provisions apply —
  - (a) the requisitioning members (or any of them representing at least half their total voting rights) may call the meeting in the same way, as nearly as possible, as meetings are called by the board;
  - (b) for that purpose they may ask the co-operative to supply a written statement of the names and addresses of the persons entitled, when the requisition was served, to receive notice of general meetings of the co-operative;
  - (c) the board must send the statement to the requisitioning members within 7 days after the request for the statement is made;
  - (d) the meeting called by the requisitioning members must be held within 3 months after the requisition is served;
  - (e) the co-operative must pay the reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting;
  - (f) any amount required to be paid by the co-operative is to be retained by the co-operative out of amounts payable by the co-operative for fees or other remuneration for their services to the directors who were in default. [s. 195]

**36. Notice of general meetings**

- (1) Subject to clause 37, at least 14 days notice (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 to every member of any general meeting, in the way stipulated in clause 74.



- (2) Notice must be given to the persons who are, under these rules, entitled to receive notices from the co-operative, but the non-receipt of the notice does not invalidate the proceedings at the general meeting.
- (3) The notice must state the place, day and hour of the meeting and, for special business, the general nature of the business.
- (4) For a special resolution, notice of —
  - (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,must be given at least 21 days before the meeting. [s. 177]
- (5) Members who together are able to cast at least .... % (max 20%) 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.
- (6) In a notice calling a general meeting, the board must include any business members have notified their intention to move at the meeting under subclause (5) (provided the members' notification has been made under these rules and within time).

**37. Notice of general meetings (small co-operatives)**

- (1) If the co-operative is a small co-operative, at least 14 days notice (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 to every member of any general meeting, in the way stipulated in clause 74.
- (2) Notice must be given to the persons who are, under these rules, entitled to receive the notices from the co-operative, but the non-receipt of the notice does not invalidate the proceedings at the general meeting.
- (3) The notice must state the place, day and hour of the meeting and, for special business, the general nature of the business.
- (4) Subject to subclause (5), the notice must include —

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- (a) a copy of the financial report (unaudited for the last financial year); and
  - (b) a directors' solvency resolution as to whether or not, in their opinion, there are reasonable grounds to believe that the co-operative will be able to pay its debts as and when they become due and payable.
- (5) The copies of the financial report are not required to form a part of the notice if the co-operative has been directed under section 293 or 294 of the Corporations Act to audit its financial statements. [s. 225]

**38. Business of general meetings**

- (1) The ordinary business of the annual general meeting 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; and
    - (ii) a report on the state of affairs of the co-operative.
- (2) The annual general meeting may also transact special business of which notice has been given to members under these rules.
- (3) All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.

**39. 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. [s. 193]
- (2) Unless these rules state otherwise ... members present in person, each being entitled to exercise a vote, constitute a quorum. [s. 193]
- (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.

**40. 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, then 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.

**41. Attendance and voting at general meetings**

- (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 will vote.
- (5) A resolution, other than a special resolution, must be decided by simple majority.

Note: The requirements for a special resolution are in section 177 of the Act.

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- (6) Subject to subclauses (7) and (8), at any general meeting a question for decision must (as provided in section 194 of the Act) 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) Where 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 subclause (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.

**42. Voting on a show of hands**

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 section 61(1) of the Act; or
- (d) represented by a non-member appointed as a proxy under these rules\*,

may exercise only one vote.

\*Note: If the rules do not allow for non-members to be appointed as proxies, paragraph (d) should be omitted.

**43.      Voting on a poll**

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

- (a) present; or
- (b) represented by a proxy; or
- (c) represented by a person acting under a power of attorney; or
- (d) represented by a person appointed under section 61(1) of the Act,

has one vote.

**44.      Determining the outcome where equality of votes**

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

**45.      Proxy votes**

- (1) The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (2) 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.

*\*Optional, select either (3) or (4).*

- (3) A person may act as a proxy despite that person not being a member of the co-operative. \*
- (4) A person must not act as a proxy unless the person is a member of the co-operative. \*
- (5) A person may be appointed as a proxy by more than one member. \*\*

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**\*\*Note:** The rules may impose a limit on the number of members for whom a proxy may act.

- (6) An instrument appointing a proxy may be in the following form, or another form the board approves\*\*\* —

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

I/we ..... (name) of ..... (address)

being a member(s) of the co-operative appoint .....

..... (name) of ..... (address)

as my/our proxy 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 and on my/our behalf at the \*annual general/\*special general meeting of the co-operative, to be held on the ..... day of ..... 20..... and at any adjournment of the meeting.

#This form is to be used \*in favour/\*against the resolution.

Signed this ..... day of ..... 20.....

*\*Strike out if not applicable.*

*#To be inserted if desired.*

**\*\*\*Note:** The form may also set out the resolutions with provision for the member to give direction to the proxy.

- (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.

**46. Postal ballots**

- (1) A postal ballot or special postal ballot must be held when required by the Act, these rules or when the members by ordinary resolution approve one.\*

\*Notes:

1. Section 187 of the Act lists a number of matters for which a special postal ballot must be conducted.
  2. Section 188(1) of the Act requires the board to conduct a postal ballot or a special postal ballot for the passing of a special resolution on the written requisition of such number of members who together are able to cast at least 20% (or less if the rules provide) of the total number of votes able to be cast at a meeting of the co-operative.
  3. Members proposing to give the board a written requisition should familiarise themselves with the requirements in section 188(2).
- (2) Subject to sections 185 and 186 of the Act and this clause, a postal ballot or special postal ballot is to be conducted using such method, in such form and returnable in such manner, as the board decides.
- (3) A postal ballot or special postal ballot may incorporate one or more methods of electronic voting.
- (4) The board is to appoint a returning officer to conduct the postal ballot or special postal ballot or, in default of such appointment, the secretary is the returning officer.
- (5) At least 21 days prior to the closing date of a postal ballot or special postal ballot\*, the returning officer is to send ballot papers (in the form and with such content as the board may approve) to all voting members giving —
- (a) particulars of the business in relation to which the postal ballot or special postal ballot is being conducted; and

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- (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.

\*Note: Section 186(3) of the Act requires a disclosure statement containing specified information to be included with the other material sent to members in connection with a special postal ballot.

- (6) The returning officer shall receive, validate and count the votes and advise the Board of —
  - (a) the number of formal votes cast in favour of the proposal concerned; and
  - (b) the number of formal votes cast against the proposal concerned; and
  - (c) the number of informal votes cast.
- (7) On declaration of the result of the ballot, the secretary must enter the subclause (6) details in the minute book of the co-operative.
- (8) 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.

**47. Special and ordinary resolutions**

- (1) A special resolution is a resolution of which the notice set out in subclause (2) has been given of the intention to propose the resolution as a special resolution and that is passed —
  - (a) by two-thirds of the members who vote in person or by proxy or attorney, at a general meeting; or
  - (b) by a two-thirds majority in a postal ballot; or
  - (c) by three-quarters of the members who cast formal votes in a special postal ballot of members. [s. 177(1)]
- (2) A resolution is not taken to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the co-operative stating —
  - (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. [s. 177(3)]
- (3) A special resolution has effect from the date it is passed, however a special resolution required to be passed by special postal ballot has no effect until registered by the Registrar [s. 180] and no amendment to these rules is to take effect until the amendment is registered by the Registrar. [s. 106(1)]
- (4) An ordinary resolution is one passed by a simple majority and has effect from the date it is passed.

**48. Board of directors**

- (1) The business and operations of the co-operative are to be managed and controlled by the board of directors, and for that purpose the board has and may exercise the powers of the co-operative as if expressly conferred on the board by a general meeting of the co-operative.
- (2) The board must have ..... member directors each of whom must be an individual, whether as a member of the co-operative, or as a representative of a corporation member, and at least 18 years old.\*  

\*Note: The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.
- (3) The powers of the board are subject to any restrictions imposed by the Act or by these rules.

**49. Qualifications of directors**

A person is not qualified to be a director of the co-operative unless the person is —

- (a) a member of the co-operative or a representative of a corporation that is a member of the co-operative; or
- (b) an employee of the co-operative or a person qualified under clause 50 to be an independent director.

**50. Independent directors**

- (1) The board may appoint persons with special skills to be independent directors of the co-operative on the conditions and for the period the board decides.

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- (2) The special skills required of an independent director may be specified by the board, and may be varied by the board from time to time, or from appointment to appointment. [s. 199(2)(b)]
- (3) An independent director is, subject to this clause, a director of the co-operative for the period of the appointment.
- (4) The majority of directors must be member directors. [s. 199(3)]
- (5) Unless this clause provides otherwise, all other rules relating to directors apply to an independent director.
- (6) On the termination of appointment as independent director by death, retirement, resignation or another way, the independent director stops being a director of the co-operative.
- (7) An independent director is entitled to attend any general meeting of the co-operative and be heard on any part of the business of the meeting.
- (8) An independent director is not entitled to vote at a meeting of directors on a motion about the terms and conditions of his or her appointment, conditions of service or termination of service but may be permitted by the chairperson of the board to speak in relation to the motion.
- (9) Despite anything else in these rules a vote is not valid if taken at a meeting of the board of directors unless, when the vote is taken, the number of independent directors present is less than the number of member directors present.
- (10) Despite the term of appointment fixed under subclause (1), the appointment of an independent director must be ratified by the members of the co-operative at the general meeting next after the appointment of the independent director. Ratification must be by a simple majority of members of the co-operative present and entitled to vote at the meeting.
- (11) If the appointment of an independent director is not ratified by the members of the co-operative, anything done by the independent director since the appointment and up to that time is taken to have been validly done.

- (12) Despite the terms of appointment, the members may, by special resolution at a general meeting of members, terminate the appointment of an independent director.
- (13) An independent director cannot be required to be an active member of the co-operative.

**51. Managing director**

- (1) The board may, if it considers appropriate, appoint a person to be managing director of the co-operative and may from time to time remove the person from office. The conditions and the period of appointment must be decided by the board.
- (2) The managing director is not counted for clause 48(2).
- (3) In all other respects the managing director has all the privileges of a director and all other rules relating to directors apply to the managing director.
- (4) On the termination of the appointment as managing director either by death, retirement, resignation or termination by the board, the managing director stops being a director of the co-operative.
- (5) The managing director 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.
- (6) A managing director cannot be required to be an active member of the co-operative.
- (7) A managing director is classified as an independent director under the Act.

**52. First and subsequent directors**

- (1) The first member directors must be elected by poll at the formation meeting of the co-operative.\*

\*Note: Under section 198(2)(b) of the Act, the first directors of a transferred co-operative are the directors in office at the date of registration under the Act.

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- (2) The term of office of the first member directors is to be not more than 3 years ending on the day of the third annual general meeting after the formation meeting.
- (3) The term of office of member directors elected thereafter, is to commence from the annual general meeting at which they are elected or at which their election is confirmed and ends on the day of the third annual general meeting thereafter.

\*Note: Each co-operative is to insert its own rules here in relation to the conduct of elections when electing directors, so that the rules reflect the particular circumstances of that co-operative.

**53. Removal from office of member director**

The co-operative may by special resolution remove a member director before the end of the member director's period of office, and may by a simple majority appoint another person in place of the member director. The person appointed must retire when the removed member director would otherwise have retired. [s. 205(2)]

**54. Vacation of office of director**

A director vacates office if —

- (a) the director dies or is permanently incapacitated; or
- (b) the director is disqualified or otherwise unable to be a director under section 200 of the Act; or
- (c) the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave; or
- (d) the director resigns from the office of director by written notice given by the director to the co-operative; or
- (e) the director is removed from office by special resolution of the co-operative; or
- (f) the person ceases to hold a qualification that qualified the person to be a director; or
- (g) an administrator of the co-operative's affairs is appointed under Part 12 Division 5 of the Act.

**55. Filling of casual vacancies**

- (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) For the purposes of this clause, a casual vacancy arises if the office of director is vacated under clause 54. [s. 198(3)]

\*Note: The rules may provide that, in the absence of a director from a meeting of the board, an alternate director may be appointed under section 203 of the Act.

**56. Remuneration**

- (1) Under section 215 of the Act the directors must not receive remuneration for their services as directors other than fees, concessions and other benefits approved at a general meeting of the co-operative.
- (2) All necessary expenses incurred by the board members in the business of the co-operative must be refunded to them.

**57. Proceedings of the board**

- (1) Meetings of the board (including meetings conducted under clause 58) are to be held as often as may be necessary for properly conducting the business and operations of the co-operative and must be held at least quarterly.
- (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) A meeting of the board of directors may be called by a director giving notice individually to every other director. [s. 201(3)]
- (6) 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.

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**58. Transaction of business outside board meetings**

- (1) The board may under section 202 of the Act transact any of its business —
  - (a) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of the members is taken to be a decision of the board; or
  - (b) at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting, can be heard by the other members.
- (2) For the purposes of this clause the chairperson of the board and each member of the board have the voting rights they have at an ordinary meeting of the board.
- (3) A resolution approved under subclause (1)(a) is to be recorded in the minutes of the meetings of the board.
- (4) The secretary may circulate papers among members of the board for subclause (1)(a) by email, fax or other transmission of the information in the papers concerned.

**59. Quorum for board meetings**

- (1) The quorum for a meeting of the board is half the number of directors (or if half is not a whole number the whole number next higher than one-half).
- (2) The number of independent directors must be fewer than the number of member directors present at a meeting of the board.

**60. Chairperson of board**

- (1) The chairperson of the board is to be elected by the board.\*

\*Note: The rules of a co-operative may provide that, in the alternative, the chairperson may 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 ordinary resolution of the board.\*

\*Note: If the rules of the co-operative provide that the chairperson is elected at a general meeting of the co-operative, then subclause (3) is to be read so that the removal of a chairperson and the election of a new chairperson is to be done by ordinary resolution at a general meeting.

**61. Delegation and board committees**

- (1) The board may (under section 204 of the Act) 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,

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 clause may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (3) A delegation under this clause may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (4) Despite any delegation under this clause, 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 subclause (3) were observed by the director exercising the powers.

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- (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.

**62. 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) Clause 61(6) and (7) apply to committees appointed under this clause, with the changes approved of 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).

**63. 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.

Note: Section 221 of the Act also requires any declarations of interest by directors to be recorded in the minutes.

- (2) Minutes must be entered in the appropriate records within one month after the meeting to which they relate is held.
- (3) The minutes are to be confirmed at, and signed by the chair of, the next meeting.



**64. Financial year**

The financial year of the co-operative ends on .....

**65. Seal**

- (1) This clause applies if a co-operative chooses to authenticate a document under the common seal of the co-operative.
- (2) The co-operative must, as required by section 240 of the Act, have the name of the co-operative appear in legible characters on its common seal and on 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, under section 47 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.
- (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.

**66. Custody and inspection of records and registers**

- (1) The co-operative must have at its registered office and available during normal office hours for inspection by any member free of charge [s. 232(1)] the following —
  - (a) a copy of the Act and the regulations;
  - (b) a copy of the rules of the co-operative and any attachments under section 345 of the Act;
  - (c) a copy of the last annual report of the co-operative under section 235 of the Act;
  - (d) the register of directors and members;
  - (e) 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;
  - (f) the register of memberships cancelled under Part 6 of the Act, required to be kept under section 230(1)(g) of the Act;

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- (g) the register of notifiable interests required to be kept under section 284 of the Act;
- (h) a copy of the minutes of each general meeting;
- (i) the other registers required under the Act or the regulations to be open for inspection.

Note: Section 233 of the Act sets out the limitations that apply to the use of information on these registers and provides for recovery of loss, damages or profits arising from misuse.

- (2) A member may make a copy of the entries in a register mentioned in subclause (1) during normal office hours, [free of charge/for the fee of \$ ..... (maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60)].

**67. Accounts**

- (1) The board must have a financial institution account or accounts, electronic or otherwise, in the name of the co-operative, into which all amounts received 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 for the co-operative, must be signed by 2 directors or by any 2 persons authorised by the board or authorised by the chief executive officer.

**68. 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.

**69. Appointing an auditor — co-operatives**

- (1) The board of a co-operative (unless the co-operative is a small co-operative or otherwise exempt from requiring an auditor [s. 226]) must appoint an auditor within one month of being registered under the Act, unless an auditor has already been appointed at a general meeting of the co-operative.
- (2) An auditor appointed under subclause (1) holds office until the first annual general meeting of the co-operative.

- (3) At its first annual general meeting, the co-operative must appoint an auditor of the co-operative and at each subsequent annual general meeting must appoint an auditor to fill any permanent vacancy in the office of the auditor.

**70. Appointing an auditor — small co-operatives**

- (1) The co-operative, if a small co-operative, may appoint an auditor at its first annual general meeting and at subsequent annual general meetings to fill a permanent vacancy in the office of the auditor.
- (2) Subclauses (3) and (4) only apply where no appointment is made under subclause (1).
- (3) The board of a small co-operative must appoint an auditor within one month of being directed to prepare a financial report and have it audited under either section 293 or 294 of the Corporations Act.
- (4) An auditor appointed under subclause (3) holds office until the financial report prepared as a result of the direction has been audited and sent to members.

**71. Terms of appointment, remuneration and removal of auditors**

- (1) The appointment, remuneration and removal of an auditor must comply with those provisions of the Corporations Act that apply under section 225 of the Act.
- (2) An auditor appointed at an annual general meeting holds office until the auditor —
- (a) dies; or
  - (b) is removed, or resigns, from office in accordance with section 329 of the Corporations Act; or
  - (c) ceases to be a registered company auditor within the meaning of the Corporations Act; or
  - (d) ceases to be an auditor under section 327B(2A), (2B) or (2C) of the Corporations Act.
- (3) While a casual vacancy in the office of the auditor continues, the surviving or continuing auditor or auditors, if any, may act.

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- (4) Where there is no surviving or continuing auditor, the board must fill a casual vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office [s. 225], within one month of the vacancy occurring, unless the co-operative at an annual general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as auditor under this subclause holds office until the next annual general meeting of the co-operative.
- (5) An individual, audit company or audit firm can be appointed as an auditor.
- (6) A co-operative cannot appoint a person —
- (a) (including a person who is a substantial shareholder in a corporation) who is indebted to the co-operative (or to a subsidiary corporation of the co-operative) for an amount that is more than \$5 000; or
  - (b) who is —
    - (i) an officer of the co-operative; or
    - (ii) a partner, employer or employee of an officer of the co-operative; or
    - (iii) a partner of an employee of an officer of the co-operative; or
    - (iv) an employee of an employee of an officer of the co-operative,
- to be auditor of the co-operative.
- (7) All reasonable fees and expenses of an auditor are payable by the co-operative.
- (8) The board must enable an auditor to have access to all books, accounts, vouchers, securities and documents of the co-operative and to be given such information as the auditor requires to perform his or her duties as auditor.
- (9) An auditor may attend any general meeting of the co-operative and is entitled to be heard, at any general meeting the auditor attends on any part of the business of the meeting.

- (10) An auditor is entitled to receive all notices and other communications relating to a general meeting that any member of the co-operative is entitled to receive.
- (11) Subject to section 329 of the Corporations Act, an auditor may be removed from office by resolution at a general meeting.
- (12) Subject to section 329 of the Corporations Act, an auditor may resign as auditor.

**72. Co-operative funds**

- (1) The board may resolve to 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. [s. 269]
- (2) Any part of the surplus arising in a year from the business of the co-operative or any part of the reserves may be —
  - (a) paid to a member by way of rebate in proportion to the value of business done by each member with the co-operative or to profits earned by the co-operative on business done by each member with the co-operative; or
  - (b) applied by the issue of bonus shares to a member in proportion to the value of business done by each member with the co-operative, to profits earned by the co-operative on business done by each member with the co-operative or to shares held by the member; or
  - (c) paid to a member by way of a dividend of not more than the prescribed amount for the shares held (a *limited dividend*).
- (3) The amount of a rebate or dividend payable to a member under subclause (2)(a) and (c) may, with the consent of the member, be applied —
  - (a) in payment for the issue to the member of bonus shares; or
  - (b) as a loan to the co-operative.
- (4) Any part of the surplus arising in any year from the business of the co-operative may be credited to any person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business, or to profits earned by the co-operative on business done by him or her with the co-operative, if —

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- (a) the person was a member at the time the business was done and the membership has lapsed; or
  - (b) the person has applied for membership after the business was done. [s. 272(1)]
- (5) Nothing in this clause precludes the payment of a bonus to an employee under the terms of the employee's employment. [s. 272(2)]
- (6) A part of the surplus, not more than .....%, arising in any year from the business of the co-operative may be applied for —
  - (a) charitable purposes; or
  - (b) supporting any activity approved by the co-operative. [s. 270(2)]
- (7) In this clause —

*surplus* means the excess of income over expenditure after making appropriate allowance for taxation expense, depreciation in value of the property of the co-operative and future contingencies.
- (8) A dividend, rebate or share bonus that accrues to the holder of shares, on which all calls payable have been paid, must be paid to the holder. However, a dividend, share bonus or rebate that accrues to the holder of partially paid up shares must be applied to paying off any subscriptions or calls on shares that may (when the dividend or bonus becomes payable) be payable and unpaid by the holder.
- (9) If several persons are registered as joint holders of a share, any one of them may be given a valid receipt for any dividend or other money payable on or for the share.
- (10) Unless the Act or rules otherwise provide, interest does not accrue to a member on a dividend or share bonus held by a co-operative for a member.

**73. Provision for loss**

The board must make provision for loss that may result from transactions of the co-operative.

**74. Notices**

- (1) A notice or other document required under the Act, the regulations or these rules to be given to a member of the co-operative may be given —
  - (a) personally; or
  - (b) by leaving it with a person who appears to be 16 years of age or older at the member's address; or
  - (c) by post; or
  - (d) by faxing it or emailing it to a fax number or email address provided by the person; or
  - (e) by sending it to the member by other electronic means (if any) nominated by the member; or
  - (f) by publishing the notice in a newspaper circulating generally in this State or in the area served by the co-operative, but only if —
    - (i) the member's whereabouts are unknown to the co-operative; or
    - (ii) the Registrar permits notice to be given to members of the co-operative in that way.
- (2) A document may be served on the co-operative —
  - (a) by post addressed to the registered office; or
  - (b) by leaving it at the registered office of the co-operative with a person who appears to be 16 years of age or older.
- (3) If a notice is sent by post, service is taken to be effected by properly addressing, prepaying and posting a letter containing the notice. For a notice of a meeting, service is taken to be effected at the end of 24 hours after the letter containing the notice is posted. Otherwise, service is taken to be effected when the letter would be delivered in the ordinary course of post and, in proving service, it is enough to prove that the envelope containing the notice was properly addressed and posted.
- (4) A notice or other document directed to a member and advertised in the newspaper is taken to be given to the member on the day the advertisement appears.

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- (5) A notice given by fax or other electronic means is taken to have been served, unless the sender's fax or other electronic device indicates a malfunction in transmission, on the day the notice is sent, if sent on a business day, otherwise on the next business day.
- (6) 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 relation to the share.
- (7) A notice may be given by the co-operative to the person entitled to an interest because of the death, bankruptcy or incapacity of a member by sending it through the post in a prepaid letter addressed to the 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 similar description. The address should be the address given for the purpose by the person claiming to be entitled. Alternatively, if no address has been given, the notice can be given in the way it could have been given if the death, bankruptcy or incapacity had not happened.
- (8) Notice of every general meeting must be given, in the same way as authorised in this clause, to —
  - (a) every member of the co-operative other than members who have not supplied to the co-operative an address for giving notices to them; and
  - (b) every person entitled to an interest because of the death, bankruptcy or incapacity of a member, who, but for the member's death, bankruptcy or incapacity, would be entitled to receive notice of the meeting; and
  - (c) every independent director.
- (9) Except as provided in this clause and in clause 71(10) no other person is entitled to receive notices of general meetings.

**75. Winding-up**

- (1) The winding-up of the co-operative must be in accordance with Part 12 of the Act.
- (2) If, on the winding-up or dissolution, there remains any property after the satisfaction of all its debts and liabilities (including the refund of the amounts paid up on the shares), this must be paid to, or distributed



among, the members of the co-operative ..... (in proportion to the amount of business conducted with the co-operative over the past ..... years) (in proportion to the member's shareholdings).

**76. Schedule of charges**

|                                |                     |
|--------------------------------|---------------------|
| Copy book of rules             | clause 2(6) and (7) |
| Copying entries in register    | clause 66(2)        |
| Transfer of shares             | clause 19(7)        |
| Maximum fine                   | clause 14(1)        |
| Transfer/register of debenture | clause 31(4)        |

**Certification**

We the undersigned, certify that this is a copy of the rules presented to the formation meeting on ..... (date) at ..... for 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 that is held after the rules have been approved by the Registrar and returned to the sponsors of the proposed co-operative.

**Schedule 4 — Particulars to be included in registers**

[r. 8, 13]

**1. Register of members, directors and shares**

- (1) The register of members, directors and shares of a co-operative must contain the following particulars of each member —
- (a) the name and address of each member;
  - (b) the date each member was admitted to the co-operative;
  - (c) if the co-operative has share capital, a statement in relation to each member by whom shares are held of the following —
    - (i) the number of shares held;
    - (ii) for partly paid shares — the identifying number of each share held;
    - (iii) the date the shares were allotted;
    - (iv) the amount paid or agreed to be considered as having been paid on the shares;
  - (d) if applicable, the date on which the member's membership ended;
  - (e) if shares are purchased under section 163(1) of the Act — a statement of the number of shares purchased and the date the shares were purchased;
  - (f) if shares are forfeited under section 280 of the Act — a statement of the number of shares forfeited and the date the forfeiture was effected;
  - (g) if there is a conversion to a co-operative without share capital — the date of repayment of the share capital or the date of disposal and the name and address of the person or body to whom the share capital was repaid.
- (2) The register of members, directors and shares of a co-operative must contain the following particulars for each director —
- (a) the name, date and place of birth, and residential address of each director;
  - (b) the date of that person's election or appointment as a director;

- (c) whether the director is a member director or an independent director;
- (d) if applicable, the date of termination of office.

**2. Register of loans, securities given by, debentures and CCUs issued by and deposits received by a co-operative**

- (1) The register of loans to, securities given by, debentures and CCUs issued by and deposits received by a co-operative is required to contain the following particulars for each loan —
  - (a) the name of the person by whom the loan is made;
  - (b) the amount of the loan;
  - (c) the date the loan was received by the co-operative;
  - (d) if the loan is secured by a mortgage of real property — the address and particulars of title of the property and a reference identifying the mortgage agreement;
  - (e) if the loan is secured other than by a mortgage of real property — particulars of the security given and a reference identifying the agreement that evidences the security;
  - (f) the date of the final repayment made in relation to the loan.
- (2) The register of loans to, securities given by, debentures and CCUs issued by and deposits received by a co-operative must contain the following particulars for each debenture or CCU issued —
  - (a) the name and address of each person to whom a debenture or CCU is payable;
  - (b) the number and series of the debenture or details of the CCU;
  - (c) the date of its issue;
  - (d) the amount of the debenture or the nominal value of the CCU;
  - (e) the rate of interest;
  - (f) the dates of payment of principal;
  - (g) the place of payment;
  - (h) the name of the trustee (if applicable);
  - (i) the date of any transfer of the debenture or the CCU.

**cl. 3**

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- (3) The register of loans to, securities given by, debentures and CCUs issued by and deposits received by a co-operative must contain the following particulars for each deposit received by the co-operative —
- (a) the name and address of the depositor;
  - (b) the date of receipt;
  - (c) the amount deposited;
  - (d) the rate of interest (if any);
  - (e) the amount repaid;
  - (f) the date of conversion to shares, debentures or CCUs (if applicable);
  - (g) the due date for repayment;
  - (h) the balance.

**3. Register of names of persons who have given loans or deposits to or hold securities or debentures or CCUs given or issued by a co-operative**

The register of names of persons who have given loans or deposits to or hold securities or debentures or CCUs given or issued by a co-operative must contain the following details for each person —

- (a) the person's full name and address;
- (b) whether the person —
  - (i) has given a loan or deposit to the co-operative; or
  - (ii) holds securities given by the co-operative; or
  - (iii) holds debentures issued by the co-operative; or
  - (iv) holds a CCU issued by the co-operative;
- (c) a reference to the relevant entry in the register of loans to, securities given by, debentures or CCUs issued by and deposits received by the co-operative.

**4. Register of loans made or guaranteed by and securities taken by a co-operative**

- (1) The register of loans made or guaranteed by and securities taken by a co-operative must contain the following details for each loan made —
- (a) the name of each member to whom a loan is made;

- (b) the amount of the loan;
  - (c) the date the loan was approved;
  - (d) if the loan is secured by a mortgage of real property — the address and particulars of title of the property and a reference identifying the mortgage agreement;
  - (e) if the loan is secured otherwise than by a mortgage of real property — particulars of the security taken and a reference identifying the agreement that evidences that security;
  - (f) the date of the final repayment made in relation to the loan.
- (2) The register of loans made or guaranteed by and securities taken by a co-operative must contain the following particulars for each loan guaranteed by the co-operative —
- (a) the name of the member;
  - (b) the name of the lender;
  - (c) the amount of the loan;
  - (d) the date of the guarantee;
  - (e) the security documents held and any other information necessary to identify the parties to the security documents;
  - (f) the due date for repayment.

**5. Register of memberships cancelled**

- (1) The register of memberships cancelled under Part 6 of the Act must contain the following particulars for each member whose membership is cancelled —
- (a) the name of the member;
  - (b) if the whereabouts of the member are unknown — the date the required period of the member's whereabouts being unknown started;
  - (c) if the whereabouts of the member are known and the amount required to be paid is over \$100.00 —
    - (i) the date of the member's last active dealing with the co-operative; and
    - (ii) the date of giving the required notice to the member;

**cl. 5**

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- (d) if the whereabouts of the member are known and the amount required to be paid is \$100.00 or less — the date of the member's last active dealing with the co-operative;
  - (e) the date the membership was cancelled.
- (2) If the member's shares are forfeited because of cancellation of the person's membership, the register must contain the following —
- (a) the amount subscribed in respect of the shares forfeited;
  - (b) the date the shares were forfeited;
  - (c) if the date fixed by the board resolution for repayment of the amount paid up on shares is within one year of forfeiture —
    - (i) the date of repayment; or
    - (ii) if the amount is dealt with under section 127(2) of the Act — the date and how the amount is applied;
  - (d) if the amount due is to be transferred to a debenture, CCU or deposit account —
    - (i) the date of repayment; and
    - (ii) the date of transfer to the account.
- (3) Subclause (2) applies only to co-operatives that have a share capital.

## **Schedule 5 — Changes to Corporations Act provisions**

[r. 4, 12, 33]

### **Division 1 — Modification to applied provisions (section 11)**

1. In the Act, references to “shareholders” are to be read as references to “members”.
2. In the Act, references to “regulations” are to be read as references to “regulations made under the *Co-operatives Act 2009* (Western Australia)”.
3. In the Act, a reference to a company that is the auditor of a company is to be read as a reference to a company that is the auditor of a co-operative.

### **Division 2 — Modifications to the Act (section 225)**

4. After section 249V(4) delete Note 1.
5. In section 294(1) delete “4,”.
6. After section 295(4) delete the note.
7. Sections 296, 298(3) and 301(2) are modified so that the exemption mentioned in those sections also applies where a financial report is prepared in response to a direction from the Registrar under section 294 specifying that the report does not have to comply with particular accounting standards.
8. In sections 295A, 299A and 300A, a reference to a company that is “listed” is to be read as a reference to a “co-operative with listed securities”.
9. In section 300(8) in the note delete “Sections 199A and 199B” and insert:

Section 213 of the *Co-operatives Act 2009* (Western Australia) and section 199B of this Act

10. After section 302 delete Note 1.
11. After section 303(4) delete the note.

**Co-operatives Regulations 2010**

**Schedule 5** Changes to Corporations Act provisions

**Division 2** the Act (section 225)

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12. In section 315(1)(b) and (2)(b) delete “4 months” and insert:
- 5 months
13. After section 315(1) delete the note.
14. In section 315(2) delete “section 293” and insert:
- section 293, or by the Registrar under section 294,
15. After section 317(1) insert:
- (1A) Subsection (1) does not apply to a small co-operative unless the small co-operative is required under the *Co-operatives Act 2009* (Western Australia) to prepare the documents set out in paragraphs (a) to (c).
16. Delete section 319.
17. After section 327A(1) insert:
- (1A) An auditor appointed under subsection (1) must be a registered company auditor.
- (1B) If a co-operative, prior to being registered under the Act, had appointed a person to be its auditor and the person continues to be the co-operative’s auditor, the co-operative is taken to have complied with subsection (1).
18. After section 327A(2) insert:
- (2A) Despite subsection (2), an auditor appointed in the circumstances set out in subsection (1B) may continue to be the co-operative’s auditor until the position is permanently vacated.



19. In section 329(1A) delete the note.
20. After section 329(1A) insert:
- (1B) Despite subsection (1A), the co-operative may pass the resolution only if at least 21 days notice of the meeting has been given.
21. In section 329(8) delete “Subject to subsection (9), the” and insert:
- The
22. Delete section 329(9).
23. Delete section 330(b) and insert:
- (b) a certificate winding-up the co-operative is given by the Registrar; or
- (c) if paragraph (a) or (b) does not apply — an order is made by the Court for the winding-up of the co-operative.
24. Delete Part 2M.4 Division 7.
- Division 3 — Changes for the Act (section 316)**
25. In section 461(h) delete “ASIC has stated in a report prepared under Division 1 of Part 3 of the ASIC Act that, in its opinion:” and insert:
- the Registrar has, because of an inquiry held under Part 15, Division 2 or 4 of the Act, stated that:
26. In section 464 delete “Where ASIC is investigating, or has investigated, under Division 1 of Part 3 of the ASIC Act:” and insert:

**Co-operatives Regulations 2010**

**Schedule 5** Changes to Corporations Act provisions

**Division 3** Changes for the Act (section 316)

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If the Registrar is holding or has held an inquiry under Part 15, Division 2 or 4 of the Act, in relation to:

27. In section 542(3) —

(a) in paragraph (c) delete “direct.” and insert:

direct; and

(b) after paragraph (c) insert:

(d) for a winding-up on a certificate of the Registrar under the *Co-operatives Act 2009* (Western Australia), section 314 — with the consent of the Registrar.

## **Schedule 6 — Undesirable matter for names**

[r. 17]

1. Names that are likely to be confused with or mistaken for —
    - (a) a name reserved or registered under the Corporations Act or registered under the *Business Names Registration Act 2011* (Commonwealth); or
    - (b) the name of any of the following registered in Western Australia —
      - an incorporated association
      - a building society
      - a co-operative
      - a foreign co-operative
- Example:
- It may be unsuitable for a co-operative to be called Hypothetical Co-operative Limited if a corporation known as Hypothetical Limited already exists.
2. Names that are misleading in relation to the nature, objects or purposes of the businesses conducted or to be conducted under the names or any other matter.
  3. Names that may be offensive to members of the public or a section of the public.
  4. Names containing the following words or phrases, any abbreviation of them or any similar words, phrases or abbreviations —
    - aboriginal corporation
    - aboriginal council
    - building society
    - chamber of commerce
    - chamber of industry
    - chamber of manufacturers

- chartered
- college of advanced education
- consumer
- co-operative housing society
- credit co-operative
- credit society
- credit union
- executor
- foreign society
- friendly society
- futures exchange
- guarantee
- incorporated
- institute of advanced education
- made in Australia
- savings
- Starr Bowkett
- stock exchange
- Torres Strait Islander corporation
- trust
- trustee
- university.

5. Names that in the context in which they are proposed to be used are capable of suggesting either of the following —

- (a) a connection with a member of the Royal Family if that connection does not exist;
  - (b) that Royal patronage has been received when this is not the case.
- 6. Names that, in the context in which they are proposed to be used, are capable of suggesting a connection with the State, the Government of the Commonwealth or a State or another part of the Queen's dominions, possessions or territories.
- 7. Names that include the words 'Commonwealth' or 'federal'.
- 8. Names that in the context in which they are proposed to be used, are capable of suggesting a connection with the government of a foreign country.
- 9. Names that in the context in which they are proposed to be used, are capable of suggesting a connection with a department, authority or instrumentality of the government of the Commonwealth or a State or with a local government.
- 10. Names that in the context in which they are proposed to be used are capable of suggesting either of the following —
  - (a) connection with an ex servicemen's organisation if that connection does not exist;
  - (b) that the members of an organisation are totally or partially incapacitated when this is not the case.
- 11. Names that are subject to restrictions under Commonwealth Acts including, but not limited to the following —
  - (a) *International Organisations (Privileges and Immunities) Act 1963* to the extent it prevents assumption or use in connection with a trade, business, profession, calling or occupation, of the name or an abbreviation of the name of the United Nations or any other prescribed international organisation;
  - (b) *Banking Act 1959* to the extent it prevents the assumption or use, in relation to financial business, of 'bank', 'banker', or 'banking' or any similar word;

- (c) *Protection of Word "Anzac" Regulations* to the extent it prevents the assumption or use of the word 'Anzac' or any word resembling it in connection with any trade, business, calling or profession, any entertainment, lottery or art union or as the name or part of the name of a private residence, boat, vehicle or charitable or other institution, or any building of the institution;
- (d) *Defence (Prohibited Words and Letters) Regulations 1957* to the extent it prohibits the use in connection with a trade, business, calling or profession or by an organisation or body of persons of the words and letters set out in the regulations (being words and letters indicative of a part of the armed forces of Australia);
- (e) *Scout Association Act 1924* to the extent it prevents the use of the name 'Scout Association' or any name implying that any other society or body is the association or a branch of the association;
- (f) *Geneva Conventions Act 1957* to the extent it prevents the use of 'Red Cross', 'Geneva Cross', 'Red Crescent' or 'Red Lion and Sun' or wording resembling any of those expressions.

**12.** Names that are subject to restrictions under Western Australian Acts including, but not limited to, the following —

- (a) *Architects Act 2004*;
- (b) *Health Practitioner Regulation National Law (Western Australia)*;
- (c) *Legal Profession Act 2008*;
- (d) *Licensed Surveyors Act 1909*;
- (e) *Pharmacy Act 2010*;
- (f) *Police Act 1892*;
- (g) *Veterinary Surgeons Act 1960*.

[Schedule 6 amended in Gazette 22 Jun 2012 p. 2778; 27 Nov 2012 p. 5733.]

## **Schedule 7 — Information for explanatory statements**

[r. 34]

**1. Terms used**

In this Schedule —

*explanatory* statement includes a draft explanatory statement;

*internal creditor*, of a co-operative, means a creditor who is —

- (a) a member of the co-operative; or
- (b) a relative or spouse of a member of the co-operative; or
- (c) a relative of the spouse of a member of the co-operative;

*scheme* means the proposed compromise or arrangement;

*scheme co-operative* means a co-operative to which a scheme applies;

*scheme creditor* means a creditor or class of creditors of a co-operative to whom the scheme is to apply;

*scheme member* means a member or class of members of a scheme co-operative.

**2. Information about proposed compromise or arrangement with creditors**

(1) If the proposed compromise or arrangement is with creditors, the information the explanatory statement must include in relation to the proposed compromise or arrangement is —

- (a) the expected dividend that would be available to scheme creditors if the co-operative were to be wound-up within 6 months after the date of hearing of the application to the Supreme Court under section 339 of the Act; and
- (b) if a composition of debts is proposed — the expected dividend that would be paid to scheme creditors if the scheme were put into effect; and
- (c) a list of the names of all known scheme creditors and the debts owed to them; and
- (d) if a scheme creditor is known to be a guaranteed creditor — the name of the creditor and the amount of the debt owed to the creditor; and

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- (e) if a scheme creditor is known to be an internal creditor — the name of the creditor and the amount of the debt owed to the creditor.
  - (2) The explanatory statement must also state that an order under section 339 of the Act is not an endorsement of, or expression of opinion on, the scheme.
  - (3) The statement must also contain or include —
    - (a) a report of the co-operative in the approved form, showing the financial position of the co-operative at a day, within one month before the day the intended application under section 339 of the Act is to be made to the court; and
    - (b) a copy, certified by a director or the principal executive officer or secretary of the co-operative to be a true copy, of all accounts, including any group accounts, required to be laid before the co-operative at its annual general meeting; and
    - (c) a copy of each document required by law to be attached to the accounts mentioned in paragraph (b); and
    - (d) if the scheme co-operative is a trustee — a statement —
      - (i) of the number of trusts the trustee administers; and
      - (ii) whether the trustee carries on any business separate from the trust; and
      - (iii) how the scheme creditors may obtain a copy of the relevant trust deed, free of charge, before the date of the meeting;and
    - (e) if any person who would be appointed to manage the scheme proposes to charge for his or her services and services of his or her staff under a particular scale of charges — the scale of charges.
- 3. Information about proposed compromise or arrangement with members or class of members**
- (1) If the proposed compromise or arrangement is with members or a class of members, the information the explanatory statement must include in relation to the proposed compromise or arrangement is —



- (a) unless paragraph (b) applies — in relation to each director of the co-operative —
    - (i) whether the director recommends accepting or rejecting the scheme and the reasons for the recommendation; or
    - (ii) if the director is not available to consider the scheme — that the director is not available to consider the scheme and the reasons the director is not available to consider it; or
    - (iii) in any other case — that the director does not wish to make, or does not consider himself or herself justified in making, a recommendation and, if the director requires, the reasons for not making a recommendation;

or

  - (b) if the co-operative is not being wound-up or is under official management — in relation to each liquidator or official manager —
    - (i) whether the liquidator or official manager recommends accepting or rejecting the scheme and the reasons for the recommendation; or
    - (ii) if the liquidator or official manager does not wish to make a recommendation — the reasons for not wishing to make the recommendation.
- (2) The statement must also include —
- (a) the number, description and amount of marketable securities of the co-operative the subject of the scheme held by or for each director of the co-operative or, if none are held by or for the director, a statement to that effect; and
  - (b) whether each director of the co-operative who holds shares, or for whom shares are held, in the co-operative —
    - (i) intends to vote for or against the scheme; or
    - (ii) has not decided whether to vote for or against the scheme;
- and

**cl. 3**

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- (c) if the other party to the proposed reconstruction or amalgamation is or includes a corporation — whether any marketable securities of the corporation are held by or for a director of the scheme co-operative and, if so, the number, description and amount of the marketable securities; and
  - (d) particulars of any payment or other benefit that is proposed to be made or given to —
    - (i) any director, principal executive officer or secretary of the scheme co-operative as compensation for loss of, or as consideration for his or her retirement from, office in the co-operative or a related corporation; or
    - (ii) any director, principal executive officer or secretary of a related corporation as compensation for loss of, or as consideration for his or her retirement from, office in the related corporation or the scheme co-operative;
- and
- (e) if there is any other agreement or arrangement made between a director of the scheme co-operative and another person in relation to or conditional on the outcome of the scheme — particulars of the agreement or arrangement; and
  - (f) if the object of the scheme is for a co-operative to acquire control of another corporation that is a company — particulars of the nature and extent of any interest of a director of the company in any contract entered into by the co-operative; and
  - (g) whether, within the knowledge of —
    - (i) the directors of the co-operative the subject of the scheme; or
    - (ii) if the co-operative is in liquidation or under official management — the liquidator or official manager, the financial position of the co-operative has materially changed since the date of the last balance sheet laid before the co-operative in a general meeting and if so, full particulars of the change; and
  - (h) any other information material to making a decision in relation to the scheme, being information that has not

previously been disclosed to the scheme members and is within the knowledge of any director, liquidator or official manager of a scheme co-operative or a related scheme.

- (3) If—
- (a) the other party to the proposed reconstruction or amalgamation of the scheme co-operative has a prescribed shareholding in the co-operative; or
  - (b) a director of any corporation that is the other party to the proposed reconstruction or amalgamation is a director of a scheme co-operative,

the statement must include a copy of a report made by an expert who is not associated with the corporation that is the other party, stating whether or not, in his or her opinion, the proposed scheme is in the best interests of the members of the scheme co-operative and the reasons for the opinion.

- (4) If the scheme co-operative obtains 2 or more reports, each of which could be used for the purposes of subclause (3), the statement must include a copy of each report.

- (5) If—
- (a) the scheme co-operative obtains a report for the purposes of subclause (3); and
  - (b) the report contains —
    - (i) a forecast of the profits or profitability of the co-operative; or
    - (ii) a statement that the market value of an asset or assets of the co-operative or a related corporation differs from an amount at which the value of the asset or assets is shown in the books of the co-operative or the related corporation,

the report must not be included in the statement without the written consent of the Registrar and in accordance with any conditions of the consent.

- (6) For the purposes of subclause (3) —

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- (a) a person has a prescribed shareholding in a co-operative if the person is entitled to at least 30% of the issued shares in the co-operative; and
  - (b) a person has a prescribed shareholding in a co-operative in which the shares are divided into 2 or more classes of shares if the person is entitled to at least 30% of the shares in one of those classes.
- (7) If all or part of the consideration to be offered to a scheme member consists of marketable securities issued, or to be issued, by a corporation, the statement must set out the formula to be applied to find out the number of marketable securities to be issued to each scheme member and the basis on which the formula was developed.
- (8) If marketable securities of the same class as those mentioned in subclause (7) are granted official quotation on a securities exchange, the statement must state the fact, specify the securities exchange concerned, and state —
  - (a) the latest recorded sale price before the date the statement is sent to the Registrar; and
  - (b) the highest and lowest recorded sale prices in the 3 months immediately before the date the statement is sent to the Registrar and the dates of the relevant sales; and
  - (c) if the scheme has been the subject of a public announcement in newspapers or in any other way before the statement was sent to the Registrar — the latest recorded sale price immediately before the public announcement.
- (9) If the marketable securities mentioned in subclause (8) are granted official quotation on more than one securities exchange, it is enough compliance with subclause (8)(a) and (c) if information on the marketable securities is given for the securities exchange at which there has been the greatest number of recorded dealings in the securities in the 3 months immediately before the date the statement is sent to the Registrar.
- (10) However, if the securities have not been granted official quotation on a securities exchange, the statement must include all the information a director, liquidator or official manager of the scheme co-operative or of a related corporation has about the number of securities sold in the 3 months immediately before the explanatory statement was prepared

and the price of the securities or, if the information or any part of it cannot be found, a statement to that effect.

- (11) The statement must include particulars of the intentions of the directors of the co-operative the subject of the scheme in relation to —
- (a) the continuation of the business of the co-operative or, if the undertaking of the co-operative or any part of the undertaking is to be transferred, how the undertaking or the part of the undertaking is to be conducted in the future; and
  - (b) any major changes to be made to the business of the co-operative, including any redeployment of fixed assets of the co-operative; and
  - (c) the future employment of the present employees of the co-operative.

**Co-operatives Regulations 2010**

**Schedule 8** Provisions of Act applying to participating and non-participating co-operatives

**Division 1** Provisions applying to participating co-operatives

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**Schedule 8 — Provisions of Act applying to participating and non-participating co-operatives**

[r. 38]

**Division 1 — Provisions applying to participating co-operatives**

1. section 240
2. section 316 (but only to the extent that it adopts the Corporations Act Part 5.4B)
3. section 484

**Division 2 — Provisions applying to non-participating co-operatives**

4. section 15
5. section 240

## **Schedule 9 — Holders of prescribed offices**

[r. 45]

### **Commonwealth**

1. The Treasurer
2. A trustee under the *Bankruptcy Act 1966* (Commonwealth) Part 4, 10 or 11
3. Each of the following officers of ASIC —
  - (a) the chairperson, deputy chairperson or member of the commission;
  - (b) president or member of the takeovers panel.

### **Australian Capital Territory**

4. Registrar or master of the Australian Capital Territory Supreme Court
5. Treasurer
6. The public trustee under the *Public Trustee Act 1985* (Australian Capital Territory)

### **New South Wales**

7. Treasurer
8. The public trustee under the *Public Trustee Act 1913* (New South Wales)
9. The master under the *Supreme Court Act 1970*, (New South Wales) Part 8, Division 1
10. The supervisor of loan fund companies under the *Loan Fund Companies Act 1976* (New South Wales)
11. The protective commissioner under the *Protected Estates Act 1983* (New South Wales)

### **Northern Territory**

12. Treasurer
13. Public trustee under the *Public Trustee Act* (Northern Territory)
14. Master of the Supreme Court of the Northern Territory

15. Commissioner for corporate affairs

**Queensland**

16. Treasurer  
17. Commissioner for corporate affairs  
18. Public trustee  
19. Registrar of the Supreme Court of Queensland

**South Australia**

20. Treasurer  
21. Curator of prisoners property under the *Criminal Law Consolidation Act 1935* (South Australia)  
22. Public trustee under the *Public Trustee Act 1995* (South Australia)  
23. Master or accountant under the *Supreme Court Act 1935* (South Australia)

**Tasmania**

24. Administrator under the Criminal Code, Chapter 49 (Tasmania)  
25. Treasurer  
26. Commissioner for corporate affairs  
27. Public trustee under the *Public Trustee Act 1930* (Tasmania)  
28. Registrar of the Supreme Court of Tasmania

**Victoria**

29. Treasurer  
30. Commissioner for corporate affairs  
31. State Trustees Limited ACN 064 593 148  
32. Master under the *Supreme Court Act 1986* (Victoria)

**Western Australia**

33. Treasurer  
34. Commissioner for corporate affairs  
35. Public trustee under the *Public Trustee Act 1941*



- 36.**     Master or registrar of the Supreme Court of Western Australia under the *Supreme Court Act 1935*

**cl. 1**

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**Schedule 10 — Fees**

[r. 42]

**1. Fees and late filing fee**

- (1) The fees set out in the Table are payable for the corresponding item in that Table.
- (2) A fee that is marked with an asterisk may incur an additional fee imposed by the Registrar for late filing of a document required to be filed under the Act.
- (3) The additional fee in subclause (2) is —
  - (a) \$68.00 — where the document is filed less than 28 days late;
  - (b) \$275.00 — where the filing of the document is 28 days late or longer.

**Table of Fees**

| <b>No.</b> | <b>Item giving rise to a fee</b>                                                                                                 | <b>Fee</b><br><b>\$</b> |
|------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1          | Submission of proposed disclosure statement for approval under sections 16, 146, 186, 251, 252, 255, 300 or 392 of the Act ..... | 283.00                  |
| 2          | Application for exemption under sections 139 or 296 of the Act .....                                                             | 283.00                  |
| 3          | Submission of proposed rules for approval under section 17 of the Act .....                                                      | 139.00                  |
| 4          | Decision on registration applications under sections 18, 23, 182 or 448 of the Act .....                                         | 139.00                  |
| 5          | Duplicate certificate issued under section 34 of the Act .....                                                                   | 35.00                   |

| No. | Item giving rise to a fee                                                                                                                                                                                                         | Fee<br>\$       |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 6   | Uncertified copy of rules under section 99(2) or an uncertified extract or copy of a document under section 457 of the Act —<br>(a) for the first page .....<br>(b) for each additional page .....<br>up to a maximum of \$86.60. | 11.90<br>1.55   |
| 7   | Submission of proposed alteration of rules for approval under section 103 of the Act—<br>(a) for each rule to be altered .....<br>(b) maximum fee .....                                                                           | 13.90<br>139.00 |
| 8   | Application for registration of alteration of rules under section 106 of the Act .....                                                                                                                                            | 35.00           |
| 9   | Review of right of member to vote under section 171 .....                                                                                                                                                                         | 139.00          |
| 10  | Filing fee for lodgment of special resolution under section 181 .....                                                                                                                                                             | 35.00           |
| 11  | Application under section 231(1)(d) of the Act to keep register at an office approved by the Registrar .....                                                                                                                      | 35.00           |
| 12  | Giving notice of appointment or cessation of appointment of a person as director, chief executive officer or secretary under section 234 of the Act .....                                                                         | Nil*            |
| 13  | Filing annual report under section 235 of the Act ...                                                                                                                                                                             | 35.00*          |
| 14  | Approval of the registration of a name as mentioned in section 238(4) of the Act .....                                                                                                                                            | 72.00           |
| 15  | Providing written notice of a new address under section 243(3) .....                                                                                                                                                              | Nil*            |

**Co-operatives Regulations 2010**  
**Schedule 10 Fees**

**cl. 1**

| <b>No.</b> | <b>Item giving rise to a fee</b>                                                                                                                 | <b>Fee<br/>\$</b> |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 16         | Registrar's statement of maximum permissible level of share interest as mentioned in section 278(2) of the Act .....                             | 283.00            |
| 17         | Approval of resolution by the Registrar as mentioned in section 278(5) of the Act .....                                                          | 139.00            |
| 18         | Application for extension of time as mentioned in section 292(5) of the Act .....                                                                | 70.00             |
| 19         | Application for Registrar's consent as mentioned in sections 299(2) or 391(3) of the Act or Schedule 7 clause 3(5) to these regulations .....    | 72.00             |
| 20         | Application for approval of a merger or transfer of engagement under section 302, 303, 394 or 395 of the Act .....                               | 283.00            |
| 21         | Approval of an explanatory statement under section 350(1) of the Act .....                                                                       | 695.00            |
| 22         | Filing office copy of order under section 352(5) of the Act .....                                                                                | Nil*              |
| 23         | Foreign co-operative lodging notification of intention to carry on business as mentioned in section 372 of the Act .....                         | Nil*              |
| 24         | Filing particulars of change concerning foreign co-operative under section 382 of the Act .....                                                  | Nil*              |
| 25         | Giving notice of cessation under section 383 of the Act .....                                                                                    | Nil*              |
| 26         | Application to have the Registrar call a special meeting or hold, or appoint an inspector to hold, an inquiry under section 444 of the Act ..... | 283.00            |
| 27         | Application for the Registrar to grant an extension of, or to abridge time under section 449 of the Act .                                        | 70.00             |
| 28         | Inspection of register or prescribed documents under section 457(1)(a) or (1)(b) of the Act .....                                                | 13.90             |

| No. | Item giving rise to a fee                                                                                                                              | Fee<br>\$     |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 29  | Certified copy of a document under section 457(1)(d) of the Act —<br>(a) for the first page .....<br>(b) for each additional page .....                | 26.25<br>2.70 |
| 30  | Application for permission to give notice by newspaper under section 484(2)(f) .....                                                                   | 70.00         |
| 31  | Filing a notice under Schedule 3 clause 13(1), 17(1), 36(1) or 36(2) to the Act .....                                                                  | 35.00         |
| 32  | Application for the Registrar to allow a further period under Schedule 3 clause 20(3)(c) to the Act                                                    | 70.00         |
| 33  | Lodging a memorandum of discharge under Schedule 3 clause 37(2) to the Act .....                                                                       | 35.00         |
| 34  | Lodging a managing controller's report under Schedule 4 clause 12(2) to the Act .....                                                                  | Nil*          |
| 35  | Inspection of managing controller's report under Schedule 4 clause 12(3)(b) to the Act .....                                                           | 13.90         |
| 36  | Lodging receiver's report under Schedule 4 clause 13(1)(c) to the Act .....                                                                            | Nil*          |
| 37  | Lodging notice of obtaining an order for the appointment of a receiver under Schedule 4 clause 18(1)(a) to the Act .....                               | Nil*          |
| 38  | Lodging notice of the appointment of a controller under Schedule 4 clause 18(2)(a) to the Act .....                                                    | Nil*          |
| 39  | Lodging notice that a person has entered into possession or taken control of property of a co-operative under Schedule 4 clause 18(3) to the Act ..... | Nil*          |
| 40  | Lodging a notice of change in the situation of the controller's office under Schedule 4 clause 18(5) to the Act .....                                  | Nil*          |

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**Schedule 10 Fees**

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| No. | Item giving rise to a fee                                                                                                                                       | Fee<br>\$ |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 41  | Lodging notice of cessation as controller under Schedule 4 clause 18(6) to the Act .....                                                                        | Nil*      |
| 42  | Lodging copy of report of the reporting officers' under Schedule 4 clause 20(2)(c) of to the Act .....                                                          | Nil*      |
| 43  | Lodging copy of extension notice given by controller under Schedule 4 clause 20(4) to the Act                                                                   | Nil*      |
| 44  | Lodging copy of court order granting extension under Schedule 4 clause 20(5) to the Act .....                                                                   | Nil*      |
| 45  | Lodging copy of controller's account under Schedule 4 clause 23(1) to the Act .....                                                                             | Nil*      |
| 46  | Lodging of half year reports under section 320 of the Corporations Act as applied by section 225 of the Act .....                                               | Nil*      |
| 47  | Lodging a disclosure document under section 718 of the Corporations Act as applied by section 250 of the Act .....                                              | 2085.00   |
| 48  | Lodging a supplementary or replacement disclosure document under section 719 of the Corporations Act as applied by section 250 of the Act .....                 | Nil*      |
| 49  | Application for the Registrar to exercise the powers conferred by sections 601AE(2) or 601AF of the Corporations Act as applied by section 316 of the Act ..... | 283.00    |
| 50  | Lodging any other document under the Corporations Act as applied by the Act .....                                                                               | Nil*      |
| 51  | Applications for exemption under section 111AS, 111AT, 283GA, 741, 742 or 1045A of the Corporations Act as applied by section 250 of the Act .....              | 283.00    |

| No. | Item giving rise to a fee                                                                                                                               | Fee<br>\$ |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 52  | Lodging documents or making applications for the registrar to exercise a power or do something under the Act for which no other fee is prescribed ..... | 35.00     |

*[Schedule 10 amended in Gazette 22 Jun 2011 p. 2351-6.]*

**Notes**

<sup>1</sup> This is a compilation of the *Co-operatives Regulations 2010* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

| <b>Citation</b>                                             | <b>Gazettal</b>            | <b>Commencement</b>                                                                                                                                  |
|-------------------------------------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Co-operatives Regulations 2010</i>                       | 13 Aug 2010<br>p. 3765-970 | r. 1 and 2: 13 Aug 2010<br>(see r. 2(a))<br>Regulations other than r. 1 and 2:<br>1 Sep 2010 (see r. 2(b) and<br><i>Gazette</i> 13 Aug 2010 p. 3975) |
| <i>Co-operatives Amendment<br/>Regulations 2011</i>         | 22 Jun 2011<br>p. 2351-6   | r. 1 and 2: 22 Jun 2011<br>(see r. 2(a));<br>Regulations other than r. 1 and 2:<br>1 Jul 2011 (see r. 2(b))                                          |
| <i>Co-operatives Amendment Regulations<br/>(No. 2) 2012</i> | 22 Jun 2012<br>p. 2777-8   | r. 1 and 2: 22 Jun 2012<br>(see r. 2(a));<br>Regulations other than r. 1 and 2:<br>23 Jun 2012 (see r. 2(b))                                         |
| <i>Co-operatives Amendment<br/>Regulations 2012</i>         | 27 Nov 2012<br>p. 5733     | 27 Nov 2012                                                                                                                                          |