

# Model rules for a non-distributing co-operative with share capital

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# Guide to the model rules

## 1. Introduction

This guide summarises the purpose and process for model rules under the Co-operatives National Law and the Co-operatives National Regulations.

A co-operative is governed primarily by the Co-operatives National Law and the Co-operatives National Regulations as applied in this jurisdiction. In addition, its operations and its relationship with its members are governed by its rules, which are a contract between the co-operative and its members as well as between each member.

A co-operative is required to have a set of rules, which address each of the topics set out in Schedule 1 to the Co-operatives National Law. Other provisions of the Law or the Co-operatives National Regulations may also specify that particular matters may or must be set out in the rules.

These model rules apply to a non-distributing co-operative with share capital. A non-distributing co-operative is a co-operative that is prohibited from giving returns or distributions on surplus or share capital (see section 19 of the Co-operatives National Law). There are separate sets of model rules for a non-distributing co-operative without share capital and for a distributing co-operative.

## 2. What are model rules?

The Co-operatives National Regulations contain a set of rules that may be used by a general co-operative. These rules are called “model rules” because they are drafted to ensure that they include all matters that are required to be included in a co-operative’s rules. A co-operative is not required to use the model rules, but instead it may prepare its own rules or it may use some of the model rules and draft others to complete its rules so that they comply with the Co-operatives National Law.

General co-operatives engage in a wide range of activities and the model rules are not intended to deal with all aspects of the business or activities of a general co-operative, but they will provide a core set of rules. A co-operative will need to consider whether each of the model rules suits its activities and either adapt the rule or prepare its own rule on a particular topic.

It is important to note that a co-operative’s rules must be approved by the Registrar. The model rules are not complete as they require additional information to be inserted or deleted by a co-operative, but, once completed with the information indicated, they should be in a form ready for approval by the Registrar.

If a co-operative chooses to prepare its own rules and the rules do not make provision for a matter set out in Schedule 1 to the Co-operatives National Law, then the Registrar may insert the relevant model rule to complete the co-operative's rules.

### **3. Model rules may change**

The model rules are part of the Co-operatives National Regulations, and like the Regulations they may change if it is considered appropriate at some future time. If a co-operative wishes, it may adopt the model rules in a form that is static. That is, the model rules as adopted will not change unless the co-operative makes a change in the manner authorised under the Co-operatives National Law. Alternatively, the co-operative may adopt the model rules as they are from time to time. If this is done, then any future changes to the model rules will automatically change without the need for the co-operative to undertake any process to amend its rules.

Potential changes to model rules will be part of the process for changing the Co-operatives National Regulations and subject to public notice before any changes are made.

### **4. Instructions for using the model rules**

The model rules are to be completed in accordance with any requirement indicated in Schedule 7 to the Co-operative National Regulations as to how the rules are to be completed (whether by inserting a specified detail or other information or by striking out any words or other matter, or otherwise).

A row of dots in a model rule indicates that a relevant detail or other information is required to be inserted before the rule is made.

References to the CNL or a provision of the CNL in these model rules is a reference to the principal provision(s) of the Co-operatives National Law as applied in this jurisdiction. The meaning or application of these model rules may be affected by other provisions of the Co-operatives National Law or other Commonwealth, State or Territory laws, as the case may be.

These notes and any other notes in the model rules do not form part of the model rules.

# Part 1 Preliminary

## 1 Application of these rules

These rules are the rules of the \_\_\_\_\_ (*insert name of co-operative*).

## 2 Definitions

(1) In these rules:

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

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

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

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

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

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

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

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

the co-operative means the \_\_\_\_\_ (*insert name of co-operative*).

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

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

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

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

The name of the co-operative is \_\_\_\_\_ (*insert name of co-operative*).

## Part 2 Membership

### Division 1 Membership generally

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

##### (1) Primary activity

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

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##### (2) Active membership requirements

A member must:

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to establish and maintain active membership of the co-operative.

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

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

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

**Note.** Insert here any other membership qualifications. For example, a housing co-operative may require members to qualify for housing assistance under other government regulations.

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

##### (1) The entry fee for an application for membership is \_\_\_\_\_

**Note.** There does not need to be an entry fee, or a fee could be determined each year by the board and published at the registered office or on the website of the co-operative.

##### (2) The regular subscription (also known as a periodic membership fee) is \_\_\_\_\_

**Note.** There need not be any regular subscription, or there could be an annual fee or a fee payable for other periods of time or determined from time to time by the board and published at the registered office or on the website of the co-operative.

## **7 Membership applications**

- (1) Applications for membership must be lodged at the registered office in the application form approved by the board, and should be accompanied by:
  - (a) payment of any applicable entry fee or subscription set under rule 6; and
  - (b) payment for allotment of the minimum number of shares in the co-operative as specified in rule 16.
- (2) every application must be considered by the board.
- (3) If the board approves the application, the applicant's name and any other information required under the Law must be entered in the register of members within 28 days of the board's approval.
- (4) 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.
- (5) The board may, at its discretion, refuse an application for membership.
- (6) 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 Cessation of membership (CNL s117)**

- (1) A person ceases to be a member in any of the following circumstances:
  - (a) if the membership ceases in any circumstances specified in section 117 of the Law;
  - (b) if the member's total shareholding is transferred to another person and the transferee is registered as the holder of the shareholding;
  - (c) if the member's total shareholding is forfeited under the Law or these rules;
  - (d) if the member's total shareholding is purchased by the co-operative under the Law or these rules;
  - (e) if the member's total shareholding is sold by the co-operative under any power in the Law or these rules and the purchaser is registered as shareholder in the member's place.

## **9 Expulsion of members (CNL s117)**

- (1) A member may be expelled from the co-operative by special resolution to the effect:
  - (a) that the member has seriously or repetitively failed to discharge the member's obligations to the co-operative under these rules or a contract entered into with the co-operative under section 125 of the Law; or
  - (b) that the member has acted in a way that has:
    - (i) prevented or hindered the co-operative in carrying out its primary activity or one or more of its primary activities; or
    - (ii) brought the co-operative into disrepute; or
    - (iii) been contrary to one or more of the co-operative principles as described in section 10 of the Law and has caused the co-operative harm.

- (2) Written notice of the proposed special resolution must be given to the member at least 28 days before the date of the meeting at which the special resolution is to be moved, and the member must be given a reasonable opportunity of being heard at the meeting.
- (3) At the general meeting when the special resolution for expulsion is proposed the following procedures apply:
  - (a) at the meeting, the member must be afforded a full opportunity to be heard and is entitled to call witnesses and cross-examine witnesses called against the member;
  - (b) if the member fails to attend at the time and place mentioned, without reasonable excuse, the member's alleged conduct must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
  - (c) once the alleged conduct is considered, the co-operative may decide to expel the member concerned;
  - (d) the co-operative must not make a decision on the alleged conduct or on expulsion, except by vote by secret ballot of the members present, in person or represented by proxy or by attorney, and entitled to vote;
  - (e) a motion for the decision is not taken to be passed unless two-thirds of the members present, in person or represented by proxy or by attorney, vote in favour of the motion.
- (4) Expulsion of one joint member means expulsion of all members holding membership jointly with the expelled member.
- (5) An expelled member must not be re-admitted as a member unless the re-admission is approved by special resolution.
- (6) A member re-admitted must not have restored to him or her any shares that were cancelled on his or her expulsion.

## **10 Resignation of members (CNL s117)**

A member may resign from a co-operative by giving \_\_\_\_\_ (*insert period of time*) notice in writing in the form approved by the board.

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

- (1) In this rule:

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

- (2) If a member is expelled or resigns from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.

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

## **12 Suspension of members**

- (1) The co-operative may suspend a member for not more than one year, who does any of the following:
  - (a) contravenes any of these rules;
  - (b) fails to discharge obligations to the co-operative, whether under these rules or a contract;
  - (c) acts detrimentally to the interests of the co-operative.
- (2) In order to suspend a member, the procedure for expulsion of a member set out in rule 9 is to be followed as if references to expulsion were references to suspension.
- (3) During the period of suspension, the member:
  - (a) loses any rights (except the right to vote) arising as a result of membership; and
  - (b) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the co-operative; and
  - (c) remains liable for any fine that may be imposed.

## **Division 2 Dispute resolution**

### **13 Disputes and mediation (CNL s129)**

- (1) The grievance procedure set out in this rule applies to disputes under these rules between:

- (a) a member and another member; or
- (b) a member (including a former member) and the co-operative.

(2) If a dispute arises, a party cannot commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this rule, except where a person seeks urgent interlocutory relief.

(3) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days of:

- (a) the dispute coming to the attention of each party; or
- (b) a party giving notice, to each of the other parties involved, of the dispute or grievance.

(4) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.

(5) The mediator is, where possible, to be a person chosen by agreement between the parties, but in the absence of agreement between the parties:

- (a) for a dispute between a member and another member, a person appointed by the board; or
- (b) for a dispute between a member (including a former member) and the co-operative, a person appointed by the Australian Mediation Association.

(6) The mediator may (but need not) be a member of the co-operative, unless the member is a party to the dispute.

(7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

(8) The mediator, in conducting the mediation, must:

- (a) give the parties to the mediation process every opportunity to be heard; and
- (b) allow due consideration by all parties of any written statement submitted by any party; and
- (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.

(9) The mediator cannot determine the dispute.

(10) The mediation must be confidential and without prejudice.

(11) The costs of the mediation are to be shared equally between the parties unless otherwise agreed.

(12) Nothing in this rule applies to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.

(13) Nothing in this rule applies to any dispute involving the expulsion or suspension of a member or the imposition of a fine.

(14) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the Law or otherwise at law.

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

## Division 3 Members' liability

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

(1) The board may impose on a member a maximum fine of \$ \_\_\_\_ for a contravention of these rules.

**Note.** The maximum amount to be inserted must not be more than \$1,000, or \$500 for a co-operative with a charitable purpose (see section 56 of the Law and National Regulation 2.1).

(2) A fine must not be imposed on a member under subrule (1) unless:

- (a) written notice of intention to impose the fine and the reason for it has been given to the member; and
- (b) the member has been given a reasonable opportunity to appear before the board in person (with or without witnesses), or to send to the board a written statement, to show cause why the fine should not be imposed.

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

- (1) A member is liable to the co-operative for the amount, if any, unpaid on the shares held by the member, together with any charges, including entry fees and regular subscriptions, payable by the member to the co-operative under these rules.
- (2) Joint members are jointly and severally liable for any amount unpaid on shares and to any such charges mentioned in subrule (1).

## Division 4 Shares

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

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

**Note.** Shares may be required to be fully paid for them to be allotted or they may be partly paid provided the minimum paid up is 10%. The amount to be paid is a matter for the co-operative to determine in the light of its capital requirements. Section 78 of the Law requires there to be a minimum of 10% paid up before allotment. The remaining percentage of the share price can be paid either by predetermined subscription amounts or they may simply be subject to a call under rule 17.

- (4) A share in the co-operative does not carry a vote.

(5) The right to vote in the co-operative is attached to membership and governed by section 228 of the Law.

**Note.** Under section 82 of the Law, the co-operative is authorised to require members of a distributing co-operative to take up or subscribe for additional shares under a proposal approved by special resolution.

## 17 Calls on shares

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

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

(1) Members' shares may be repurchased by the co-operative in accordance with the Law.

OR

Members' shares held in excess of the minimum shareholding required under rule 16(2) may be repurchased in accordance with the Law.

(strike out whichever is not applicable.)

(2) A member who wishes the co-operative to repurchase any shares must do so by submitting a request to the board in the following form:

I/We \_\_\_\_\_ being members of the \_\_\_\_\_ (co-operative name) and the holders of \_\_\_\_\_ (number of shares) in the co-operative that are fully/partly paid, request that the co-operative repurchase \_\_\_\_\_ (number of shares). I/We are aware of the conditions of repayment under the Co-operatives National Law or relevant Act.

Signed \_\_\_\_\_

Dated \_\_\_\_\_

Witness (name and signature) \_\_\_\_\_

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

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

(1) The instrument of transfer of a share must be signed by or for the transferor and the transferee.

(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.

(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/Territory of \_\_\_\_\_ in consideration of the sum of \$ \_\_\_\_\_ paid to me by C.D. (the transferee), of \_\_\_\_\_ in the State/Territory of \_\_\_\_\_ transfer to the transferee the share (or shares) numbered \_\_\_\_\_ in the \_\_\_\_\_ (name of co-operative) to hold for the transferee, the transferee's executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed by \_\_\_\_\_ transferor.

In the presence of \_\_\_\_\_ witness.

Signed by \_\_\_\_\_ transferee.

In the presence of \_\_\_\_\_ witness.

(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 rules 4 and 5; or

(b) as otherwise provided by these rules or the Law.

(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 363 of the Law.

(7) The board may decline to recognise an instrument of transfer unless:

(a) a fee of \$ ..... (or a smaller amount decided by the board from time to time) is paid to the co-operative for the transfer; and

(b) the instrument of transfer is accompanied by any evidence the board may require to show the right of the transferor to make the transfer.

(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 before the annual general meeting in each year.

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

A member who has sold or transferred, or disposed of the beneficial interest in, all 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.

## Division 5 Member cancellations

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

- (1) The board must declare the membership of a member cancelled if:
  - (a) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for a continuous period of at least \_\_\_\_ years; or
  - (b) the member is not presently active and has not been active within the meaning of rule 4 in the past \_\_\_\_ years.

**Note 1.** The period of inactivity must take account of the active membership requirements in rule 4. For example, if a member is required to acquire or sell product or services during a calendar year, the period of time should be expressed in terms of calendar years.

**Note 2.** The period of time for inactivity under the Law is 3 years. The co-operative's rules may specify a shorter time than 3 years. If no period of time is specified, it will be as specified in the Law.

### 22 Forfeiture of shares (CNL s109)

- (1) If a member fails to pay a call or instalment of a call by the day appointed for payment, the board may, at any time that any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that may have accrued.
- (2) The notice must name a further day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares for which the call was made will be liable to be forfeited.
- (3) If the requirements of the notice served under this rule are not complied with, any share in respect of which the notice has been given may at any time (but before the payment required by the notice has been made) be forfeited by a resolution of the board.

**Note.** There will be no dividends on these shares.

- (4) Forfeited shares must be cancelled.

### 23 Forfeited shares—liability of members

- (1) A person whose shares have been forfeited under these rules stops being a member if membership is conditional on the holding of the shares or membership has otherwise been cancelled under the Law. The person nevertheless remains liable to pay to the co-operative all amounts that are (as at the date of forfeiture) payable by him or her to the co-operative for the shares.

- (2) A statutory declaration in writing by a director, the chief executive officer or secretary of the co-operative stating that a share in the co-operative has been forfeited and cancelled on a date stated in the declaration, is proof of that fact as against all persons claiming to be entitled to the share.
- (3) The co-operative has set-off rights against share capital as specified in section 127 of the Law.

## **Division 6 Deceased or incapacitated members**

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

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

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

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

I request that the board transfer all shares attaching to the membership of \_\_\_\_\_ being shares numbered \_\_\_\_\_ in the co-operative, to me.

A. I intend to hold the shares subject to the deceased member's last will and testament / letters of administration and will notify the board of any proposal to transfer the shares to any beneficiary/ies *OR*

B. I am also the beneficiary of the estate of the deceased member and I am aware of the requirements for active membership under the rules of the co-operative.

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

Dated \_\_\_\_\_

Signed by \_\_\_\_\_

Legal personal representative

In the presence of \_\_\_\_\_ witness.

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

- (1) A person's membership ceases upon bankruptcy and that person's shares may be transferred to the Official Trustee in Bankruptcy and dealt with under the provisions of section 95 of the Law.

- (2) A person appointed under a law of a State or Territory to administer the estate of a member who, through mental or physical infirmity, is incapable of managing his or her affairs, may be registered as the holder of the member's shares and the rights and liabilities of membership vest in that person during the period of the appointment.
- (3) The liabilities attaching to the shares of a person under bankruptcy or mental incapacity continue in accordance with section 96 of the Law.
- (4) Upon application by a person appointed to manage the affairs of a member referred to in subrule (2), the board may decide to suspend some or all active membership obligations if there are grounds to believe that the member's physical or mental infirmity is temporary.

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

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

## **Division 7 Transfer of securities other than shares**

### **27 Transfer and transmission of debentures**

- (1) On the written request of the transferor (the giver) of a debenture, the co-operative must enter in the appropriate register the name of the transferee (the receiver) in the same way and on the same conditions as if the application for entry were made by the transferee.
- (2) If the co-operative refuses to register a transfer of debentures, it must, within 28 days after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.
- (3) An instrument of transfer of a debenture must be executed by or on behalf of the transferor and the transferee. The transferor is taken to remain the holder of the debenture until the debenture in the name of the transferee is entered in the register of debentures.
- (4) The board may decline to recognise an instrument of debenture and may decline to register a debenture unless:

- (a) a fee of \$ \_\_\_\_\_ (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/Territory of

\_\_\_\_\_ in consideration of the sum of \$ \_\_\_\_\_ paid to me by C.D (the transferee), of

\_\_\_\_\_ in the State of

\_\_\_\_\_ transfer to the transferee the debenture(s)

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed by \_\_\_\_\_ transferor.

In the presence of \_\_\_\_\_ witness.

Signed by \_\_\_\_\_ transferee.

In the presence \_\_\_\_\_ witness.

## **28 Issue of CCUs (CNL ss345–354)**

- (1) The board may confer an interest in the capital of the co-operative by issuing CCUs in accordance with the Law.
- (2) Each holder of CCUs is entitled to one vote only at a meeting of the holders of CCUs.

OR

- (3) Each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs.

(strike out whichever is not applicable.)

- (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.

## 29 Transfer and transmission of CCUs

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

## Part 3 General meetings, resolutions and voting

### 30 Annual general meeting (CNL s252)

An annual general meeting must be held each year, at a place and on a date and a time decided by the board, within 5 months after the close of the financial year of the co-operative or within the further time allowed by the Registrar.

**Note.** A co-operative may specify particular matters to suit the convenience of members such as time and place, if members are located in a wide geographical area.

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

- (1) The board may, whenever it considers appropriate, call a special general meeting of the co-operative.
- (2) The board must call a general meeting of the co-operative on the requisition in writing by members who together are able to cast at least        % (*maximum 20%*) of the total number of votes able to be cast at a meeting of the co-operative.
- (3) The provisions of section 257 of the Law apply to a meeting requisitioned by members.

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

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

(1) At least 14 days' notice of a general meeting (not including the day on which the notice is served or taken to be served, but including the day for which notice is given) must be given.

**Note 1.** If there is to be a special resolution proposed at the meeting, there is a requirement for at least 21 days' notice of the special resolution.

**Note 2.** If there is a resolution proposed for the removal of a director, section 180 of the Law requires special notice of the resolution and 21 days notice of the meeting.

(2) Notice must be given to each member of the co-operative and any other persons who are, under these rules or the Law, entitled to receive notices from the co-operative.

**Note.** The auditor is and, if there is a trustee for debenture holders, the trustee is entitled to notice of a general meeting.

(3) The notice must state the place, day and hour of the meeting and include ordinary business as specified in rule 33 and, for special business, the general nature of any special business.

(4) The notice must also include any business members have notified their intention to move at the meeting under subrule (6) (but only if the members' notification has been made under these rules and within time).

(5) The notice must be served in the manner provided in the Law or rule 62.

**Note 1.** Section 611 of the Law makes provision for the service of notices on members of the co-operative. Rule 62 makes additional provision for notice by electronic transmission.

**Note 2.** Non-receipt of the notice does not invalidate the proceedings at the general meeting.

(6) Members who together are able to cast at least \_\_\_\_ % (*maximum 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.

**Note.** A co-operative can limit an individual member from proposing a resolution to the general meeting by requiring that there be a minimum number of members proposing the resolution before the matter can be considered. This does not prevent an individual member from requesting that the board propose a particular resolution at the next meeting.

## 33 Business of general meetings

(1) The ordinary business of the annual general meeting of a large co-operative must be:

- (a) to confirm minutes of the last preceding general meeting (whether annual or special); and
- (b) to receive from the board, auditors or officers of the co-operative:
  - (i) the financial reports of the co-operative for the financial year;
  - (ii) a report on the state of affairs of the co-operative; and
- (c) to approve any payments of fees to directors.

(2) The ordinary business of the annual general meeting of a small co-operative must be:

- (a) to confirm 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 basic minimum financial statements for the co-operative for the financial year;
  - (ii) a report on the state of affairs of the co-operative;
  - (iii) 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; and
- (c) to approve any payments of fees or to directors.

**Note 1.** A small co-operative must prepare and send to members minimum financial statements that are specified in regulation 3.10 of the National Regulations (these are referred as "basic minimum financial statements"). A co-operative may require more than the basic minimum financial statements to be provided to members and, if so, the additional financial statements should be specified in this rule.

**Note 2.** If the small co-operative has consolidated gross assets of less than \$250,000 and consolidated revenue of less than \$750,000, the financial statement for the small co-operative need not include a cash flow statement (as provided in regulation 3.10 of the National Regulations).

**Note 3.** A small co-operative may decide whether its financial statements are to be either audited or reviewed, or neither.

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

## **34 Quorum at general meetings**

- (1) An item of business cannot be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item.
- (2) Unless these rules state otherwise, ... members present in person, each being entitled to exercise a vote, constitute a quorum.

- (3) If a quorum is not present within half an hour after the appointed time for a meeting, the meeting, if called on the requisition of members, must be dissolved. In any other case it must be adjourned to the same day, time and place in the next week.
- (4) If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the members present constitute a quorum.

## **35 Chairperson at general meetings**

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

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

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

**Note.** The requirements for a special resolution are in section 239 of the Law.

- (6) Subject to subrules (7) and (8), a question for decision at any general meeting must be decided on a show of hands of members present at the meeting.
- (7) A poll may be demanded on any question for decision.
- (8) If before a vote is taken or before or immediately after the declaration of the result on a show of hands:

- (a) the chairperson directs that the question is to be determined by a poll; or
- (b) at least 5 members present in person or represented by proxy demand a poll;

the question for decision must be determined by a poll.

- (9) The poll must be taken when and in the manner that the chairperson directs.
- (10) A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
- (11) Once the votes on a show of hands or on a poll have been counted then, subject to subrule (8), a declaration by the chairperson that a resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.
- (12) The result of the vote must be entered in the minute book.

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

- (1) On a show of hands at a general meeting, each member:
  - (a) present; or
  - (b) represented by a non-member acting under a power of attorney; or
  - (c) represented by a non-member appointed under the provisions of the Law; or
  - (d) represented by a proxy (but only if proxies are allowed under these rules);

may exercise only one vote.

### **38 Voting on a poll**

- (1) On a poll called at a general meeting, each member:
  - (a) present; or
  - (b) represented by a person acting under a power of attorney; or
  - (c) represented by a person appointed under the provisions of the Law; or
  - (d) represented by a proxy (but only if proxies are allowed under these rules);

has one vote.

**Note 1.** A person can hold an unlimited number of proxies unless the rules restrict the number of proxies any one person can hold. If the vote on a show of hands is likely not to represent the views of the members who have given a proxy, a poll may be demanded. Section 256(2) of the Law provides that a question is to be decided by a poll if a poll is required by the chairperson of the meeting or by any 5 members present at the meeting or represented at the meeting by proxy.

**Note 2.** Most decisions are made by ordinary resolution, but in certain cases the Law requires a special resolution.

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

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

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

**Note.** The rules of the co-operative may or may not permit proxy voting. Section 229 of the Law requires a proxy to be an active member of the co-operative (or, in the case of a co-operative group, to be entitled to represent a member of the group).

If the co-operative wishes to prohibit proxy voting, the following rule is suitable:

Voting by proxy is not permitted at a general meeting.

If the co-operative wishes to permit proxy voting, the following rule is suitable:

- (1) Voting may be by proxy at a general meeting.
- (2) The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (3) An instrument appointing a proxy may direct the way the proxy is to vote in relation to a particular resolution and, if an instrument of proxy directs, the proxy is not entitled to vote on the resolution other than as directed in the instrument.
- (4) A person may be appointed as a proxy by more than one member.

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

- (5) 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.

- (6) 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.
- (7) A vote given in accordance with an instrument of proxy or a power of attorney is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the co-operative at the registered office before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

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

**Note 1.** The rules may require some decisions to be made by postal ballot.

**Note 2.** Section 250 of the Law provides that members may require a matter to be decided by a postal ballot. The following rule will facilitate a postal ballot in these situations.

- (1) A postal ballot must be held in respect of a special resolution where members who together are able to cast at least 20% (*or a lesser percentage which may be substituted here*) of the total number of votes able to be cast at a meeting of the co-operative may requisition the board to conduct the special resolution by postal ballot.

**Note.** Requisitioning members may be liable for the cost of a postal ballot if the special resolution is not passed. See section 250 of the Law.

- (2) If a postal ballot is requisitioned by members under subrule (1), the requisition should specify whether the postal ballot is to be a secret ballot.
- (3) A postal ballot requisitioned under subrule (1) is to be conducted in accordance with the National Regulations and in the form and manner determined by the board.
- (4) The board may determine in a particular case whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
- (5) If the board decides to conduct a secret postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each member has voted.
- (6) The board is to appoint a returning officer to conduct the postal ballot. In default of such an appointment, the secretary is the returning officer.
- (7) Ballot papers (in such form and with such content as the board may approve) must be sent to all voting members giving:
  - (a) particulars of the business in relation to which the postal ballot is being conducted; and
  - (b) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
  - (c) notice of the closing date and closing time of the postal ballot;
- (8) and must be sent to members so that they arrive (assuming standard postal times) at least 21 days before the closing date of the postal ballot.
- (9) This rule does not apply in relation to special postal ballots.

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

**Note.** A special postal ballot is required by the Law for certain specified decisions. The majority required to pass a special postal ballot is 75%. A special postal ballot is governed by the provisions of the Law and the National Regulations as well as these rules.

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

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

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

**Note.** Voting majorities for ordinary and special resolutions and special postal ballots are defined in the Law along with how a majority is counted and the requirements for registration of special resolutions.

## **Part 4 Board of directors**

### **44 Board (CNL s172)**

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

**Note.** The rules of the co-operative may restrict the power of the board, but an exercise of power by the board in excess of the restriction in these rules may still be a valid act. See section 45 of the Law.

- (2) The board must have \_\_\_\_ directors.

### **45 Qualifications of directors (CNL s174)**

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

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

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

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

- (1) The first directors are elected by poll at the formation meeting of the co-operative (except as provided by section 173(2)(b) of the Law).

**Note.** Under section 173(2)(b) of the Law, the first directors of a transferred co-operative are the directors in office at the date of registration under the Law.

- (2) The term of office of the first directors is to be not more than 3 years ending on the day of the third annual general meeting after the formation meeting.

**Note.** The rules may require that directors' terms are of different length to enable rotational retirement.

- (3) The term of office of directors elected thereafter, is to commence from the annual general meeting at which they are elected and ends on the day of the third annual general meeting thereafter.
- (4) The members of the board are to be elected in the manner specified in this rule.
- (5) At an annual general meeting at which a director retires, the vacated office may be filled in the following manner:

- (a) At least 6 weeks before an annual general meeting, the board must:
  - (i) notify all members of the number of directors retiring at the annual general meeting; and
  - (ii) advise the members of:
    - (i) their eligibility to nominate as a director; and
    - (ii) the duties and responsibilities of a director; and

- (iii) the anticipated remuneration (if any); and
- (iv) the nomination and election procedures.

(b) A notice must also be displayed at the place of business of the co-operative inviting nominations of nominees to serve as directors.

(c) A nomination must:

- (i) be signed by 2 or more members; and
- (ii) provide details of the qualifications and experience of the person nominated; and
- (iii) be accompanied by a notice in writing signed by the nominee consenting to their nomination.

(d) The nomination and the notice of consent must be lodged with the secretary of the co-operative at least 30 days before the annual general meeting.

(e) The secretary, or an officer nominated by the board, must give details of each person who has been nominated to members with the notice of the annual general meeting. Details to be provided to members must include:

- (i) the nominee's name; and
- (ii) the nominee's qualifications and experience; and
- (iii) the nominee's length of any previous service as a director of the co-operative or with any other co-operative.

(6) If the number of nominees equals the number of vacancies, the nominees must be declared elected at the annual general meeting.

(7) If there are insufficient nominees to fill all vacancies, the nominees to be declared elected at the annual general meeting and nominations for people to fill the remaining vacancies are to be called from the floor and a ballot held if required.

(8) If the number of nominees exceeds the number of vacancies, the election of directors must be conducted at the meeting by ballot as follows:

- (a) A returning officer is elected at the meeting. The directors, the secretary and anyone who has an interest in the election are not eligible to be the returning officer.
- (b) All nominees are to be listed on the ballot form in alphabetical order.
- (c) The returning officer is responsible for determining the validity of and counting of the votes.
- (d) If there is an equality of votes, the outcome must be determined by lot.
- (e) The returning officer is to declare the election results.

(9) If any vacancies remain at the end of the meeting, the vacancies are to be casual vacancies and must be filled in accordance with rule 50.

**Note.** A co-operative may specify other procedures in the rules to suit the particular circumstances of the co-operative.

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

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

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

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

**Note.** If a co-operative wishes to specify circumstances other than those set out in section 179 of the Law or in this rule, those circumstances should be specified as additions to this rule.

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

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

## 51 Remuneration of directors (CNL s203)

Directors' remuneration must comply with the provisions of the Law.

**Note 1.** Remuneration for directors is strictly controlled under the Law and requires the approval of the co-operative in general meeting. However, it is possible for a co-operative to specify in its rules that a director will

receive particular remuneration if this is appropriate. It may still be necessary to obtain ratification or approval at a general meeting even in respect of specified remuneration under the rules.

**Note 2.** An alternate director is treated as a director under the Law, and remuneration of an alternate director is subject to the same restrictions under the Law.

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

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

## **53 Quorum for board meetings (CNL s175)**

- (1) The quorum for a meeting of the board is 50% of the number of directors (or if that percentage of the number of directors is not a whole number, the whole number next higher than one half).

**Note.** The co-operative may specify in the rules a greater percentage than 50% for a quorum.

- (2) For a quorum, the number of member directors must outnumber the non-member directors by at least one.

**Note.** The co-operative may specify in the rules another number by which the number of member directors must outnumber the non-member directors.

## **54 Chairperson of board**

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

**Note.** The rules may provide that, in the alternative, the chairperson is to be elected at a general meeting of the co-operative.

- (2) If no chairperson is elected or the chairperson is not present within 15 minutes after the time fixed for holding the meeting or is unwilling to act as chairperson of the meeting, the directors present may

choose one of their number to be chairperson of the meeting until the chairperson attends and is willing to act as chairperson.

- (3) The chairperson may be removed, and a new chairperson elected, by:
  - (a) ordinary resolution of the board, unless paragraph (b) applies; or
  - (b) ordinary resolution at a general meeting, if these rules provide that the chairperson is elected at a general meeting of the co-operative.

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

## 55 Delegation and board committees (CNL s178)

- (1) The board may by resolution delegate to:
  - (a) a director; or
  - (b) a committee of 2 or more directors; or
  - (c) a committee of members of the co-operative; or
  - (d) a committee of members of the co-operative and other persons if members form the majority of persons on the committee; or
  - (e) a committee of directors and other persons;
  - (f) the exercise of the board's powers (other than this power of delegation) specified in the resolution.

The co-operative or the board may by resolution revoke all or part of the delegation.
- (2) A power delegated under this rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (3) A delegation under this rule may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (4) Despite any delegation under this rule, the board may continue to exercise the power delegated.
- (5) If a power is exercised by a director (alone or with another director) and the exercise of the power is evidenced in writing, signed by the director in the name of the board or in his or her own name on behalf of the board, the power is taken to have been exercised by the board. This is so whether or not a resolution delegating the exercise of the power to the director was in force when the power was exercised, and whether or not any conditions mentioned in subrule (3) were observed by the director exercising the powers.
- (6) A committee may elect a chairperson of their meetings. If no chairperson is elected, or, if at a meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.

(7) A committee may meet and adjourn as it thinks appropriate. Questions arising at a meeting must be decided by a majority of votes of the members present and voting and if the votes are equal, the chairperson has a second or casting vote.

## 56 Other committees

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

## 57 Minutes

- (1) The board must keep minutes of meetings and, in particular, of:
  - (a) all appointments of officers and employees made by the directors; and
  - (b) the names of the directors present at each meeting of the board and of a committee of the board; and
  - (c) all resolutions and proceedings at all meetings of the co-operative and of directors and of committees of directors.

**Note.** Section 209 of the Law also requires any declarations of interest by directors to be recorded in the minutes.

- (2) Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate was held.
- (3) The minutes are to be signed within a reasonable time after the meeting to which they relate by either the chairperson of that meeting or the chairperson of the next meeting.

## Part 5 Rules

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

- (1) Any amendment of the rules must be approved by special resolution. However, if model rules are adopted in the manner specified under section 65(a) of the Law, any amendments to the model rules as notified by the Registrar are included in the co-operative's rules without the need for a special resolution.

**Note.** Section 60 of the Law permits the Registrar to specify classes of rules that must not be changed without first obtaining the approval of the Registrar. A co-operative should check whether any prior approval is required before the change is put to a special resolution vote.

- (2) A proposal to amend the rules of the co-operative must be made in a form approved by the board which clearly shows the existing rule or rules concerned and any proposed amendment to the rules.
- (3) A member is entitled to a copy of the rules upon payment of the amount of \$5 to the co-operative.

**Note.** The rule could instead provide that the fee payable by a member for a copy of the rules is nil (for example, for a copy that is provided electronically to the member). In any case, the fee cannot be greater than the fee that would be charged if the member obtained a copy from the Registrar.

## Part 6 Administrative matters

### 59 Seal (CNL ss49 & 223)

- (1) This rule applies if the co-operative chooses to authenticate a document under the common seal of the co-operative.
- (2) The co-operative's name and registration number must appear on its common seal and any official seal. The common seal must be kept at the registered office in the custody that the board directs.
- (3) The co-operative may have one or more official seals for use outside the State or Territory in place of its common seal. Each of the additional seals must be a facsimile of the common seal with the addition on its face of the name of the place where it is to be used.
- (4) The seal of the co-operative must not be affixed to an instrument other than under a resolution of the board. Two directors, or one director and the secretary, must be present and must sign all instruments sealed while they are present.

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

- (1) Members of the co-operative have free access to the records and registers referred to in section 214 (1) of the Law and they may make a copy of any entry in the registers free of charge.

**Note 1.** The rule may instead specify an amount payable for making an entry in the registers. The amount cannot exceed the amount set down in either the National Regulations applying in this jurisdiction or in local regulations.

**Note 2.** Members and other persons accessing records and registers under section 214 of the Law are restricted in the use of any information obtained.

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

## 61 Safe keeping of securities

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

## 62 Notices to members (CNL s611)

- (1) This rule applies in addition to section 611 of the Law regarding how a notice or other document may be given to a member of the co-operative.
- (2) A notice or other document required to be given to a member of the co-operative may be given by the co-operative to any member by any form of technology (for example, by fax or email), where the member has given consent and notified the co-operative of the relevant contact details.

**Note.** Legislation relating to electronic transactions may also be relevant to the giving of notices or other documents.

- (3) If a notice is sent by post, service is taken to be effected at the time at which the properly addressed and prepaid letter would be delivered in the ordinary course of post. In proving service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (4) A notice forwarded by some other form of technology is taken to have been served, unless the sender is notified of a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.
- (5) A notice may be given by the co-operative to joint members by giving the notice to the joint member named first in the register of members.
- (6) A notice may be given by the co-operative to the person entitled to a share in consequence of the death, incapacity or bankruptcy of a member by sending it through the post in a prepaid letter addressed to that person by name. Alternatively, it can be addressed to the person by the title of representative of the deceased or incapacitated person, or trustee of the bankrupt, or by any like description, and:
  - (a) the address should be that supplied for the purpose by the person claiming to be entitled; or
  - (b) if no such address has been supplied, the notice can be given in the manner in which it could have been given if the death, incapacity or bankruptcy had not occurred.

## Part 7 Accounting and financial matters

### 63 Financial year

The financial year of the co-operative ends on \_\_\_\_\_ (*insert day and month*).

## 64 Accounts

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

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

**Note 1.** If a co-operative is a small co-operative in a particular financial year, there is no requirement to appoint an auditor, unless the co-operative is directed to prepare audited or reviewed financial statements by its members or by the Registrar. A small co-operative may choose to appoint an auditor or a reviewer to have its financial statements to members either audited or reviewed each financial year where there is no direction from members or the Registrar.

**Note 2.** A review may be carried out by a person who:

- is a member of the Institute of Chartered Accountants in Australia and holds a Certificate of Public Practice issued by that body
- is a member of CPA Australia Ltd and holds a Public Practice Certificate issued by that body
- is a member of the Institute of Public Accountants and holds a Professional Practice Certificate issued by that body

**Note 3.** Large co-operatives are required to appoint an auditor in accordance with the procedures under the Law. A large co-operative is one that is not classified as a small co-operative under the National Regulations.

**Note 4.** The following rule is suitable for a small co-operative that wishes to require its financial statements be either audited or reviewed.

- (5) The co-operative must appoint an auditor / a reviewer (*strike out whichever is not applicable*) in respect of its financial statements.

- (6) An auditor / a reviewer (*strike out whichever is not applicable*) appointed under this rule is to conduct an audit / review (*strike out whichever is not applicable*) of the co-operative's financial statements as presented to members.
- (7) The appointment of an auditor / a reviewer (*strike out whichever is not applicable*) under this rule is to be made at an annual general meeting.
- (8) The co-operative may appoint another auditor / reviewer (*strike out whichever is not applicable*) at a subsequent annual general meeting if there is a vacancy in the office of the auditor / reviewer (*strike out whichever is not applicable*).
- (9) The provisions of section 300(2) of the Law apply to an auditor / a reviewer (*strike out whichever is not applicable*) appointed under this rule in the same way (but with any necessary adaptations) as they apply to an auditor appointed for a large co-operative.

**Note.** See section 310 of the Law regarding the removal and resignation of auditors.

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

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

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

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

## **68 Provision for loss**

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

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

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

**Note.** The financial reports or statements required by the Law to be given to members vary according to the size of a co-operative in a given year. Large co-operatives are required to prepare and lodge with the Registrar full audited financial reports as set out in Part 3.3 of the Law. Small co-operatives are not required to lodge financial reports with the Registrar but are required to lodge an annual return under section 293 of the Law and provide members with basic minimum financial statements set out in the National Regulations. If the basic minimum reports prescribed in the National Regulations are not considered sufficient for a particular co-operative, the rules may include additional financial statements or information.

## Part 8 Winding up

### 70 Winding up (CNL Part 4.5)

**Note.** A non-distributing co-operative is prohibited from distributing any surplus to members either during its operations or when it is wound up. If there are surplus funds after winding up, those funds must be given to another entity that also prevents distribution to its members. The co-operative may specify this entity in its rules and if the entity, for some reason, no longer exists when the co-operative is wound up, then the rule can provide a process for determining an alternative recipient of the funds.

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

**Note.** If the co-operative does not wish to specify an entity to receive any surplus after winding up, the following subrule is suitable:

(4) If, on the winding up or dissolution, there remains any property after the satisfaction of all its debts and liabilities, this must not be paid to or distributed among the members of the co-operative but must be given or transferred to an institution or institutions:

- (a) with objects similar to those of the co-operative; and
- (b) whose constitution prohibits the distribution of its property among its members; and
- (c) chosen by the members of the co-operative at or before the dissolution or, in default, by a judge of the court with jurisdiction in the matter.