

# RULES OF bHive Bendigo Co-operative Ltd

## Non-Distributing Cooperative with Share Capital

Registration Number G0003584W

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## Table of Contents

PREAMBLE.....	4
How our members use these rules.....	4
Category 1 Preliminary.....	6
1 Application of these rules.....	6
2 Definitions.....	6
3 Name of the co-operative (CNL ss220–222 & 224).....	8
3A Website of the co-operative.....	8
3B Use of electronic means of communication in the co-operative.....	8
Category 2 Membership.....	9
Division 1 Membership generally.....	9
4 Active membership provisions (CNL ss112(2), 144, 148 & 156–166).....	9
5 Qualifications for membership (CNL s112).....	9
6 Entry fees and regular subscriptions (CNL s124).....	10
7 Membership applications.....	10
8 When membership ceases (CNL s117).....	11
9 Expulsion of members (CNL s117).....	11
10 Resignation of members (CNL s117).....	12
11 Monetary consequences of expulsion or resignation (CNL s128).....	12
12 Suspension of members.....	13
Division 2 Dispute resolution.....	13
13 Disputes and mediation (CNL s129).....	13
Division 3 Members' liability.....	15

14 Fines payable by members (CNL ss56 & 126) .....	15
15 Liability of members to co-operatives (CNL ss117(2) & 121) .....	15
Division 4 Shares .....	15
16 Capital and shares (CNL ss76–82) .....	15
17 Calls on shares.....	16
18 Repurchase of members' shares (CNL ss99, 107, 109 & 118) .....	17
19 Transfer of shares (CNL ss100 & 101) .....	17
20 Effect of sale, transfer or disposal of shares (CNL ss232 & 233) .....	18
Division 5 Member cancellations.....	18
21 Forfeiture and cancellations—inactive members (CNL ss156–163).....	18
22 Forfeiture of shares (CNL s109) .....	18
23 Forfeited shares—liability of members .....	19
Division 6 Deceased or incapacitated members.....	19
24 Death of member (CNL ss93 & 102–106) .....	19
25 Rights and liabilities of members under bankruptcy or mental incapacity (CNL ss95, 96 & 117) .....	19
26 Entitlements and liabilities of person registered as trustee, administrator etc.....	20
Division 7 Transfer of securities other than shares .....	20
27 Transfer and transmission of debentures.....	20
28 Issue of CCUs (CNL ss345–354) .....	21
29 Transfer and transmission of CCUs .....	21
Category 3 General meetings, resolutions and voting .....	21
30 General meetings (CNL s252).....	21
32 Notice of general meetings and member resolutions .....	22
33 Business of the AGM .....	22
34 Quorum at general meetings .....	23
35 Chairperson at general meetings.....	24
36 Attendance and voting at general meetings (CNL ss228 & 256) .....	24
37 Voting on a show of hands.....	25
38 Voting on a poll .....	26
39 Determining the outcome where equality of votes (s228) .....	26
40 Proxy voting (s229).....	26
41 Postal ballots (other than special postal ballots) (CNL ss247 & 250) .....	26
42 Special postal ballots (CNL ss248 & 249) .....	27

43 Special resolutions (CNL ss238–241) .....	28
43A Minimum member participation for Collective Equity Resolution .....	28
Category 4 Board of directors .....	29
44 Board (CNL s172).....	29
45 Qualifications of directors (CNL s174) .....	29
47 First directors and terms of office (CNL ss173 & 179) .....	29
47A Retiring Directors .....	30
47B Election of Directors .....	30
48 Removal from office of director (CNL s180) .....	31
49 Vacation of office of director .....	31
50 Casual vacancies and alternate directors (CNL ss173 & 177) .....	31
51 Remuneration of directors (CNL s203) .....	32
52 Proceedings of the board (CNL ss175 & 176) .....	32
53 Quorum for board meetings (CNL s175).....	32
54 Chairperson of board .....	33
55 Delegation and board committees (CNL s178) .....	33
57 Minutes of board and other meetings.....	33
Category 5 Rules .....	34
58 Amendments and copies of rules (CNL ss57 & 60–63).....	34
Category 6 Accounts and Administration .....	34
61 Safe keeping of securities .....	34
62 Notices and other documents to members (CNL s611).....	34
63 Financial year .....	35
64 Accounts.....	35
64A Gift fund.....	36
65 Member financial statements and audit .....	36
67 Surplus or reserves not to be distributed to members .....	37
68 Provision for loss .....	37
Category 7 Winding up.....	37
70 Winding up (CNL Part 4.5).....	37
71 Distribution of surplus assets on winding up.....	38

## **PREAMBLE**

The bHive Cooperative is a community owned person-to-person sharing economy platform. Our digital platform allows people to create, own and run sharing enterprises, providing access to shared local goods and services.

Due to the bHive platform being housed online these rules are based on our members having online access and all membership and governance communication will be managed electronically. These rules reflect this online operating environment.

### **Please note:**

- In light of communications being online based there is no official 'seal' used within the bHive Co-operative
- A full set of policy documents are available to members

### **How our members use these rules**

The constitution of your co-operative is a set of rules that apply specifically to your co-operative. The rules set out how it operates internally, the governance structure, meetings and voting. Most importantly like any contract, it specifies what the co-operative will be doing and how members will work with their co-operative and how they work with each other.

As a non-distributing co-operative there are clear restrictions on the return of any profits or surplus to members in these rules and under the law.

All co-operatives are subject to the legal system like any other organisation. Do not treat the rules as though they are the only requirements that impact on how a co-operative operates both internally and in business. Co-operatives are required to abide by all laws, including the law under which they are registered.

The registration of co-operatives is governed by the legislation that forms a uniform national code called the Co-operatives National Law or the CNL. This law adopts the Co-operative Principles developed by the International Co-operative Alliance. The Co-operative Principles provide a guidance for co-operative legislation and how co-operatives should operate. In brief they are:

1. Voluntary and open membership
2. Democratic member control
3. Member economic participation
4. Autonomy and independence
5. Education, training and information
6. Co-operation among co-operatives, and
7. Concern for the community

The full text of the co-operative principles can be accessed on the International Co-operatives Alliance website [www.ica.coop](http://www.ica.coop)

Where there are specific requirements under the legislation and those requirements impact on how your rule operates, the rules will have a note or signpost to the relevant legislation. These rules do not contain all of the legal operating requirements, you will need to become familiar with the relevant law for your co-operative.

### **Rules can be changed**

At the point of start-up, it is not possible to prepare a rule to deal with every possible contingency or event. As your co-operative begins its operations and grows, you may need to consider new rules and review existing rules to deal with new situations. The process for changing the rules is governed both by the relevant legislation and these rules.

### **How the rules are arranged**

These rules are designed to suit a non-distributing co-operative. Rules are arranged under categories. Each category is accompanied by a broad description along with reference to how this relates to the legislation.

The categories are:

Category 1 - Preliminary

Category 2 - Membership

Category 3 - General meetings, resolutions and voting

Category 4 - Board of directors

Category 5 - Rules

Category 6 - Accounts and administration

Category 7 – Winding up

Some rules will be accompanied by a note. These notes are not the rules, they merely provide operational guidance and references to relevant legislation.

## Category 1 Preliminary

### 1 Application of these rules

These rules are the rules of the *bHive Bendigo co-operative Ltd*

### 2 Definitions

(1) In these rules:

**attend** means physical attendance and attendance using electronic means as approved by the board of the co-operative under rule 3B.

**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.

**corporate member** means a locally owned sharing economy enterprises, and charities registered with the Australian Charities and not for Profit Commission.

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

**Electronic Communications Policy** is a policy set by the board of the co-operative that sets out the electronic means of communications between the co-operative and members.

**Good Governance Policy** is a policy set by the board of the co-operative that sets out minimum standards of governance by the board.

Either of the words **Law** or **Act** means the co-operatives legislation applying in this jurisdiction. co-operatives legislation applying in this jurisdiction means:

- for co-operatives registered in all States and Territories, the *Co-operatives National Law* or CNL.

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

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

**peer-to-peer** means the matching of individuals with a service to offer with others who could use that service

**place based** means a general planning approach, which emphasizes the characteristics and meaning of places as a fundamental starting point for planning and development.

**Platform User Agreement** means an agreement between a member and the co-operative setting out the terms of use of the online platform of the co-operative.

**present** means physical presence and presence through electronic means as approved by the board of the co-operative under rule 3B.

**sharing economy** means an economic system of decentralised networks and marketplaces that unlocks the value of underused assets by matching needs and haves, in ways that bypass middlemen.

**sharing economy business** means businesses whose core business idea involves unlocking the value of unused or under-utilized assets whether it's for monetary or non-monetary benefits.

#### **small co-operative**

A co-operative is defined as a small co-operative for a particular financial year if:

- **it does not issue shares to more than 20 prospective members** during that year; or, if it has done this, the amount raised by the issue of those shares does not exceed \$2 million

**and**

- it does not have securities on issue to non-members during that year, other than:
  - shares in the co-operative; and
  - securities issued in respect of the co-operative's obligations under section 163 of the Co-operatives National Law

**and**

it satisfies **at least 2** of the following criteria:

- The consolidated revenue of the co-operative and the entities it controls (if any) is **less than \$8 million** for the previous financial year.
- The value of the consolidated gross assets and the entities the co-operative controls (if any) is **less than \$4 million** at the end of the financial year.
- The co-operative and the entities it controls (if any) had **fewer than 30 employees** at the end of the financial year. In counting employees, part-time employees are to be taken into account as an appropriate fraction of a full-time equivalent. For example, four half-time employees should be counted as two employees.

Consolidated revenue and the value of consolidated gross assets are to be calculated in accordance with accounting standards in force at the relevant time (even if the standard does not apply to the financial year of some or all of the entities concerned). For further information go to [consumer.vic.gov.au/co-operatives](http://consumer.vic.gov.au/co-operatives).

**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 bHive Bendigo Co-operative Ltd.

**software technology platform** means software that matches individuals with services, the guidelines/rules/regulations, and the payment/remuneration mechanisms.

**website of the co-operative** means the website of the co-operative according to rule 3A of these rules.

**year** means the co-operative's financial year as defined in these rules ([Rule 63](#)).

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 co-operatives legislation applying in this jurisdiction, unless they are specifically defined elsewhere in these rules.

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

The name of the co-operative is *bHive Bendigo co-operative Ltd.*

### **3A Website of the co-operative**

Unless the board passes a motion declaring otherwise, the website of the co-operative is [www.bhive.coop](http://www.bhive.coop).

### **3B Use of electronic means of communication in the co-operative**

- (1) The board shall set out the electronic means of communication in the co-operative in an Electronic Communications Policy, which shall include:
  - (a) Giving of notice to members;
  - (b) Receiving notice from a member;
  - (c) Electronic attendance and participation at board, as well as general (including annual and special general meetings) of the co-operative;
  - (d) Electronically communicated voting at board meetings and annual and special general meetings of the co-operative;
  - (e) Electronically communicated ballot papers and electronically communicated voting in a postal ballot;
  - (f) Recording of minutes of meetings; and
  - (g) Any other communications in the co-operative that the board wishes to include.
- (2) The co-operative must inform a person applying for membership of the co-operative of the Electronic Communications Policy and receive the relevant information from the person applying for membership to enable communication.

- (3) The co-operative must inform members of changes to the Electronic Communications Policy and any consent and information that needs to be provided by members to the co-operative as a consequence.  
**Note.** Acceptance of the Electronic Communications Policy is a membership qualification. This rule should be read alongside rule 62 of these rules.

## Category 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:

- (a) Develop and operate a software technology platform that provides member access to place-based, peer-to-peer business and community services
- (b) Provide services to support the development of sharing economy businesses and their operation on the the software technology platform
- (c) Allocate surplus funds from the operation of the co-operative for charitable purposes.

(2) Active membership requirements

A member must:

- (a) Pay any entry fee and or subscription fee as set from time to time by the board; and
- (b) Be able to access bHive software technology

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)

(1) A person qualifies for membership of the co-operative if the person:

- (a) Is able to use or contribute to the services of the co-operative.
- (b) Expressly agrees to support the values and principles of the co-operative movement (as set out in the Statement of co-operative Identity published by the International Co-operative Alliance);
- (c) Accepts that, subject to any requirements of the Law, the co-operative will use the electronic means of communication as set out in rule 3B of these rules and provides the email address or other contact details that are necessary for electronic communication between the member and the co-operative;

- (d) Accepts the User Agreements of platforms developed by the co-operative. Without otherwise limiting the terms, the Platform User Agreements developed by the board must:
  - (i) Comply with the co-operative values and principles (as adopted by the International Co-operative Alliance);
  - (ii) Set out minimum standards of online behavior; and
  - (iii) Set out any disciplinary procedures and consequences for breaches of these minimum standards including consequences for the user as a member of the co-operative in accordance with these rules.

- (2) Corporate members (locally owned sharing economy enterprises, and charities registered with the Australian Charities and not for Profit Commission) qualify for membership of the co-operative if the corporate member is able to use and contribute to the services of the co-operative.

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

- (1) The entry fee for an application for membership may be set from time to time by the Board and published at the registered office or on the website of the co-operative. Different entry fees may be set for individual and corporate members.
- (2) The regular subscription (also known as a periodic membership fee) is to be determined from time to time by the board and published at the registered office or on the website of the co-operative. Different periodic membership fees may be set for different service packages.

## **7 Membership applications**

- (1) Applications for membership must be lodged via our website 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.
- (7) Corporate representation
- (a) Where a corporate member is a member of the co-operative, that corporate member may from time to time in such manner as the board directs, appoint a corporate representative to represent in respect of its membership.

## **8 When membership ceases (CNL s117)**

- (1) A person will cease to be a member of the co-operative in each of the following circumstances and as otherwise provided by the Law if:
- (a) the person's membership is cancelled in accordance with these rules or the Law;
  - (b) the member is expelled or resigns under these rules;
  - (c) the contract of membership is rescinded on the ground of misrepresentation or mistake;
  - (d) for a member that is a corporation, the corporation is deregistered;
  - (e) for a member who is a natural person and the member dies;
  - (f) the member's total shareholding is transferred or sold to another person under these rules and the name of the transferee is entered in the register of members in respect of the shareholding;
  - (g) the member's total shareholding is forfeited under the Law or these rules;
  - (h) the member's total shareholding is purchased by the co-operative under the Law; or
  - (i) the amount paid up on the member's shares is repaid to the member under these rules.
- (2) Except as otherwise provided by the Law a person will not cease to be a member of a cooperative if the person:
- (a) becomes bankrupt and their property is subject to control under laws relating to bankruptcy; or
  - (b) is a corporate member that becomes insolvent and subject to control under laws relating to the insolvency.

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

- (1) A member may be expelled from the co-operative by resolution of the board at a meeting to the effect that:
- (a) the member has seriously or repetitively failed to discharge the member's obligations to the co-operative under these rules or, or a contract entered into with the co-operative; or
  - (b) the member has seriously or repetitively breached the Platform User Agreement (Code of Conduct); or
  - (c) 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 board resolution must be given to the member at least 7 days before the date of the meeting at which the resolution is to be moved, and the member must be given a reasonable opportunity of being heard at the meeting.

- (3) At the board meeting when the resolution for expulsion is proposed the following procedures apply:
  - (a) 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 board may decide on the evidence before it, despite the absence of the member;
  - (b) Once the alleged conduct is considered, the board may decide to expel the member concerned;
  - (c) A motion for the decision is not taken to be passed unless two-thirds of the directors present vote in favour of the motion.
- (4) An expelled member must not be re-admitted as a member unless the re-admission is approved by special resolution of the co-operative.
- (5) A member re-admitted must not have restored to them any shares that were cancelled on their expulsion.

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

- (1) A member may resign from a co-operative by giving 28 days 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.
  - (c) may be converted to a CCU to be paid within ten years from the date of expulsion or resignation
- (7) If a member who is expelled or who resigns has prepaid an annual subscription, and
- (a) the amount of the annual subscription is less than \$200 the co-operative may retain the whole of the prepaid annual subscription; or
  - (b) the amount of the annual subscription is greater than \$200 the co-operative must refund a pro-rated amount for the remainder of the subscription period less any reasonable costs incurred in administering a refund.

## **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

## **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.
- (15) In this rule the word **member** includes any person who was a member not more than 6 months before the dispute occurred.

**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) No fines are to be imposed on members in any circumstances.

### **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) Rights and liabilities of members who are bankrupt, insolvent or otherwise incapable

(a) The shares of an individual member who becomes bankrupt or a corporate member who becomes insolvent may be transferred to the member's trustee, administrator or liquidator, as the case may be, in accordance with the laws dealing with such events.

(b) A legal personal representative appointed to administer the affairs of a member who, through mental or physical incapacity, is incapable of managing their affairs, may be registered as the holder of the member's shares and the rights and liabilities of membership vest in the legal personal representative during the period of the appointment.

(c) The liabilities attaching to the shares of a member under bankruptcy, insolvency or mental or physical incapacity continue in accordance with the Law.

(d) The board may decide to suspend some or all active membership obligations where a legal personal representative has been appointed for a member, if there are grounds to believe that the member's mental or physical incapacity is temporary.

**Note:** If a member becomes bankrupt (natural person) or insolvent (corporate member) or incapable of managing their affairs, then various laws provide that another qualified person will take charge of that person's financial affairs. For a bankrupt it is usually a trustee in bankruptcy, for person who is mentally or physically incapable, it will be a legal personal representative, for a corporate member it will be either an administrator or liquidator who is substituted as the person with authority to deal with that person's financial affairs. Normally only persons who are active members are permitted to hold shares, the Law provides for an exception in these cases by allowing the substitution of an administrator, liquidator or trustee as the case may be, to be the legal 'owner' of the shares and do whatever is necessary to deal with the shares.

## **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 \$10 each.

(2) A member must hold a minimum of one share in the co-operative and must not hold or have a relevant interest in more than 20% of the nominal value of issued share capital of the co-operative unless permitted to do so under section 363 of the Law.

(3) No share is to be allotted unless 100% of the nominal value of the share has been paid.

**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.

## **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) 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.
- (6) 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.
- (7) 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.
- (8) The board may accept from a member all or part of the money uncalled and unpaid on shares held by the member.

- (9) 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.
- (2) A member who wishes the co-operative to repurchase any shares must do so by submitting a request in a form approved by the board.
- (3) The board of the co-operative must consider each request for repurchase in accordance with the Law and cancel and 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 a form approved by the board
- (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 \$80 (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 three years; or
  - (a) the member is not presently active and has not been active within the meaning of rule 4 in the past three 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**

- (1) Value of interest of deceased members
  - (a) The value of the interest of a deceased member, is the amount that would have been payable to the member if the member had resigned.

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

- (1) The legal personal representative of a deceased member may apply to the board for a transfer of the deceased member's shares in a form approved by the board:

### **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) Entitlements and liabilities of persons registered as trustee, administrator etc
  - (a) A person who is entitled to hold shares in the co-operative, because of the death, bankruptcy, insolvency or incapacity of a member, is entitled to the dividends and other advantages of membership of the co-operative, other than the right to vote, as soon as their entitlement arises. The person entitled to hold the shares may only exercise the right to vote if that person is registered as a member of the co-operative.
- (2) A person referred to in paragraph 1 of this rule who is registered as the holder of shares in the co-operative has the same liabilities in relation to the shares as the member on whose behalf the shares are held.
- (3) The board has the same right to decline or to suspend registration of a share transfer by a person referred to in paragraph 1 of this rule as it would for a share transfer by a member.

## **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 \$ 100 (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 a form approved by the board:

## **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 a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs.

(3) The rights of the holders of CCUs may be varied only in the way and to the extent provided by their terms of issue and only with the consent of at least 75% of those holders of CCUs who, being entitled to do so, cast a formal vote to accept the variation at a meeting.

(4) The holder of a CCU has, in the person's capacity as a holder of a CCU, none of the rights or entitlements of a member of the co-operative.

(5) The holder of a CCU is entitled to receive notice of all relevant meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative.

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

## **29 Transfer and transmission of CCUs**

(1) Subject to subrule (2), the transfer and transmission of a CCU is to follow the same process as for a debenture under rule 27.

(2) If the terms of issue of a CCU differ from rule 27 in respect of the manner of transfer or transmission, the terms of its issue prevail.

## **Category 3 General meetings, resolutions and voting**

### **30 General meetings (CNL s252)**

(1) 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.

**Note:** Rule 31 'Members power to requisition a general meeting' is now incorporated into rule 32

### **32 Notice of general meetings and member resolutions**

- (1) At least 14 days' notice of a general meeting must be given.
- (2) The period of notice is calculated by starting from the day after the notice is served or taken to be served, and is taken to include the day on which the meeting is to be held.
- (3) Notice must be served on each member of the co-operative and any other persons who are entitled to receive such notices under the Law.
- (4) The notice must state the place, day and hour of the meeting and if the meeting is to be conducted via the use of technology, the notice must include instructions about how to attend the meeting.

**Note:** Refer also to **rule 5.6** regarding attending meetings and **rule 6.9** regarding notices and other documents to members.

- (5) The notice must state what ordinary business is to be considered, and, if there is to be any special business, the general nature of any special business.
- (6) The notice must also include any business that members have notified their intention to move at the meeting provided that paragraph 7 of this rule has been complied with.
- (7) Members who together are able to cast at least 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 that requires a decision by the members at a general meeting, must serve written notice of it on the co-operative.
- (8) If the co-operative has been served with notice under paragraph 7 of this rule the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is served or taken to be served.

**Note 1:** For a special resolution it is necessary to give at least 21 days' notice. See **rule 5.12** for special resolutions. 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.** 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.

### **33 Business of the AGM**

- (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) (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 considered or decided at a general meeting unless a quorum of members is present .
- (2) If the number of active members is less than or equal to 10, the quorum is 5 active members.
- (3) If the number of active members is more than 10, then the greater of
  - (a) 6 active members, or
  - (b) 20% of the active membership,

constitutes a quorum.

- (4) A member is present for the purpose of these rules if the member is entitled to vote and
  - (a) is physically present,
  - (b) is represented by their legal personal representative or corporate representative, or
  - (c) is attending via video link or other technology that enables the member to participate in the proceedings.
- (5) A proxy given to another member does not entitle the person giving the proxy to be counted as a member who is present for the purposes of paragraph 2 of this rule.
- (6) If within half an hour after the appointed time for the meeting a quorum is not present, the meeting:
  - (a) if convened upon the requisition of members, is abandoned; and
  - (b) in any other case is to be adjourned to the same day and time in the next week at the same place; or
  - (c) the Chairperson announces that written notice will be given as to an alternative day time or place and the meeting is then adjourned.
- (7) 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 cooperative.
- (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.
- (4) 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.
- (5) It is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting unless the meeting is adjourned for 14 days or more, in which case notice of the adjourned meeting must be given just as for the original meeting.

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

- (1) The right to vote attaches to membership and not shareholding.
- (2) 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.

- (3) Subject to sub rules (3) and (4), a question for decision at any general meeting must be decided on a show of hands of members present at the meeting.
- (4) A poll may be demanded on any question for decision.
- (5) 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 sub rule (4), 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**

- (1) On a show of hands called at a general meeting, each member
- (a) who is present in accordance with rule 5.4.4 or
  - (b) who is represented by a proxy (but only if proxies are allowed under these rules)
- may exercise one vote.

**Note.** Nothing in this rule precludes the use of electronic means to allow members to 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.

### 38 Voting on a poll

- (1) On a poll called at a general meeting, each member
  - (c) who is present in accordance with rule 5.4.4 or
  - (d) who is represented by a proxy (but only if proxies are allowed under these rules)may exercise one vote.

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

- (1) This rule applies where the votes in favour and against a resolution are equal.
- (2) If the chairperson of the meeting is a member of the co-operative, he or she may exercise a second or casting vote used in line with the appropriate policy.
- (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 voting (s229)

- (1) For the purposes of this rule:
  - (a) a **directed proxy** is a document appointing a person to vote on behalf of a member and where the document specifies how the member's vote is to be cast on a particular matter, and
  - (c) Voting may be by proxy at a general meeting.
- (2) The document appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (3) A document appointing a proxy may only appoint a person who is an active member of the co-operative as a proxy.
- (4) If the document appointing the proxy is a directed proxy the proxy is not entitled to vote on the resolution other than as directed in the proxy document.
- (5) A person may be appointed as a proxy by no more than 5 members where the proxy is an directed proxy.
- (6) A document appointing a proxy is not valid unless it is delivered (either by post or electronic means), to the registered office of the co-operative at least 48 hours before the time for holding the meeting or any adjournment of that meeting. If the document appointing a proxy is signed by a member's attorney, a copy of the attorney's authority to appoint a proxy should also accompany the proxy appointment.
- (7) A vote given in accordance with a directed proxy is valid unless the co-operative receives notice in writing at its registered office of the death or unsoundness of mind of the appointer, or revocation of that directed proxy, before the start of the meeting or adjourned meeting at which the proxy document is used.

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

- (1) For the purposes of this rule:
  - (a) a **postal ballot** includes a ballot conducted by the use of technology such as email or other voting software, and
  - (b) a **ballot paper** means a ballot paper in paper or electronic form.

- (2) A postal ballot may be held in respect of any matter that may be decided by the members at general meeting, under rule 32.
- (3) In determining whether to hold a postal ballot on a matter for decision by members, the board must take into consideration the following matters:
  - (a) whether a postal ballot would facilitate a more democratic decision by members, and
  - (b) whether a postal ballot is time and cost effective.
- (4) A postal ballot must be held in respect of a matter that may be decided by members, where members who together are able to cast at least 20 % of the total number of votes able to be cast at a meeting of the co-operative, requisition the board to conduct the vote by postal ballot.
- (5) The board may determine in a particular case whether the matter to be decided by postal ballot should be a secret ballot and whether votes may be returnable by or other electronic means or both.
- (6) If electronic means for voting are used, members who have limited or no access to the electronic means, must not be prejudiced in any way and must have reasonable opportunity to be advised of the postal ballot and to consider, record and return their vote.
- (7) 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.
- (8) Ballot papers (in such form and with such content as the board may approve) must be sent to all voting members giving:
  - (a) particulars of the business in relation to which the postal ballot is being conducted; and
  - (b) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
  - (c) notice of the closing date and closing time of the postal ballot; and
  - (c) must be sent to members so that they arrive 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)

- (1) For the purposes of this rule:
  - (a) a **special postal ballot** includes a ballot conducted by the use of technology such as email or other voting software, and
  - (b) a **ballot paper** means a ballot paper in paper or electronic form.
- (2) Where a special postal ballot is required under the Law, the board may determine in a particular case whether the special postal ballot should be a secret ballot and whether votes may be returnable by electronic means or both.
- (3) If electronic means for voting are used, members who have limited or no access to the electronic means, must not be prejudiced in any way and must have reasonable opportunity to be advised of the special postal ballot and to consider, record and return their vote.
- (4) The board is to appoint a returning officer to conduct the special postal ballot. In default of such an appointment, the secretary is the returning officer.
- (5) Ballot papers (in such form and with such content as the board may approve) providing:
  - (6) particulars of the business in relation to which the special postal ballot is being conducted;
  - (7) all documents required for special postal ballots as set out under the Law; and
  - (8) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
  - (9) notice of the closing date and closing time of the special postal ballot.
- (10) Ballot papers must be sent to all voting members so that they arrive at least 28 days before the closing date of the special postal ballot.

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

- (1) 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 in the case of a special postal ballot).
- (2) The notice of special resolution must state:
  - (a) the intention to propose the special resolution; and
  - (b) the wording of the proposed special resolution; and
  - (c) the reasons for proposing the special resolution; and
  - (d) the effect of the special resolution being passed.
- (3) A special resolution is passed if:
  - (a) a. two-thirds of the active members who cast a vote, vote in favour of the resolution at a general meeting or in a postal ballot of members; or
  - (b) b. three-quarters of those active members who cast a vote, vote in favour of the resolution in a special postal ballot of members.

### 43A Minimum member participation for Collective Equity Resolution

- (1) Notwithstanding anything to the contrary in these Rules, a Collective Equity Resolution will, for all purposes, be approved only if (and will be deemed not to have been approved unless):
  - (a) in the case of a postal ballot conducted for the purpose of the Collective Equity Resolution, greater than 50% of all active members cast a formal and valid vote and requires a 75% majority for the vote to be passed; and
  - (b) in the case of a Collective Equity Resolution put to a general meeting, greater than 50% of all active members vote on the resolution in person or by proxy and requires a 75% majority for the vote to be passed;.
- (2) “**Collective Equity Resolution**” means any resolution put to members for:
  - (a) the approval of the making of an offer to which Division 2 of Part 1 of Chapter 3 of the Act applies;
  - (b) an agreement to a compromise or arrangement between the Co-operative and any of its Members under Part 4 of Chapter 4 of the Act;
  - (c) the approval of the making of an application for a merger or transfer of engagements, as contemplated in Division 1 of Part 3 of Chapter 4 of the Act;
  - (d) the approval of the making of an application for the Co-operative to become registered or incorporated, under legislation or law other than the Act, as contemplated in Division 2 of Part 3 of Chapter 4 the Act;
  - (e) the approval of the sale of all or part of the undertaking of the co-operative that relates to its primary activities, the value of which represents 50% or more of the total value of its undertaking;
  - (f) the approval of the winding up of the Co-operative;
  - (g) the approval of an alteration of these Rules to the extent that the alteration has the effect of amending this rule 43A in any manner, including by removal.

## **Category 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 7 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.

**Note.** Rule 46 Chief Executive Officer has been removed

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

- (1) The first directors are those directors who are elected by poll at the formation meeting.
- (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.
- (3) From here, at the annual general meeting, two board positions become vacant and at the annual general meeting in each subsequent year, positions shall become vacant in rotation of two, three and two.
- (4) A retiring director retains office until the close of the meeting at which his or her successor is elected.
- (5) The directors to retire in any one year are, subject to the provisions as to the filling of casual vacancies, those that have been longest in office since their last election and if there are two or more directors who became directors on the same day, those who retire must be determined by lot unless they otherwise agree among themselves.
- (6) A retiring director is eligible for re-election.

## **47A Retiring Directors**

- (1) Retiring directors shall be deemed to be nominated unless a director advises the co-operative at least 28 days before the annual general meeting that he or she does not seek re-election.

## **47B Election of Directors**

- (1) The members of the board are to be elected in the manner specified in this rule.
- (2) 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 shared with members in a form approved by the board 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
    - (iv) the nominee's qualifications and experience; and
    - (v) the nominee's length of any previous service as a director of the co-operative or with any other co-operative.
- (3) If the number of nominees equals the number of vacancies, the nominees must be declared elected at the annual general meeting.

- (4) 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.
- (5) 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.
- (6) 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)**

- (1) 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**

- (1) In addition to the circumstances set out in s179 of the CNL a director vacates office if the director dies or becomes unable to manage their affairs by reason of mental illness.
- (2) The board may appoint a qualified person to fill a casual vacancy in the office of director that arises because of an event referred to in paragraph 1 of this rule or because there were insufficient nominees for election at an annual general meeting.
- (3) A person appointed to fill a vacancy under paragraph 2 of this rule is appointed until the next annual general meeting.

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

- (1) The board may appoint a person to act as a director (an alternate director or deputy director) in the place of an absent director (the principal director).
- (2) A person is not qualified to be appointed as an alternate or deputy 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.
- (3) An alternate or deputy 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).
- (4) An alternate or deputy 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 under these rules or
  - (b) if the alternate or deputy director is removed from office by the board as alternate or deputy director for failure, without its leave, to attend a meeting of the board at which the principal director is absent.

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

- (1) Directors' remuneration must be approved at a general meeting.

**Note:** Co-operatives legislation requires all director fees, remuneration and benefits to be approved by members. Directors may claim expenses relevant to their obligations without member approval.

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

- (1) Meetings of the board 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 to be used in line with the appropriate policy.
- (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 and may be removed by resolution of the board. On a resolution to remove the chairperson, the chairperson is not entitled to cast a vote.
- (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.

## 55 Delegation and board committees (CNL s178)

- (1) The board may, by resolution, delegate any of the board's powers (other than this power of delegation) provided that the delegation;
  - (a) is in writing,
  - (b) is only a delegation of power to a committee that includes a minimum of 2 directors, and
  - (c) the instrument of delegation clearly describes the power delegated and any limitations on the exercise of such delegated power.

**Note:** A co-operative board may establish committees to assist with particular functions in an advisory capacity or they can delegate specific functions to a committee. It is common to establish committees that can concentrate on specialist issues such as marketing or member engagement committee. Committees with delegated power must be overseen carefully by the board where the delegation permits the committee to make arrangements binding on the co-operative. This rule does not apply to a person who is employed by the co-operative. An employee, such as a CEO or General Manager has delegated authority to carry out functions specified in their contract of employment.

**Note.** Rule 56 Other committees has been removed.

## 57 Minutes of board and other meetings

- (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.
- (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.
- (4) 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.

## **Category 5 Rules**

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

- (1) Any amendment of the rules must be approved by special resolution.
- (2) A proposal to amend any rules must be made in a form approved by the board which clearly shows the existing rule or rules concerned and any proposed amendment to those rules.
- (3) A member is entitled to a copy of the rules, including any amendments consolidated into the rules on payment to the co-operative of the following amount:
  - (a) For an electronic copy of the rules – Nil.

## **Category 6 Accounts and Administration**

**Note.** Rule 59 Seal has been removed as the co-operative has chosen not to use a common seal to authenticate documents.

**Note.** Rule 60 Inspection of records and registers has been removed.

### **61 Safe keeping of securities**

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

### **62 Notices and other documents 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 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 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 liquidator as the case may be 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.

### **63 Financial year**

- (1) The financial year of the co-operative ends on 30th June.

### **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) Subject to paragraph 4 of this rule, the operation of any electronic accounts must be restricted so that there is a requirement for authorisation of any electronic transaction by 2 authorised persons.
- (4) The board may determine by resolution that the payment of money in respect of transactions conducted in the ordinary course of the co-operative's business may be executed by 1 authorised person subject to a specified monetary limit set out in such resolution.
- (5) For the purposes of this rule, an **authorised person** is:
  - (a) a director; or
  - (b) a person approved by the board.

## 64A Gift fund

- (1) A co-operative that is endorsed as a Deductible Gift Recipient for a particular purpose or purposes must (if required to do so by the Australian Tax Office) set up and maintain a separate fund to be called a 'Gift Fund' to which gifts of money or property for these purpose/s is to be credited, including:
  - (a) contributions made in relation to a fund-raising event held for these purpose/s and
  - (b) any money received by the co-operative because of those gifts or contributions.
- (2) The Gift Fund must not receive any other money or property.
- (3) The co-operative must only use the gifts or money in the Gift Fund in pursuit of the purpose/s for which Deductible Gift Recipient status is endorsed.
- (4) The co-operative must not use any of the gifts or money in the Gift Fund to satisfy any other debts or liabilities of the co-operative.
- (5) If the co-operative's deductible gift recipient endorsement is revoked (whether or not the co-operative is to be wound up) all surplus assets in the Gift Fund must be transferred, to one or more entities that meet the requirements of rule 6.11.1, as decided by the board.
- (6) The co-operative must maintain a separate bank account for the Gift Fund, and all receipts issued for gifts made to the Gift Fund must state:
  - (a) the name of the co-operative,
  - (b) the Australian Business Number of the co-operative, and
  - (c) the fact that the receipt is for a gift.
- (7) For the purposes of this rule, 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

**Note:** This rule is relevant only if the co-operative obtains deductible gift recipient (DGR) status. It enables the co-operative to ensure that money or gifts received as a result of its DGR status are maintained and accounted for separately from any general funds.

## 65 Member financial statements and audit

- (1) Subject to paragraph 2 of this rule and any other provisions of the Law, the co-operative must provide members with **basic financial statements** no later than 7 days before the Annual General Meeting.
- (2) If the co-operative is directed under the Law to prepare a financial report by members or by the Registrar and the direction requires that the financial report be audited or reviewed, the board must appoint an auditor within one month of the direction.
- (3) An auditor appointed under paragraph 2 of this rule holds office until the financial report prepared as a result of the direction has been audited or reviewed in accordance with the directions and sent to members or the Registrar as directed.
- (4) For the purposes of this rule **basic financial statements** includes:
  - (a) an income and expenditure statement that sets out the appropriately classified individual sources of income and individual expenses incurred in the operation of the co-operative and the assets and liabilities of the co-operative,
  - (b) a balance sheet (including appropriately classified individual assets and liabilities of the co-operative),
  - (c) a statement of changes in equity, and
  - (d) a cash flow statement.
- (5) If the co-operative is a large co-operative under the Law, it must appoint an auditor to prepare financial statements in accordance with the Law.

**Note.** Rule 66 has been removed as is now covered in rule 65.

## **67 Surplus or reserves not to be distributed to members**

- (1) The board may retain all or part of the surplus arising in any financial year from the business of the co-operative to be applied for the benefits of the co-operative.
- (2) The co-operative must not give returns or distributions to members from any operating surplus or reserve.
- (3) The board may allocate part of the surplus in any year from the business of the co-operative to be applied for charitable purposes.
- (4) If the co-operative is wound up, any surplus assets must not be distributed to a member or a former member of the co-operative, unless that member or former member is an organisation or entity described in rule 71.

**Note:** The Law also prohibits the giving of any return or distribution to members. Any surplus assets after winding up must be transferred to another organisation with the same or similar objects.

## **68 Provision for loss**

- (1) 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 material prejudice to the co-operative's solvency.

**Note.** Rule 69 has been removed as it now covered by rule 65.

## **Category 7 Winding up**

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

- (1) The winding up of the co-operative must be in accordance with the Law.
- (2) If the co-operative has established a Gift Fund any debts and liabilities that were incurred as a result of activities lawfully conducted as an acceptable use of the Gift Fund shall firstly be satisfied by assets in the Gift Fund. If there remains any surplus assets in the Gift Fund these must be distributed in accordance with rule 71.
- (3) All remaining debts and liabilities of the co-operative must be satisfied from such other assets of the co-operative that are not part of the Gift Fund.
- (4) If on the winding up or dissolution there is a deficiency, members are liable to contribute towards the deficiency to the extent of any amount unpaid on any guarantee made by the member and any charges payable by the member to the co-operative as required by these rules.

**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.

## **71 Distribution of surplus assets on winding up**

- (1) If the co-operative has obtained Deductible Gift Recipient status for a particular purpose, any surplus assets in a Gift Fund must be distributed to
  - (a) one or more organisations which prohibits the distribution of any surplus assets to its members to at least the same extent as the co-operative, and
  - (b) with similar purposes to the purpose for which the Gift Fund was established, and
  - (b) to which income tax-deductible gifts can be made.
- (2) Subject to the Law and any other applicable Australian laws, or any court order, all other surplus assets remaining after the co-operative is wound up must be distributed to:
  - (a) The Foundation for Rural and Regional Renewal (FRR)
- (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.