

A guide to establishing a co-operative 'community land trust'

Template Rules & Commentary

June 2024

bunya
funded }



CO-OPERATION
HOUSING

Foreword



Co-operation Housing has been assisted to develop these free resources for communities interested in co-operative Community Land Trust models with a grant from The Bunya Fund.

The Bunya Fund is Australia's first co-operative development fund, powered by the investment of established co-ops and mutuals to support new and emerging co-ops and mutuals. It is premised on the idea that co-ops and mutuals will have more social impact by working together.

The work done by Co-operation Housing is a great example where innovative models of co-operation can be fostered to meet contemporary social and economic challenges.

Community Land Trusts are a popular model of perpetually affordable and community-focused housing in the UK, US and Canada but there has been a knowledge gap about whether and how a co-op structure and Community Land Trust could work in the Australian context. These model rules for two types of Community Land Trusts to be established as a co-operative, and the accompanying guide, are intended as a useful guide for future Community Land Trusts wanting to establish as a co-operative.

Melina Morrison
CEO
Business Council of Co-operatives and Mutuals (BCCM)



Foreword



I am Australia's leading academic researcher on community-led and affordable forms of housing such as co-operatives and community land trusts (CLTs). I have worked in partnership with Co-operation Housing on a federally funded Australian Research Council grant, Articulating Value in Housing Co-operatives and have also led research on the applicability of CLT principles in Australia since 2010.

CLTs are non-profit member-based organisations that hold title to land and steward it for the dual purposes of community benefit and permanently affordable housing, including cooperatives. Their broad voting membership provides a strong channel to embed diverse voices into durable visions and transparent mechanisms of appropriate development.

This project by Co-operation Housing addresses a key question of how the core objectives of CLTs and co-operatives can be combined. Currently Australian CLTs are generally establishing themselves as non-profit companies limited by guarantee; however, there are international precedents for CLTs that form using a co-operative structure and CLT-coop partnerships are found in international CLT sectors. Investigation of the possibility of such options in Australia is relevant and useful.

I have thoroughly enjoyed supporting this project in an advisory role.

Professor Louise Crabtree-Hayes | Professorial Research Fellow
Institute for Culture and Society
Western Sydney University

Thank you!



This project was funded by a grant from The Bunya Fund to Co-operation Housing. The co-operative movement has established The Bunya Fund, a co-operative development fund, to grow the next generation of co-operatives and mutuals (and support bold new initiatives from more established co-operatives and mutuals). The Bunya Fund funds education, training, advisory and mentoring to help co-operatives and mutuals take on challenging economic, social, cultural and environmental problems in Australian communities and thrive. The Bunya Fund is administered by the Business Council of Co-operatives and Mutuals (BCCM)

Advisory Group



Louise Crabtree-Hayes
Western Sydney University
[LinkedIn Profile](#)



Katie Innes
BAL Lawyers
[LinkedIn Profile](#)



Kerry Pearse
Housing Matters Action Group Inc
[LinkedIn Profile](#)



Linda Seaborn
Business Council of Co-operatives and Mutuals
[LinkedIn Profile](#)



Eugenie Stockmann
Co-operation Housing
[LinkedIn Profile](#)



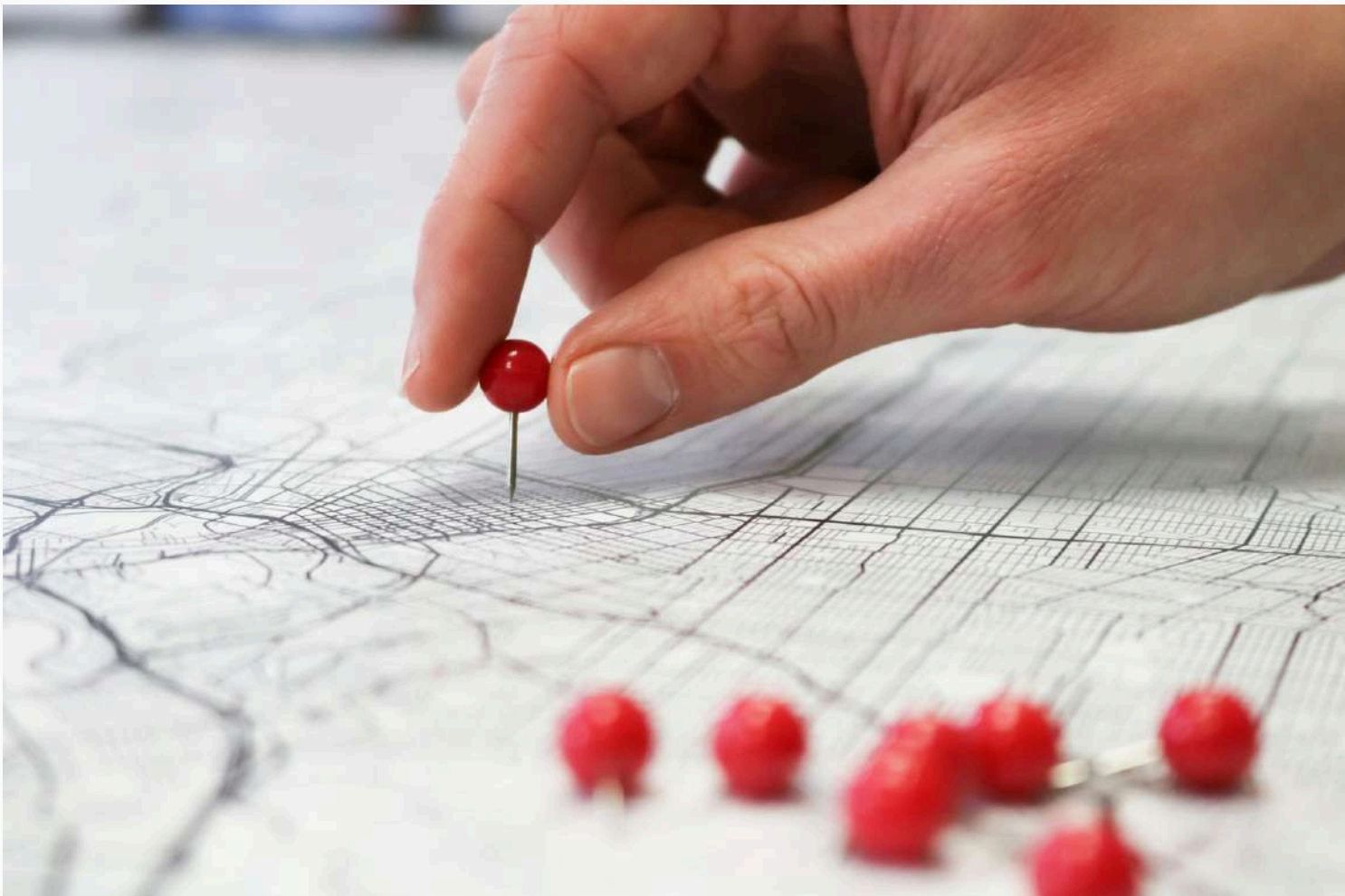
Melinda Marshall
Co-operation Housing
[LinkedIn Profile](#)

Commentary on Template Rules

Introduction

This document provides commentary on the template rules for a non-distributing co-operative with share capital.

Two versions of the rules have been drafted for use by groups wishing to form what is known as a 'community land trust' using a co-operative as the preferred legal structure. The first version is for a Property holder only Model, the second version provides for a Resident & General Member Model.



What is a Community Land Trust

According to the Australian CLT Manual, a ‘community land trust’ or ‘CLT’ is an organisation that provides ongoing affordable housing and other community benefits. CLTs aim to ensure that neither the household nor wider society benefits at the expense of the other. CLTs provide a range of affordable housing that includes resale-restricted home ownership, rental housing and housing cooperatives, as well as other commercial and/or community spaces.

In the “classic” CLT model, long term affordability is achieved by home-owners buying the dwelling only but not the underlying land, which is held by the CLT. Dwelling prices are controlled from excessive capital gain or rent levels through affordability formulas set by each CLT and contained in a ground lease that conveys full land usage rights to the home-owner. When the owner sells their home, the resale price is limited, delivering modest equity gains to the seller while locking in the benefit of subsidies or donations to the CLTs for the next buyer.

While the Classic is perhaps the most well-known version of CLTs, in some jurisdictions, including Australia, the land-building separation is not possible, so long-term leasehold and shared equity are the two main options.

The Australian CLT Manual states that: “CLTs have widespread potential in Australia to: address affordable housing concerns (especially affordable home ownership concerns); increase the range of housing tenure options available; foster community development and social capital; and, maintain a stock of perpetually affordable housing.”

A note on the word Trust

Given that groups are seeking to establish a community land trust, groups should be aware that the word “trust” cannot be used in an entity’s name without express ministerial consent, as it may mislead the public about the legal nature of the co-operative’s activities.

The authors have deliberately chosen not to use the word ‘trust’ in reference to the template rules as that has a legal meaning of its own; rather the use of ‘custodian’ or ‘steward’ might be chosen to convey that the holding of land is for the benefit of present and future generations of persons who use the land.

Co-operatives

A co-operative is an organisation that is owned, controlled and used by its members primarily for the mutual economic, social or cultural benefit. Co-operatives are separate legal entities from its members[1], meaning the co-operative can buy, own or sell property itself, can sue and be sued, and its members are not liable for the co-operative's debts[2]. They are limited liability entities.

Co-operatives promote member development through their participation in governing the organisation, and usually provide social or economic development, such as providing employment or providing goods or services that would not otherwise be available or affordable to the members. Their democratic nature means that all members are equal decision makers, with one vote per member.

Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity. In the tradition of their founders, cooperative members believe in the ethical values of honesty, openness, social responsibility and caring for others. There are seven co-operative principles which serve as guidelines by which co-operatives put their values into practice:

1. Voluntary and Open Membership
2. Democratic Member Control
3. Member Economic Participation
4. Autonomy and Independence
5. Education, Training and Information
6. Cooperation among Cooperatives
7. Concern for the Community

These principles are enshrined in the legislation governing co-operatives.

Except for Western Australia, co-operatives are regulated by the Co-operatives (Adoption of the National Law) Act 2012 (the Co-operatives National Law or CNL), the Co-operatives National Regulations 2013 (the National Regulations) and local (State/Territory) regulations depending on the jurisdiction of incorporation. In Western Australia, co-operatives are regulated by the Co-operatives Act 2009 (WA) (the Co-operatives Act) and the Co-operatives Regulations 2010 (WA). The CNL is a uniform set of state/territory laws designed to eliminate the disparities in the regulation of co-operatives between state and territories.

The Corporations Act 2001 (Cth) (the Corporations Act) also applies to some co-operatives and aspects of the governance of co-operatives as the CNL and the Co-operatives Act borrow drafting from the Corporations Act or, in parts, simply adopts the Corporations Act.

[1] Sections 38 and 42 of the CNL; sections 35 and 39 of the Co-operatives Act 2009 (WA).

[2] Members not liable – s121 of the CNL; section 67 of the Co-operatives Act 2009 (WA).

Each State and Territory Government has a 'Registrar of Co-operatives'. The role of the Register is to authorise the registration of a co-operative, is the entity to whom co-operatives report (for changes to their Rules and their financial reporting) and it is the Registrar who enforces the CNL/Co-operatives Act.

There are three types of co-operatives:

- A distributing co-operative with share capital. Distributing co-operatives may give returns or distributions on surplus or share capital to members.
- A non-distributing co-operative that has share capital. These co-operatives are prohibited from giving returns or distributions on surplus or share capital to members, other than the nominal value of shares at winding up.
- A non-distributing co-operative that has no share capital. These co-operatives are prohibited from giving returns or distribution on surplus to members.

In all co-operatives the right to vote attaches to membership (with one vote per member). In co-operatives which have share capital, members are required to hold the minimum number of shares set by the rules – the number of shares held does not affect voting entitlements. Therefore “members” and “shareholders” are, in essence, the same.

Co-operatives may have external investors (debenture holders, co-operative capital unit holders) but no right to vote in the co-operative's general business attaches to those types of securities. A debenture holder or CCU holder does not need to be member of the co-operative (they can be truly external investors) unless the co-operative has decided that the offer of securities is only open to members.

Why a non-distributing co-operative with share capital?

A non-distributing co-operative with share capital was chosen for the template rules for two primary reasons. First, was to focus on perpetual affordability through a non-distributing model where member returns (in the form of dividends) are prohibited. Second, to create 'buy-in' to the structure and the business, from members, through the obligation to purchase shares in the co-operative (albeit at a nominal value).

CLTs are impacted by funding constraints and this project is an attempt to remedy that constraint, by investigating if and how a co-operative model can enable investment. There is an underlying tension between ensuring affordability and shareholder return.

By choosing a non-distributing co-operative, the intention was to focus on permanent affordability with no return for members but allowing in the rules the ability of the co-operative to raise capital (to purchase or develop property etc) through the issue of debentures or co-operative capital units. Those debenture holders or co-operative capital unit holders may be entitled to a return on their investment (depending on how those securities are structured), but this would need to be subject to:

- 1.the proposed co-operative working through a detailed business case setting out how that return could be generated while maintaining affordability for the residents;
- 2.the Board determining the rights or liabilities which attach to the relevant class of securities and ensuring that the rights or interests of members (whether they are community members or residents) are taken into account; and
- 3.the procedures under the CNL or the Co-operatives Act (for the approval of the issue of such securities) being followed.

Charitable organisations can operate through the non-distributing co-operative structure. With the provisions which prevent surplus being distributed to members, a co-operative can be eligible to obtain charitable status with the Australian Charities and Not-for-Profits Commission (the ACNC) and can be eligible to gain certain tax exemptions. Co-operatives may also be eligible for endorsement as a deductible gift recipient (DGR) in order to accept tax deductible donations, but that will depend on what the co-operative's purpose is.

The template rules have been prepared in a way that the co-operative is a not-for-profit entity. That does not mean that the co-operative will be considered charitable or eligible for DGR endorsement. If you are considering applying for charitable registration or DGR endorsement then you will need to pay particular care to the purposes and primary activities to ensure they meet the tests at law; you may also need additional drafting around gift funds etc.

Two iterations of the Template Rules & Commentary

Two iterations of the rules have been prepared to show the flexibility that a co-operative structure can adopt. Readers should remember that the rules are examples only. These examples serve as a guide or starting point for individual groups to develop their own rules. Each iteration of the template rules is accompanied by a set of commentary/guidance. This commentary has been prepared to help groups make sense of certain sections in the template rules and to help you tailor your own set of rules to the needs and specifications of your co-operative.

The first template has been kept fairly simple. The intention being that these rules are used when the co-operative will be the property holder only (with the rental of the dwellings built on the land managed by a community housing provider or other co-operative housing provider). Hence, only one class of membership has been created that does not distinguish between those residing on the land and those who are part of the community that wish to support perpetual affordability of land.

The second template is more complex and envisions that the co-operative would be the owner of property and its members would be made up of either (1) co-owners or residents of the dwellings on the land, and (2) community members. Hence, there are two classes of membership, rights to appoint directors from each class of members (as well as independent directors) and a restriction on the sale price of property (to maintain affordability).

Further information

For further information on co-operatives see:

- **Business Council of Co-operatives & Mutuals (BCCM):** <https://bccm.coop>
- **Cooperative Housing International:** <https://www.housinginternational.coop/>
- **Australian Co-operative Housing Alliance (ACHA):** <https://acha.coop>
- **The Co-op Federation:** <https://fed.coop/>
- The website for each **State and Territory Registrar of Co-operatives:**
 - **ACT** - Access Canberra <https://www.accesscanberra.act.gov.au/business-and-work/associations-co-ops-and-charities/co-operative-registration>
 - **NSW** - NSW Fair Trading <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives>
 - **NT** - Licensing NT <https://nt.gov.au/industry/start-a-business/key-decisions/business-structures/cooperatives>
 - **QLD** - Office of Fair Trading <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/cooperatives>
 - **SA** - Consumer and Business Services <https://www.cbs.sa.gov.au/sections/ACC>
 - **TAS** - Consumer, Building & Occupational Services <https://www.cbos.tas.gov.au/topics/licensing-and-registration/co-operatives>
 - **VIC** - Consumer Affairs Victoria <https://www.consumer.vic.gov.au/licensing-and-registration/co-operatives>
 - **WA** - Department of Energy, Mines, Industry Regulation and Safety <https://www.commerce.wa.gov.au/consumer-protection/co-operatives>

For further information on community land trusts see:

- ‘**The Australian Community Land Trust Manual**’ by L Crabtree, H Blunden et al (2013) (University of Western Sydney) (referred to elsewhere in this commentary as the “CLT Manual”).
https://www.westernsydney.edu.au/_data/assets/pdf_file/0006/600567/Australian_CLT_Manual.pdf
- **The Australian Community Land Trust Network:**
<https://www.australiancltnetwork.org.au/>

Disclaimer

All material contained in guide is provided by way of general comment. No material should be accepted as authoritative advice or legal advice. Any reader wishing to act upon material contained in this guide or use the template rules, should consider obtaining professional advice which takes into account their own objectives and circumstances.

Property Holder Only Model

A Non-Distributing Co-operative with Share Capital.

Commentary on Template Rules (Property Holder Only Model)

A Non-Distributing Co-operative with Share Capital.

General

While all provisions within the Rules can be modified to suit the needs of the proposed founding members and each co-operative, rules which contain drafting in **[square brackets with yellow text]** need to be completed or amended.

As stated earlier, the CNL applies in all States and Territories except Western Australia. In Western Australia the Co-operatives Act applies. You will need to use the appropriate drafting for the definitions of “the Law” and “the National Regulations” (and update the various legislative references throughout), based on your chosen jurisdiction for registration.

Not all provisions in the Rules have a drafting or explanatory note. If anything is unclear then you should seek legal advice on what the provision means. The numbers and headings below refer to the references in the draft Rules.

All references to the legislation (and monetary amounts/thresholds) are correct as at the date of publication (June 2024).

1. Application of the rules and name of the co-operative

You will need to select a name for your co-operative. A co-operative may include “co-operative” or “co-op” in its name. “Ltd” or “Limited” must also be included in the name of the co-operative to designate its legal structure.

As mentioned, we note that groups should be aware that the word “trust” cannot be used in an entity’s name without express ministerial consent, as it may mislead the public about the legal nature of the co-operative’s activities.

3.1 Purpose

In this iteration of the rules, the authors have deliberately chosen a high-level purpose for the co-operative to hold the property to deliver permanently affordable housing and community benefit (see rule 3.1(a)). The reasons for this are two-fold.

First, a purpose is not necessary to include in the Rules under the CNL or Co-operatives Act, but having one stated will help guide the members and directors as to the co-operative’s core objective. A purpose may be needed if you are applying for charitable registration or DGR endorsement. Under the CNL and the Co-operatives Act, a co-operative must specify its ‘primary activities’. Any purpose stated here needs to align with the primary activities set out in rule 3.3 (see also commentary on rule 3.3). Keeping the purpose ‘high level’ allows flexibility for the co-operative as to how it delivers on the purpose in the future, with the focus being on the primary activity/ies.

Second, in addition to delivering permanently affordable homes that could be rented or owned, a number of community land trusts also provide a range of community facilities and services, open space, and/or commercial properties in response to local need, hence the inclusion of “community benefit”.

The purpose of the co-operative is, however, entirely for each group to decide.

Subrules 3.1(c) and (d) are optional but are useful if you are applying for charitable registration. These subrules are drafted to show the ‘not-for-profit’ element of the co-operative.

3.2 Values and Principles

A co-operative does not need to include a list of any values or principles it wishes to adopt. Some co-operatives do have certain values that are important and which the founders want to be binding on the members and directors. Any values or principles to be enshrined should be stated in rule 3.2, otherwise you can delete this rule. Please be aware that separate to any chosen principles, the co-operative principles in ss.10 and 11 of the CNL and ss.6 and 7 of the Co-operatives Act, will apply to the co-operative and to the construction of the Rules to promote these principles.

3.3 Primary Activity

A co-operative must articulate its primary activities in its rules, and a co-operative must have at least one primary activity (s.147 of the CNL and s.113 of the Co-operatives Act). The primary activity must be connected with the purpose for which the co-operative exists. The activity need not be the only function of the co-operative, but it must contribute at least 10% to the turnover, income, expenses, surplus or business of the co-operative (note this percentage is correct at the time of publication but please review the National Regulations at the time of drafting).

The template sets out a number of primary activities you can choose from to suit the purpose of the co-operative as a community property custodian or steward. Some of these activities may be better suited as part of the 'purpose' of the co-operative.

Where a group is seeking to form a charitable organisation, or register for DGR endorsement, the group should pay particular attention to language used for the purpose and primary activities to ensure it meets the test under those laws.

For example, you may have a purpose similar to: "relieve the distress, misfortune, hardship, disability or poverty experienced by people in need, by facilitating access to affordable housing with a focus on people living in *insert name of local area*." With the primary activities being one or more of the following:

- (a) providing quality, affordable rental housing for those otherwise unable to access housing in and around the *insert name of local area*;
- (b) facilitating the provision of equitable, non-discriminatory access to housing within eligibility guidelines and within households' capacity to pay;
- (c) providing affordable housing ownership options to individuals or families who are financially disadvantaged, and are otherwise unable to afford home ownership in order to achieve a modest standard of living in the Australian community without experiencing financial distress; or
- (d) providing affordable housing or land (for rental or ownership purposes) to the beneficiaries of other charitable or benevolent organisations with similar views and purposes, provided that such beneficiaries fall within.

Note these are examples only. As with the purpose, the primary activities of the co-operative are entirely for each group to decide.

3.4 Active Membership

The rules of a co-operative must specify how a member must:

- (a) use or support an activity of, or maintain a relationship or an arrangement with, the co-operative, for carrying on the primary activity; or
- (b) maintain any other relationship or arrangement with the co-operative for carrying on the primary activity.

This is called “active membership” (see s.145 of the CNL and s.111 of the Co-operatives Act). Essentially this is the minimum commitment and support from members to ensure the co-operative’s ongoing operations. Despite the obligation to include an active membership requirement, the nature of active membership is decided by the co-operative in its rules.

In a non-distributing co-operative, the active membership requirement may simply be the payment of a regular subscription by the member to be applied to the primary activity of the co-operative (s.151(1) of the CNL and s.117(1) of the Co-operatives Act).

A co-operative may choose to include additional active membership requirements around participating in the primary activities of the co-operative, to use the co-operative’s services, to be a co-owner of property or resident of a dwelling (etc). For simplicity these rules specify only an obligation to pay an annual subscription fee.

Where you are drafting additional active membership requirements, those obligations must be clear, reasonable and clearly define a period in which a member is required to use or support an activity of the co-operative and/or maintain a relationship within the co-operative. The Registrar will reject any active membership rules which are vague in how they are measured. If you have different classes of membership, you should describe whether there are different active membership tests for each class of member.

4.1 Qualifications for Membership

Qualifications for membership are set out in s.112 of the CNL and s.58 of the Co-operatives Act, and essentially there must be reasonable grounds for believing the person will be an active member of the co-operative, and they otherwise meet the eligibility criteria (if any) under the rules. You do not need to have any ‘additional’ qualifications, but rule 4.1 is a suggested set of drafting if desired.

One example of a qualification may be that the member must be an individual (and membership is not open to companies, trusts etc). If you are looking to limit membership in such a way you should consider the longer-term impact for such a restriction as amending the rules (to change membership eligibility) will require pre-approval of the Registrar in addition to approval by the members by a special resolution.

Another qualification which may be relevant to a community land trust model is that each member has to be a resident of a dwelling (on land owned or controlled by the co-operative) where the property is held to ensure perpetual affordability for only those that fall into a certain class of individuals (artists for example).

A common practice for CLTs in the US is to encourage wide community support base by specifying different membership classes. Such classes might include “resident member” and “general member”. For this iteration of the Rules, the authors have not created separate classes of members with additional qualifications so that there is open membership for all those in the community. A deliberate decision was made to have this template focus on the co-operative as a ‘property holder only’ so distinctions between residents and non-residents were not decided. The second template rules creates classes of ‘general members’ and ‘resident members’.

If you have different classes of membership, you should describe whether there are different qualifications for membership for each class of member, including different active membership requirements or different fees. It is possible to charge different fees to members within the same class of membership (for example, to allow discounts for those on pensions or low-incomes) but care should be taken to ensure you do not inadvertently create unnecessary divisions amongst those members from a cultural perspective but also an administrative perspective.

4.2 Joint Members

Section 81 of the CNL and s.59 of the Co-operatives Act, allows membership to be joint unless the rules state otherwise. You will need to decide whether joint membership is permitted or not. Alternative drafting is set out in rule 4.2.

5 Entry Fees and Regular Subscriptions

In rules 5.1 and 5.2, you may want the members to approve entry/application fees and/or annual subscription fees, in which case you will need to remove “by the Board” and replace it with “by an ordinary resolution of the Members”.

You can also set out in the rules the amount of the entry fee or annual subscription fee – but it then requires a special resolution of the Members to amend the rules if co-operative ever wanted to change the fee. If you are concerned about the potential fees to be charged in the future, you could also propose a monetary cap, so that the Board (or Members) can approve the relevant fee provided it is “not greater than xxx”.

7.1 Cessation of Membership

Sections 117 and 118 of the CNL and ss.63 and 64 of the Co-operatives Act set out where membership will be cancelled. The template includes what is set out in the Law but you should add any other instances where you expect membership to cease (for example, if it is a condition of membership that the member be a resident of a dwelling and they cease to be a resident that might be a circumstance to list here).

In subrule 7.1(b) the notice period and method of resignation is a decision for each co-operative.

Subrules 7.1(e) and (f) replicate what appears under the Law but you can choose alternate drafting with a different consequence to occur.

8.1 Expulsion of Members

You are not obliged to include a ‘expulsion’ clause within the rules, but if you do not have such a clause, there is no way under the Law to remove a member from membership unless they are no longer an active member. This template sets out a basic procedure for expulsion.

8.4 Expulsion of Members

Only include rule 8.4 if you permit joint members, otherwise delete.

9 Suspension of Members

You are not obliged to include a 'suspension' clause within the rules, but if you do not have such a clause, there is no way under the Law to suspend a member from the benefits of membership unless they are no longer an active member. This template sets out a basic procedure for suspension.

11 Dispute Resolution

Section 129 of the CNL and s.79 of the Co-operatives Act, require the rules of a co-operative to set out a grievance procedure for dealing with disputes under the rules between members, and between members and the co-operative. The process for dispute resolution is up to each co-operative. The template drafting is taken from the model rules which form part of the National Regulations.

12 Fines Payable by Members

Sections 56 and 126 of the CNL and ss. 71 and 98 of the Co-operatives Act allow the co-operative to impose a fine on a member for an infringement of the rules. There is no obligation to do so. The Law allows a maximum penalty of \$500 (for co-operatives with a charitable purpose, and \$1,000 for all other co-operatives). The template provides alternate drafting – use either rule 12.1 (where no fines will be permitted), or rules 12.2 and 12.3 (where a fine is permitted).

13.2 Joint Members

Only include rule 13.2 if you permit joint membership, otherwise delete.

14 Capital and Shares

Sections 76-82 of the CNL and ss.140 to 146 of the Co-operatives Act allow for multiple classes of share capital. In this template, the authors have provided for only one class of shares (ordinary shares) but with the right for the Board to approve additional classes of shares from time to time.

Where you intend to have multiple classes of shares, you will need to ensure rule 14 includes the rights and entitlements attached to each class of shares.

Shares in a co-operative have a fixed value and shares must be repurchased by the co-operative on a member ceasing to be a member of the co-operative (subject to rights of the co-operative to defer or be exempt from payment in certain circumstances). Groups should consider this liability when considering the number of shares to be acquired by each member and the fixed value attributed to those shares.

14.1 Nominal Value

Section 76(2) of the CNL and s.140(2) of the Co-operatives Act states that shares have a fixed value, you will need to decide what that value will be.

14.2 Minimum number of shares

Section 77 of the CNL states that the minimum number of shares must be stated in the rules³. The minimum number of shares could be zero, and the acquisition of shares is optional.

14.4 Fully paid or partly paid

Section 78(1) of the CNL and s.142(1) of the Co-operatives Act state that a share must not be allocated unless at least 10% of the nominal value of the share has been paid. The co-operative may choose what percentage to allow, and that may require full payment before a share is allotted.

15 Calls on Shares

This rule will only be relevant where a share is issued partly-paid. Rule 15 sets out when the Board can require the remainder of the amount owing on the share to be paid to the co-operative.

15.5 Joint Members

Only include rule 15.5 if you permit joint membership, otherwise delete.

18 Forfeiture and Cancellations – Inactive Members

Sections 156 to 166 of the CNL and ss.120 to 130 of the Co-operatives Act set out the rules for inactive membership. Membership can be cancelled if a member is inactive (i.e. they have failed to comply with the active membership test) or their whereabouts are unknown for periods of 3 years or less (as stated in the rules). The template uses 3 years but you can use a lesser period. The two periods in rule 18.1 do not need to be identical (but commonly are).

25 Issue & Transfer of CCUs

Rule 25 sets out the right to issue co-operative capital units (**CCUs**) in the co-operative. As set out in the Introduction, CCU holders need not be members (but can be).

It is a requirement of the CNL and the Co-operatives Act that the rules of a co-operative specifically permit the co-operative to issue CCUs, before the co-operative has a right to do so. The authors have therefore included a broad clause to allow the co-operative to issue CCUs. Before issuing any CCUs the Board of the co-operative will need to:

1. determine the *terms* on which the CCUs are issued (including how they interact with the rights of the members under the rules);
2. have those terms and an accompanying disclosure statement approved by the Registrar of Co-operatives; and
3. have those documents (and the issue of CCUs) approved by the members.

Groups should seek legal advice on the process for issuing CCUs, and what restrictions (if any) they wish to build into the rules on the process or terms of issuing CCUs.

³ Note there is no equivalent provision in the Co-operatives Act.

The reference in rule 25.2 to an entitlement of the CCU holder to vote – is only a right to vote in a meeting of CCU holders on matters which affect them. Unless the CCU holder is also a member of the co-operative, the CCU holder does not get a right to vote at any general meeting of the co-operative or in any postal ballot or special postal ballot.

27.2 Members' power to requisition a general meeting

Section 257 of the CNL and s.195 of the Co-operatives Act state that members who can cast 20% of the votes at a meeting of members, can requisition a meeting. However, the Law also allows a co-operative to lower that percentage through its rules. Groups should consider whether to lower the percentage in rule 27.2 or leave at 20%.

30.2 Quorum

Section 255 of the CNL and s.193 of the Co-operatives Act allow the co-operative to determine the quorum. You can specify a specific number, a percentage, or you can have a 'sliding scale' or combination based on the number of members. Much will depend on how large you anticipate growing the membership. For example, if your co-operative will only ever have between 8 and 10 members, a quorum of 4 or 5 members may be appropriate. If your co-operative grows to 100 members, a quorum of 4 or 5 members may be too low and need to be updated by a rule amendment. The whole of rule 30.2 is an example only of possible drafting.

32.2 Joint Members

Only include rule 32.2 if you permit joint membership, otherwise delete.

32.3 Joint Members

Only include rule 32.3 if you permit joint membership, otherwise delete.

32.4 Joint Members

Only include rule 32.4 if you permit joint membership, otherwise delete.

35 Determining the outcome where equality of votes

Section 256(5) of the CNL and s.194(5) of the Co-operatives Act allow the chairperson of the meeting to have a second vote at a general meeting. Directors are given discretion to regulate their own meetings. The drafting of rule 35 can be used in the alternate. Use rules 35.1 to 35.3 if you want to give a chairperson a second/casting vote at both a general meeting and board meeting. Use 35.4 if you do not want the chairperson to have a second/casting vote at any meeting.

36 Proxy Votes

Section 229 of the CNL and s.168 of the Co-operatives Act allow the rules to determine whether you permit proxies or not. The drafting of this rule can be used in the alternate. Use rule 36.1 if you do not permit proxies at all. Use all remaining rules if you do permit proxies. You can choose the parameters around how many can be held by a single member.

37 Postal Ballots

Postal ballots can be held at the discretion of the Board. Section 250 of the CNL and s.188 of the Co-operatives Act allow for members holding at least 20% of the votes that can be cast at a general meeting, to requisition a postal ballot. However, the Law also allows a co-operative to lower that percentage through its rules. Groups should consider whether to lower the percentage in rule 37.1 or leave at 20%.

38 Special Postal Ballots

Please be aware that there are certain 'significant' decisions that must be made by the members by a special resolution by a special postal ballot. These are set out in s.249 of the CNL and s.187 of the Co-operatives Act. Examples include the conversion of the legal structure, a requirement for members to subscribe for additional shares or to provide loans to the co-operative, and to acquire or sell certain assets.

You should consider whether you add any additional decisions to be made by the 'super majority' required of special postal ballots, and include these in rule 38.

40.2 Board

Section 172(2) of the CNL and s.197(2A) of the Co-operatives Act require a minimum of three (3) directors, two of whom are ordinarily resident in Australia. The co-operative can otherwise set that minimum (or a higher minimum) and can set a maximum (if it chooses). There is no requirement to set a maximum number of directors but it is useful to ensure the Board does not become so large that it cannot function. The Australian Institute of Company Directors' Board Size Director Tool may be useful to determining the number.

41 Qualifications of Directors

Section 174 of the CNL and s.199 of the Co-operatives Act require the Board to be made up of a majority of member-directors, but that is the only qualification for membership. The template allows for some basic qualifications but each co-operative may wish to decide these for itself. Consideration should also be given to the mix of (or skill sets of) directors recommended by the CLT Manual.

43 First Directors and election of Member Directors

Section 173 of the CNL and s.198 of the Co-operatives Act allow the co-operative to specify the process for electing directors, the number of years/terms the directors can serve, etc. It is common for the 'non-member directors' to be appointed by the Board directly to fill any skills gap (they are also referred to as independent directors). The template sets out one possible process for member-directors to be elected (and non-member directors to be appointed in the following rule) and has been formulated based on the model rules attached to the National Regulations.

46 Vacation of the office of Director

Section 179(2) of the CNL and s.205(2) of the Co-operatives Act sets out six circumstances in which a director will vacate their office. The template rules refer to that legislation and add two additional reasons. You may wish to add additional reasons which trigger an automatic removal of a director. Consideration should be given as to whether you create a rule which requires a director to stand

down where they hold an ongoing material personal interest in the business of the co-operative that it prevents them from discharging their duties to the co-operative.

47 Casual Vacancies and Alternate Directors

A co-operative does not have to permit alternate directors. The template allows for alternative drafting – use rule 47.2 if you do not permit alternates. Use rules 47.3 to 47.6 if you permit alternates.

48.1 Proceedings of the Board

Section 175(1) of the CNL and s.201(2) of the Co-operatives Act require the directors to meet at least once every three (3) months, but meetings may be held as often as the rules provide, or as often as necessary. The template uses this language but you can change the frequency of the meetings.

49.1 Quorum for Board Meetings

Section 175(4) of the CNL and s.201(5) of the Co-operatives Act provide that a quorum for a board meeting is 50% of the number of directors or greater number provided in the rules. Section 175(5) of the CNL and s.201(6) of the Co-operatives Act also provides the number of member-directors must outnumber the non-member directors by at least 1 or greater number specified in the rules. The template uses the 50% measure rounded up (for quorum) and 1 (for how many member directors must outnumber the non-member directors).

55 Custodian of Land

Rule 55 has been adapted from the template rules provided in the CLT Manual. You can modify to suit the co-operative's needs.

59.5 Joint Members

Only include rule 59.5 if you permit joint membership, otherwise delete.

65 Disposal of surplus funds during a financial year

Rules 65.1 and 65.2 reflect the rights stated under ss.355 and 356 of the CNL and ss.269 and 270 of the Co-operatives Act. The rules of a co-operative must limit the amount that can be applied to a charitable purpose to a stated proportion – it is up to the co-operative to determine that proportion. The template provides alternate drafting with a limit of the whole of the surplus or a set percentage.

A non-distributing co-operative is one that is prohibited from giving returns or distributions on surplus or share capital to members, other than the nominal value of shares (if any) at winding up (see s.19(1) of the CNL and s.14(1) of the Co-operatives Act).

Section 4 of the CNL and s.4 of the Co-operatives Act defines 'surplus' as:

surplus, in relation to a co-operative, means the excess of income over expenditure after making adequate allowance for taxation expense, for depreciation in value of the property of the co-operative and for future contingencies.

Therefore rule 65.3 specifically prohibits the distribution of surplus to members.

Rule 65.3 does not prohibit the payment of any amounts due under the terms of a co-operative capital unit or debenture (these would be liabilities of the co-operative which must be paid prior to the 'surplus' being calculated).

67 Winding Up

On the winding up of a non-distributing co-operative, the 'surplus property' of the co-operative must be distributed as required by the rules of the co-operative (per s.448 of the CNL and s.319 of the Co-operatives Act). Groups have flexibility on what will happen on a winding up. 'Surplus property' is defined slightly differently in the legislation (although there is no practical difference in the interpretation).

In s.448(3) of the CNL:

surplus property means property of the co-operative remaining after satisfaction of the debts and liabilities of the co-operative and the costs, charges and expenses of the winding up.

In s.319(1) of the Co-operatives Act:

surplus property means property of the co-operative that remains after satisfaction of the debts and liabilities of the co-operative and the costs, charges and expenses of the winding up.

If the co-operative intends to apply for charitable registration then it will need to prevent the surplus property from being distributed to members to meet the requirements of the ACNC. Separately, shares can be repurchased by the co-operative at their nominal value (as identified earlier under rule 65). Rules 67.2 and 67.3 are to address this approach to surplus property, although the language used is to repay 'amounts paid up' on the shares – in case shares are not fully paid up at the time of winding up.

If the co-operative is not a charity but wants to ensure the perpetual affordability of land (in line with its purpose as a community land trust) then it should prevent the surplus property from being distributed to members (allowing for the shares to be repurchased at their nominal value). Rule 68.4 is intended to address this approach to surplus property.

In addition to Rule 67.1 (which is the overarching reference to the procedures under the Law), groups may wish to choose to use:

- (a) Rules 67.2 and 67.3; or
- (b) Rule 67.4; or
- (c) Rules 67.2, 67.3 and 67.4 – in case the intention is to apply to be a charity, but for whatever reason charitable status is lost at the time of winding up.

It is also possible to create a different regime for winding up of the non-distributing co-operative but groups will need to seek legal advice on the interaction with any other laws that will govern the co-operative.

===== End of Commentary on Template Co-operative Rules for Property Holder Only Model

Template Rules

(Property Holder Only Model)

A Non-Distributing Co-operative with Share Capital.

[Co-operative Name]

Rules

[Month 20XX]

CONTENTS

1.	APPLICATION OF THESE RULES & NAME OF THE CO-OPERATIVE	4
2.	DEFINITIONS & INTERPRETATION	4
3.	PURPOSE, VALUES, PRIMARY ACTIVITY & ACTIVE MEMBERSHIP	5
4.	QUALIFICATIONS FOR MEMBERSHIP.....	7
5.	ENTRY FEES AND REGULAR SUBSCRIPTIONS	7
6.	MEMBERSHIP APPLICATIONS	7
7.	CESSATION OF MEMBERSHIP	8
8.	EXPULSION OF MEMBERS	8
9.	SUSPENSION OF MEMBERS	9
10.	MONETARY CONSEQUENCES OF EXPULSION OR RESIGNATION	10
11.	DISPUTE RESOLUTION	10
12.	FINES PAYABLE BY MEMBERS	11
13.	LIABILITY OF MEMBERS TO CO-OPERATIVES.....	11
14.	CAPITAL AND SHARES	12
15.	CALLS ON SHARES	12
16.	REPURCHASE OF MEMBERS' SHARES.....	13
17.	TRANSFER OF SHARES.....	13
18.	FORFEITURE AND CANCELLATIONS—INACTIVE MEMBERS	14
19.	FORFEITURE OF SHARES	14
20.	FORFEITED SHARES—LIABILITY OF MEMBERS	15
21.	DEATH OF MEMBER	15
22.	RIGHTS AND LIABILITIES OF MEMBERS UNDER BANKRUPTCY OR MENTAL INCAPACITY	15
23.	ENTITLEMENTS AND LIABILITIES OF PERSON REGISTERED AS TRUSTEE, ADMINISTRATOR ETC.....	16
24.	TRANSFER AND TRANSMISSION OF DEBENTURES	16
25.	ISSUE & TRANSFER OF CCUS	17
26.	ANNUAL GENERAL MEETING	17
27.	MEMBERS' POWER TO REQUISITION A GENERAL MEETING	18
28.	NOTICE OF GENERAL MEETINGS	18
29.	BUSINESS OF GENERAL MEETINGS	18
30.	QUORUM AT GENERAL MEETINGS.....	19
31.	CHAIRPERSON AT GENERAL MEETINGS	19
32.	ATTENDANCE AND VOTING AT GENERAL MEETINGS	19
33.	VOTING ON A SHOW OF HANDS	20

34.	VOTING ON A POLL	20
35.	DETERMINING THE OUTCOME WHERE EQUALITY OF VOTES	20
36.	PROXY VOTES.....	21
37.	POSTAL BALLOTS (OTHER THAN SPECIAL POSTAL BALLOTS)	21
38.	SPECIAL POSTAL BALLOTS	22
39.	SPECIAL RESOLUTIONS.....	22
40.	BOARD	23
41.	QUALIFICATIONS OF DIRECTORS	23
42.	CHIEF EXECUTIVE OFFICER	23
43.	FIRST DIRECTORS AND ELECTION OF MEMBER DIRECTORS	23
44.	APPOINTMENT OF NON-MEMBER DIRECTORS	25
45.	REMOVAL FROM OFFICE OF DIRECTOR.....	25
46.	VACATION OF OFFICE OF DIRECTOR	25
47.	CASUAL VACANCIES AND ALTERNATE DIRECTORS	25
48.	PROCEEDINGS OF THE BOARD	26
49.	QUORUM FOR BOARD MEETINGS	26
50.	CHAIRPERSON OF BOARD	26
51.	CONFLICTS OF INTEREST.....	27
52.	DELEGATION AND BOARD COMMITTEES	27
53.	OTHER COMMITTEES.....	28
54.	MINUTES	28
55.	CUSTODIAN OF PROPERTY	28
56.	SEAL	29
57.	INSPECTION OF RECORDS AND REGISTERS	29
58.	SAFE KEEPING OF SECURITIES.....	29
59.	NOTICES TO MEMBERS	29
60.	TECHNOLOGY	30
61.	ACCOUNTS	30
62.	FINANCIAL REPORTS TO MEMBERS	30
63.	APPOINTING AN AUDITOR OR REVIEWER FOR SMALL CO-OPERATIVE.....	31
64.	APPOINTING AN AUDITOR OR REVIEWER FOR A SMALL CO-OPERATIVE IF THERE IS A DIRECTION UNDER THE LAW.....	31
65.	DISPOSAL OF SURPLUS FUNDS DURING A FINANCIAL YEAR.....	31
66.	PROVISION FOR LOSS.....	31
67.	WINDING UP	31

Preliminary

1. APPLICATION OF THESE RULES & NAME OF THE CO-OPERATIVE

These rules are the rules of [insert co-operative name] Ltd (the Co-operative).

2. DEFINITIONS & INTERPRETATION

2.1 Definitions

In these rules:

- (a) **Ballot Paper** means a ballot paper in paper or electronic form.
- (b) **Basic Minimum Financial Statements** means the financial statement required of a small Co-operative under the National Regulations.
- (c) **Board** means the board of the Co-operative.
- (d) **Business Day** means a day other than a Saturday, Sunday, or public holiday in [insert the State/Territory in which the co-operative is to be registered].
- (e) **Business Hours** means between 9.00am and 5.00pm on a Business Day.
- (f) **co-operative capital unit** and **CCU** have the meaning given to that term in the Law.
- (g) **Director** means a director of the Co-operative.
- (h) **Financial Year** means a year commencing on 1 July in any year and ending on 30 June in the following year.
- (i) **the Law** means [insert either "the Co-operatives National Law as applying in this jurisdiction" (for any jurisdiction other than WA) or "the Co-operatives Act 2009 (WA)"].
- (j) **Member** means a member of the Co-operative.
- (k) **Member Director** and **Non-member Director**—see [insert either "section 174 of the Law" (for jurisdictions other than WA) or "section 199 of the Law" (for WA)] and rule 41.
- (l) **Standard Postal Times** means the times when properly addressed and prepaid letters would be delivered in the ordinary course of post.
- (m) **Technology** includes all information and communications devices for audio, visual, audio-visual or electronic communication including, but not limited to, radio, telephone, facsimile, closed circuit television, data storage devices, internet communication via an automated or user operated system, electronic mail, automated election processes, direct recording electronic voting systems, or any other electronic means available.
- (n) **the National Regulations** means [insert either "the Co-operatives National Regulations as applying in this jurisdiction" (for any jurisdiction other than WA) or "the Co-operatives Regulations 2010 (WA)"].

2.2 Interpretation

- (a) 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.
- (b) In these rules, unless a contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;

- (ii) words importing any gender include all other genders;
- (iii) any headings inserted in these rules are included for convenience and shall not affect its construction;
- (iv) the word "includes" in any form is not a word of limitation;
- (v) the word "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (vi) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (vii) a reference to "currency", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency; and
- (viii) the word or phrase "present" or "present in person" includes present at a meeting through the use of Technology.

2.3 Rules constitute a contract

- (a) The rules of the Co-operative have the effect of a contract under seal –
 - (i) between the Co-operative and each Member;
 - (ii) between the Co-operative and each holder of a CCU;
 - (iii) between the Co-operative and each Director, the chief executive officer and the secretary of the Co-operative;
 - (iv) between a Member and each other Member; and
 - (v) between a holder of CCUs and each other holder of CCUs and each Member.
- (b) The Co-operative has the powers set out in the Law (and where applicable the *Corporations Act 2001* (Cth)) but only to do all things that are necessary, convenient or incidental to carry out the primary activities of the Co-operative.
- (c) Any amendment of the rules must be approved by special resolution.
- (d) 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.
- (e) A Member is entitled to a physical copy of the rules upon payment of a fee, as determined by the Board from time to time (but which is not greater than \$....). A Member is entitled to an electronic copy of the rules for free.

3. PURPOSE, VALUES, PRIMARY ACTIVITY & ACTIVE MEMBERSHIP

3.1 Purpose of the Co-operative

- (a) The Co-operative is formed to act as a community property custodian, and the main purpose of the Co-operative is to hold title (or long-term leases) to property to deliver permanently affordable housing and community benefit.
- (b) The main purpose of the Co-operative is supported by the following further objects:
 - (i) to develop and maintain any income-generating activities compatible with and complementary to the main purpose set out in rule 3.1(a), to support the Co-operative financially so that the Co-operative can operate sustainably;

- (ii) to finance and develop property, such as affordable and resource efficient homes; and
 - (iii) undertaking other incidental activities that the Co-operative considers will support the main object set out in rule 3.1(a).
- (c) The income and assets of the Co-operative are to be applied solely to further the Co-operative's purpose. No portion of the income or assets of the Co-operative may be paid, distributed, or transferred either directly or indirectly including by way of dividend, bonus or otherwise to any Member.
- (d) Nothing in rule 3.1(c) prevents the Co-operative from:
- (i) the payment in good faith of reasonable and proper remuneration to any employed officer or other employee;
 - (ii) payment in good faith of reasonable and proper remuneration to a Member in return for services actually rendered, or goods actually supplied, in the ordinary course of the Co-operative's operations;
 - (iii) reimbursement of officers for out-of-pocket expenses in performing their duties as an officer of the Co-operative;
 - (iv) payment of interest on money lent or otherwise owing by the Co-operative;
 - (v) payment for sale or hire of goods or payment of rent for premises let to the Co-operative; or
 - (vi) repayment of the nominal value of the share capital upon a Member ceasing to be a Member of the Co-operative, or on a winding up of the Co-operative.

3.2 Values

- (a) The Co-operative adopts both the co-operative values and co-operative principles.
- (b) The co-operative values are self-help, self-responsibility, democracy, equality, equity and solidarity. Co-operative members must believe in, and support, the ethical values of honesty, openness, social responsibility and caring for others.
- (c) The co-operative principles are stated in [insert either "s.10 of the Law" (for any jurisdiction other than WA) or "s.6 of the Law" (for WA)] and are as follows:
 - (i) voluntary and open membership;
 - (ii) democratic member control;
 - (iii) member economic participation;
 - (iv) autonomy and independence;
 - (v) education, training, and information;
 - (vi) co-operation amongst co-operatives; and
 - (vii) concern for community.

3.3 Primary Activity

For the purposes of the Law, the primary activities of the Co-operative are:

- (a) assisting in or overseeing the development, delivery and provision of affordable housing options on property owned or controlled by the Co-operative, including rentals, price-

restricted home ownership, co-operative housing, emergency shelter or temporary accommodation;

(b) acquiring and retaining property, or interests in property, in order to facilitate the provision of affordable housing;

(c) the provision of commercial leases to businesses and the community in order to be a source of local revenue, employment, and community development, and to sustain the operations of the Co-operative;

(d) the provision of affordable housing in [insert relevant area]; and

(e) provide training, advice, and other support to home buyers.

3.4 Active membership requirements

In order to maintain an active Membership, a Member must pay the annual subscription fee in accordance with rule 5.2 (which money will be used towards the primary activities of the Co-operative).

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

4. QUALIFICATIONS FOR MEMBERSHIP

4.1 Qualifications for Membership

A person qualifies for Membership as a Member of the Co-operative if:

(a) they are aligned with the Co-operative purpose and values set out in these rules;

(b) they are able to use or contribute to the services of the Co-operative; and

(c) [insert any other qualification you expect the member to have].

4.2 Joint Members

Joint membership is permitted provided that each proposed Member meets the qualifications for Membership in rule 4.1.

or

Joint membership is not permitted.

5. ENTRY FEES AND REGULAR SUBSCRIPTIONS

5.1 The entry fee for an application for Membership will be determined, from time to time, by the Board and published at the registered office or on the website of the co-operative.

5.2 The annual subscription fee (also known as an annual membership fee) will be determined, from time to time, by the Board and published at the registered office or on the website of the co-operative. Such a fee shall be payable annually from the time that the person becomes a Member.

6. MEMBERSHIP APPLICATIONS

6.1 Applications for Membership must be lodged at the registered office in the application form approved by the Board, and must be accompanied by:

(a) payment of any applicable entry fee or subscription set under rule 5.1; and

(b) payment for allotment of the minimum number of shares in the Co-operative as specified in rule 14.

- 6.2 Every application must be considered by the Board.
- 6.3 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.
- 6.4 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.
- 6.5 The Board may, at its discretion, refuse an application for Membership.
- 6.6 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. CESSATION OF MEMBERSHIP

- 7.1 A person ceases to be a Member in any of the following circumstances:
- (a) if the Member is expelled pursuant to these Rules;
 - (b) if the Member resigns (by giving 3 months notice, or a lesser period of time's notice approved by the Board, in writing in the form approved by the Board);
 - (c) if an individual Member dies;
 - (d) if the Member's membership is cancelled under the Law;
 - (e) if an individual Member becomes bankrupt, or a corporate Member becomes insolvent;
 - (f) if the Member's property becomes subject to control under the law relating to bankruptcy;
 - (g) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
 - (h) if a corporate Member is deregistered;
 - (i) if the Member's total shareholding is transferred to another Member and the transferee is registered as the holder of the shareholding;
 - (j) if the Member's total shareholding is forfeited under the Law or these rules;
 - (k) if the Member's total shareholding is purchased by the Co-operative under the Law or these rules;
 - (l) 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;
 - (m) the amount paid up on the Member's shares is repaid to the Member under these rules.

8. EXPULSION OF MEMBERS

- 8.1 A Member may be expelled from the Co-operative by special resolution of the Members where:
- (a) 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 [insert either "section 125 of the Law" (for all jurisdictions except WA) or "section 70 of the Law" (for WA)]; or
 - (b) 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 the Law and has caused the Co-operative harm.

8.2 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.

8.3 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; and
- (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.

8.4 Expulsion of one joint Member means expulsion of all Members holding Membership jointly with the expelled Member.

8.5 An expelled Member must not be re-admitted as a Member unless the re-admission is approved by special resolution.

8.6 A Member re-admitted must not have restored to them any shares that were cancelled on their expulsion.

9. SUSPENSION OF MEMBERS

9.1 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.

9.2 In order to suspend a Member, the procedure for expulsion of a Member set out in rule 8 is to be followed as if references to expulsion were references to suspension.

9.3 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.

10. MONETARY CONSEQUENCES OF EXPULSION OR RESIGNATION

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 Subject to rule 10.5 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).
- 10.5 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.
- 10.6 Subject to [insert either "section 128 of the Law" (for all jurisdictions except WA) or "section 73 of the Law" (for WA)], 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 [insert either "section 128 of the Law" (for all jurisdictions except WA) or "section 73 of the Law" (for WA)], 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.
- 10.7 The repayable amount to the expelled or resigning Member may be applied in any of the ways set out in [insert either "section 128(2) of the Law" (for all jurisdictions except WA) or "section 73(2) of the Law" (for WA)].

11. DISPUTE RESOLUTION

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 The mediator may (but need not) be a Member of the Co-operative, unless the Member is a party to the dispute.
- 11.7 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- 11.8 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.
- 11.9 The mediator cannot determine the dispute.
- 11.10 The mediation must be confidential and without prejudice.
- 11.11 The costs of the mediation are to be shared equally between the parties unless otherwise agreed.
- 11.12 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.
- 11.13 Nothing in this rule applies to any dispute involving the expulsion or suspension of a Member or the imposition of a fine.
- 11.14 If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the CNL or otherwise at law.

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

12. FINES PAYABLE BY MEMBERS

- 12.1 The Board must not impose a fine on a Member for a contravention of these rules.
- or**
- 12.2 The Board may impose on a maximum fine of \$[XXX] on a Member for a contravention of these rules.
- 12.3 A fine must not be imposed on a Member under rule 12.2 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.

13. LIABILITY OF MEMBERS TO CO-OPERATIVES

- 13.1 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.

13.2 Joint Members are jointly and severally liable for any amount unpaid on shares and to any such charges mentioned in rule 13.1.

14. CAPITAL AND SHARES

14.1 The capital of the Co-operative comprises of the issue of ordinary shares of nominal value of \$[xxx] each, and any other class of shares approved by the Board from time to time.

14.2 Each Member must hold a minimum of [xxx] ordinary shares in the Co-operative.

14.3 If a Member chooses to purchase ordinary shares more than the minimum set out in rule 14.2, they 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 [insert either "section 363 of the Law" (for all jurisdictions except WA) or "section 278 of the Law" (for WA)].

14.4 No share is to be allotted unless [100%] of the nominal value of the share has been paid.

14.5 A share in the Co-operative does not carry a vote.

14.6 The right to vote in the Co-operative is attached to Membership and governed by [insert either "section 228 of the Law" (for all jurisdictions except WA) or "section 167 of the Law" (for WA)].

15. CALLS ON SHARES

15.1 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.

15.2 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.

15.3 The Directors may revoke or postpone a call.

15.4 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.

15.5 The joint holders of a share are jointly and severally liable to pay all calls for the share.

15.6 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 [xx]% per annum, the Directors decide, but the Directors may waive payment of all or part of the interest.

15.7 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.

15.8 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.

15.9 The Board may accept from a Member all or part of the money uncalled and unpaid on shares held by the Member.

15.10 The Board may authorise payment by the Co-operative of interest on all or part of an amount accepted under rule 15.9 until the amount becomes payable, at a rate agreed between the Board and the Member paying the amount, of not more than [xx]% per annum or another rate fixed by the Co-operative by special resolution.

16. REPURCHASE OF MEMBERS' SHARES

16.1 The Co-operative may (but is not obliged) to repurchase any share of a Member at the request of a Member in accordance with the Law.

16.2 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 [insert name of the co-operative] (the co-operative) 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 Law.

Signed.....

Dated.....

Witness (name and signature).....

16.3 The Board of the Co-operative must consider each request for repurchase in accordance with the CNL and cancel any shares that have been repurchased.

17. TRANSFER OF SHARES

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

17.2 The transferor is taken to remain the holder of the share until the name of the transferee is entered in the register of Members.

17.3 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.

17.4 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 3.4 and 4; or

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

provided the transferee will hold the minimum number of shares required by rule 14.

17.5 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.

- 17.6 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 [insert either “section 363 of the Law” (for all jurisdictions other than WA) or “section 278 of the Law” (for WA)].
- 17.7 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.
- 17.8 The Board must maintain a record of all transfers made in the proper books of the Co-operative.
- 17.9 The Board may suspend the registration of transfers during the 45 days immediately before the annual general meeting in each year.
- 17.10 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.
- 17.11 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.
- 17.12 The transfer of share in the Co-operative is not effective until the transfer is registered and the name of the transferee is entered in the register of Members.

18. FORFEITURE AND CANCELLATIONS—INACTIVE MEMBERS

- 18.1 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 3 years; or
 - (b) the Member is not presently active and has not been active within the meaning of rule 3.4 in the past 3 years.

19. FORFEITURE OF SHARES

- 19.1 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.
- 19.2 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.
- 19.3 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.
- 19.4 Forfeited shares must be cancelled.

20. FORFEITED SHARES—LIABILITY OF MEMBERS

- 20.1 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.
- 20.2 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.
- 20.3 The Co-operative has set-off rights against share capital as specified in [insert either "section 127 of the Law" (for all jurisdictions except WA) or "section 72 of the Law" (for WA)].

21. DEATH OF MEMBER

- 21.1 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 ofbeing 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.

22. RIGHTS AND LIABILITIES OF MEMBERS UNDER BANKRUPTCY OR MENTAL INCAPACITY

- 22.1 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 [insert either "section 95 of the Law" (for all jurisdictions except WA) or "section 154 of the Law" (for WA)].
- 22.2 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.
- 22.3 The liabilities attaching to the shares of a person under bankruptcy or mental incapacity continue in accordance with [insert either "section 96 of the Law" (for all jurisdictions except WA) or "section 155 of the Law" (for WA)].
- 22.4 Upon application by a person appointed to manage the affairs of a Member referred to in rule 22.2, 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.

23. ENTITLEMENTS AND LIABILITIES OF PERSON REGISTERED AS TRUSTEE, ADMINISTRATOR ETC.

23.1 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.

23.2 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.

23.3 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.

24. TRANSFER AND TRANSMISSION OF DEBENTURES

24.1 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.

24.2 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.

24.3 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.

24.4 The Board may decline to recognise an instrument of debenture and may decline to register a debenture unless:

- (a) a fee of **[\$XXX]** (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.

24.5 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 of20

Signed by transferor.

In the presence of witness.

Signed by..... transferee.

In the presence ofwitness

25. ISSUE & TRANSFER OF CCUS

- 25.1 The Board may confer an interest in the capital of the Co-operative by issuing CCUs in accordance with the Law.
- 25.2 Each holder of CCUs is entitled to [insert either "one vote" or "one vote per CCU held"] at a meeting of the holders of CCUs.
- 25.3 The Board may issue CCUs to a person whether or not that person is a Member of the Co-operative.
- 25.4 The terms on which CCUs are issued under this rule 25 must:
- (a) be approved by a special resolution of the Co-operative,
 - (b) be made pursuant to an offer accompanied by a statement approved by the Registrar for the purposes of the issue (which is approved by the Registrar); and
 - (c) include the following information:
 - (i) details of entitlement to repayment of capital;
 - (ii) details of entitlement to participate in surplus assets and profits (including how the entitlements are balanced with the members' rights to participate in surplus assets and profits (if applicable));
 - (iii) details of entitlement to interest on capital, including whether interest is cumulative or non-cumulative;
 - (iv) details of how capital and interest on capital are to rank for priority of payment on a winding up; and
 - (v) whether there is a limit on the total holding of CCUs that may be acquired by persons who are not Members of the Co-operative and, if there is a limit, what the limit is.
- 25.5 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.
- 25.6 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.
- 25.7 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.
- 25.8 Subject to rule 25.9 the transfer and transmission of a CCU is to follow the same process as for a debenture under rule 24.
- 25.9 If the terms of issue of a CCU differ from rule 24 in respect of the manner of transfer or transmission, the terms of its issue prevail.
- ## **26. ANNUAL GENERAL MEETING**
- 26.1 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.

27. MEMBERS' POWER TO REQUISITION A GENERAL MEETING

- 27.1 The Board may, whenever it considers appropriate, call a special general meeting of the Co-operative.
- 27.2 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 20% of the total number of votes able to be cast at a meeting of the Co-operative.
- 27.3 The provisions of [insert either "section 257 of the Law" (for all jurisdictions except WA) or "section 195 of the Law" (for WA)] apply to a meeting requisitioned by Members.

28. NOTICE OF GENERAL MEETINGS

- 28.1 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 CNL / section 206A of the Co-operatives Act requires special notice of the resolution and 21 days notice of the meeting.

- 28.2 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.
- 28.3 The notice must state the place, day and hour of the meeting, what Technology (if any) will be used to transact the meeting, and include ordinary business as specified in rule 29 and, for special business, the general nature of any special business.
- 28.4 The notice must also include any business Members have notified their intention to move at the meeting under rule 28.6 (but only if the Members' notification has been made under these rules and within time).
- 28.5 The notice must be served in the manner provided in the Law or rule 59.
- 28.6 Members who together are able to cast 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.

29. BUSINESS OF GENERAL MEETINGS

- 29.1 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 elect the Directors (if an election year or if there are any casual vacancies on the Board).

- 29.2 The annual general meeting may also transact special business of which notice has been given to Members under these rules.
- 29.3 All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.
- 30. QUORUM AT GENERAL MEETINGS**
- 30.1 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.
- 30.2 Unless these rules state otherwise:**
- (a) where the Membership of the Co-operative is less than or equal to 10 – then a quorum will be 50% of Members present or by proxy or representative, each being entitled to exercise a vote; and
- (b) where the Membership of the Co-operative is 11 or more – then a quorum will be the lower of 50% of Members or 5 Members present or by proxy or representative, each being entitled to exercise a vote.
- 30.3 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.
- 30.4 If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the Members present constitute a quorum.
- 31. CHAIRPERSON AT GENERAL MEETINGS**
- 31.1 The chairperson, if any, of the Board may preside as chairperson at every general meeting of the Co-operative.
- 31.2 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).
- 31.3 The chairperson may, with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place. However, the only business that can be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given just as for the original meeting. Apart from this it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.
- 32. ATTENDANCE AND VOTING AT GENERAL MEETINGS**
- 32.1 The right to vote attaches to Membership and not shareholding.
- 32.2 Joint Members have only one vote between them.
- 32.3 Every joint Member is entitled to attend and be heard at a general meeting.
- 32.4 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.
- 32.5 A resolution, other than a special resolution, must be decided by simple majority.
- 32.6 Subject to rules 32.7 and 32.8 a question for decision at any general meeting must be decided on a show of hands of Members present at the meeting.

- 32.7 A poll may be demanded on any question for decision.
- 32.8 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 or represented by proxy demand a poll;
- the question for decision must be determined by a poll.
- 32.9 The poll must be taken when and in the manner that the chairperson directs.
- 32.10 A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
- 32.11 Once the votes on a show of hands or on a poll have been counted then, subject to rule 32.8 a declaration by the chairperson that a resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.
- 32.12 The result of the vote must be entered in the minute book.

33. VOTING ON A SHOW OF HANDS

- 33.1 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 CNL; or
 - (d) represented by a proxy (but only if proxies are allowed under these rules);
- may exercise only one vote.

34. VOTING ON A POLL

- 34.1 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 CNL; or
 - (d) represented by a proxy (but only if proxies are allowed under these rules);
- has one vote.

35. DETERMINING THE OUTCOME WHERE EQUALITY OF VOTES

35.1 This rule applies where the votes in favour and against a resolution are equal (either in a Board meeting or general meeting of Members).

35.2 The chairperson of the meeting may exercise a second or casting vote.

35.3 If the chairperson 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.

or

35.4 The chairperson of the meeting does not have a second or casting vote in either a Board meeting or a general meeting of Members. Where the votes in favour and against a resolution are equal, the resolution is taken to have failed.

36. PROXY VOTES

36.1 Proxy votes at general meetings are not permitted by these rules.

or

36.2 Voting may be by proxy at a general meeting.

36.3 The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.

36.4 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.

36.5 A person may be appointed as a proxy by [how many members?].

36.6 Only an active Member of the Co-operative may act as a proxy.

36.7 An instrument appointing a proxy may be in the following form, or another form the Board approves:

[Co-operative name]

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/s.

Signed this day of 20.....

*Strike out if not applicable.

#To be inserted if desired.

36.8 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.

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

37. POSTAL BALLOTS (OTHER THAN SPECIAL POSTAL BALLOTS)

37.1 A postal ballot must be held in respect of a special resolution where Members who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the Co-operative may requisition the Board to conduct the special resolution by postal ballot.

- 37.2 If a postal ballot is requisitioned by Members under rule 37.1 the requisition should specify whether the postal ballot is to be a secret ballot.
- 37.3 A postal ballot requisitioned under rule 37.1 is to be conducted in accordance with the National Regulations and in the form and manner determined by the Board.
- 37.4 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 the use of Technology.
- 37.5 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.
- 37.6 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.
- 37.7 Ballot Papers (in such form and with such content as the Board may approve) must be sent to all voting Members giving:
- (a) particulars of the business in relation to which the postal ballot is being conducted; and
 - (b) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
 - (c) notice of the closing date and closing time of the postal ballot;
- and must be sent to Members so that they arrive (assuming Standard Postal Times) at least 21 days before the closing date of the postal ballot.
- 37.8 This rule does not apply in relation to special postal ballots.

38. SPECIAL POSTAL BALLOTS

- 38.1 This rule applies where a special postal ballot is required is required under [insert either "section 249 of the Law" (for all jurisdictions except WA) or "section 187 of the Law" (for WA)].
- 38.2 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.
- 38.3 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 Technology.
- 38.4 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.

39. SPECIAL RESOLUTIONS

- 39.1 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.
- 39.2 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).
- 39.3 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.

40. BOARD

- 40.1 The business of the Co-operative is 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.
- 40.2 The Board must have a minimum of [3] Directors, and may have a maximum of [9] Directors.

41. QUALIFICATIONS OF DIRECTORS

- 41.1 A person is not qualified to be a Director of the Co-operative unless the person:
- (a) is an individual over the age of 18 years;
 - (b) understands how a Co-operative works or be prepared to undertake training to become familiar with the model; and
 - (c) is either:
 - (i) an active Member of the Co-operative or a representative of an entity that is an active Member of the Co-operative; or
 - (ii) 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.
- 41.2 A person qualified to be a Director under rule 41.1(c)(i) is known as a “Member Director”. A person qualified under rule 41.1(c)(ii) is known as a “non-Member Director”.

- 41.3 The Board of Directors must have a majority of Member Directors.

42. CHIEF EXECUTIVE OFFICER

- 42.1 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.
- 42.2 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.
- 42.3 The conditions and the period of appointment including termination must be decided by the Board.
- 42.4 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.
- 42.5 The chief executive officer cannot be required to be an active Member of the Co-operative.
- 42.6 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.

43. FIRST DIRECTORS AND ELECTION OF MEMBER DIRECTORS

- 43.1 The first Directors are elected by poll at the formation meeting of the Co-operative.

- 43.2 The term of office of the first Directors shall be determined at the formation meeting in order to enable their retirement by rotation and in any event shall be no more than **three (3)** years ending on the day of the third annual general meeting after the formation meeting.
- 43.3 The term of office of all elected Member Directors thereafter, is to commence from the annual general meeting at which they are elected and ends on the day of the **[3rd]** annual general meeting thereafter.
- 43.4 The Member Directors of the Board are to be elected in the manner specified in this rule.
- 43.5 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:
 - A. their eligibility to nominate as a Director; and
 - B. the duties and responsibilities of a Director; and
 - C. the anticipated remuneration (if any); and
 - D. 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.
- 43.6 If the number of nominees equals the number of vacancies, the nominees must be declared elected at the annual general meeting.
- 43.7 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.

- 43.8 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.

43.9 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 47.1.

43.10 Subject to rule 43.11, each Director is eligible for re-election.

43.11 All Member Directors may serve no more than **three terms** in total, whether consecutive terms or not, unless the Members approve a further term by a special resolution at a general meeting.

44. APPOINTMENT OF NON-MEMBER DIRECTORS

44.1 Non-member Directors shall be appointed by the Board in their absolute discretion.

44.2 The term of office of Non-member Directors will be 3 years, unless re-appointed for a further term by the Board after their term expires.

44.3 All Non-Member Directors may serve no more than **three terms** in total, whether consecutive terms or not, unless the Members approve a further term by a special resolution at a general meeting

45. REMOVAL FROM OFFICE OF DIRECTOR

45.1 The Co-operative may by resolution under **[insert either "section 180 of the Law" (for all jurisdictions except WA) or "section 206A of the Law" (for WA)]**, 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.

46. VACATION OF OFFICE OF DIRECTOR

46.1 In addition to the circumstances set out in the Law, a Director vacates office if the Director:

- (a) dies;
- (b) loses decision-making capacity for a period of more than **[xx time period]**; or
- (c) **[insert other]**.

47. CASUAL VACANCIES AND ALTERNATE DIRECTORS

47.1 The Board may appoint a qualified person to fill a casual vacancy in the office of Director until the next annual general meeting.

47.2 The Board must not appoint a person to act as a Director (an alternate director) in the place of an absent Director.

or

- 47.3 The Board may appoint a qualified person to act as a director (an **alternate director**) in the place of an absent director.
- 47.4 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.
- 47.5 An alternate director holds office for the duration of the absent director’s term of office.
- 47.6 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 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 [insert either “section 179(2)(b) of the Law” (for all jurisdictions except WA) or “section 205(2)(b) of the Law” (for WA)] do not apply in relation to the alternate director).

48. PROCEEDINGS OF THE BOARD

- 48.1 Meetings of the Board (including the transaction of business conducted outside Board meetings) 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.
- 48.2 A meeting may be held with one or more of the Directors participating by using a form of Technology that allows reasonably contemporaneous and continuous communication between the Directors taking part in the meeting.
- 48.3 Questions arising at a meeting must be decided by a majority of votes.
- 48.4 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.

49. QUORUM FOR BOARD MEETINGS

- 49.1 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).
- 49.2 For a quorum, the number of Member Directors must outnumber the non-Member Directors by at least one.

50. CHAIRPERSON OF BOARD

- 50.1 The chairperson of the Board is to be elected by the Board.
- 50.2 The term of the chairperson shall be determined by the Board.
- 50.3 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.
- 50.4 The chairperson may be removed, and a new chairperson elected, by ordinary resolution of the Board.

51. CONFLICTS OF INTEREST

- 51.1 A Director must disclose any actual, potential or perceived Conflicts of Interest to the Chairperson and CEO (if applicable) as soon as reasonably practicable after the individual has identified the interest.
- 51.2 Where a Director has a material personal interest in an issue arising in the course of their duties, they must immediately inform the chairperson in writing and must not deal with the issue except under the chairperson's written direction.
- 51.3 If the chairperson does not issue a written direction pursuant to rule 51.2:
- (a) the Director must not be counted in quorum;
 - (b) the Director must not vote or use their personal influence on the matter;
 - (c) the Director must not be present when the matter is discussed by the Board; and
- 51.4 The minutes of the meeting will reflect that a disclosure was made, and the abstention from voting or any other resolution action undertaken.

52. DELEGATION AND BOARD COMMITTEES

- 52.1 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;
- 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.
- 52.2 A power delegated under this rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- 52.3 A delegation under this rule may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- 52.4 Despite any delegation under this rule, the Board may continue to exercise the power delegated.
- 52.5 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.
- 52.6 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.
- 52.7 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 outcome shall be the same as in rule 35.

53. OTHER COMMITTEES

- 53.1 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.
- 53.2 Rules 52.6 and 52.7 apply to committees appointed under this rule, with the changes approved by the Board.
- 53.3 The quorum for a meeting of the committee is half the number of committee Members (or, if half is not a whole number, the whole number next higher than one half).

54. MINUTES

- 54.1 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.
- 54.2 Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate was held.
- 54.3 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.

55. CUSTODIAN OF PROPERTY

- 55.1 Before the Board may make a decision regarding the use of any property owned by the Co-operative, including use of such property by Members, the Board must take into account the following principles:
- (a) the needs of potential residents;
 - (b) the just distribution of property use rights;
 - (c) the preservation of affordable access to property and housing for future residents and/or Members;
 - (d) the promotion of the long-term wellbeing of the community and long term health of the environment.
- 55.2 Both the Board and the Members at a General Meeting must approve a decision to mortgage or otherwise encumber property owned by the Co-operative.
- 55.3 Property owned by the Co-operative must not be sold except in extraordinary circumstances and only in accordance with the following:
- (a) the sale must be first approved by a two-thirds majority of the Board; and
 - (b) the sale must be approved by a special resolution of the Members passed by a special postal ballot.
- 55.4 Despite rule 55.3, property owned by the Co-operative must not be sold whilst it remains subject to a lease or co-ownership arrangement with a Member.

56. SEAL

- 56.1 This rule applies if the Co-operative chooses to authenticate a document under the common seal of the Co-operative.
- 56.2 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.
- 56.3 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.
- 56.4 The seal of the Co-operative must not be affixed to an instrument other than under a resolution of the Board. Two Directors, or one Director and the secretary, must be present and must sign all instruments sealed while they are present.

57. INSPECTION OF RECORDS AND REGISTERS

- 57.1 Subject to rule 57.2, Members of the Co-operative shall have access to the records and registers referred to in [insert either "section 214(1) of the Law" (for all jurisdictions except WA) or "section 232(1) of the Law" (for WA)], and they may make a copy of any entry in the registers.
- 57.2 The Co-operative may require that the Member pay a fee not exceeding the amount that would be charged if the Member obtained a copy from the Registrar for such access.
- 57.3 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.

58. SAFE KEEPING OF SECURITIES

- 58.1 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.

59. NOTICES TO MEMBERS

- 59.1 This rule applies in addition to the Law regarding how a notice or other document may be given to a Member of the Co-operative.
- 59.2 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, where the Member has given consent and notified the Co-operative of the relevant contact details.
- 59.3 A notice is deemed to be given:
- (a) if sent by pre-paid post, three (3) Business Days after it is posted;
 - (b) if sent by email or other Technology during Business Hours, on the day it was sent; and if sent outside Business Hours, on the first Business Day after the day it was sent; and
 - (c) if delivered during Business Hours, on the day of delivery; and if delivered outside Business Hours, on the first Business Day after the day of delivery.
- 59.4 In proving service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- 59.5 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.
- 59.6 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:

- (a) to that person by name to the contact details listed in the register of Members; or
- (b) 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:
 - (i) the address should be that supplied for the purpose by the person claiming to be entitled; or
 - (ii) 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.

60. TECHNOLOGY

60.1 General Meetings by Using Technology

Without limiting the discretion of the Board to regulate their meetings and general meetings, the Board may, if it sees fit, give notice of meetings, confer, meet, hold elections or conduct postal ballots or special postal ballots using any Technology.

60.2 Resolutions, Postal Ballots & Special Postal Ballots

Notwithstanding that the Board or the Members (as applicable) are not present together in one place at the time of the meeting, a resolution passed by the use of Technology will be deemed to have been passed at a meeting of the Board or the Co-operative held on the day and time at which the meeting was held.

60.3 Quorum

A Director or Member (as applicable) present at the commencement of the meeting will be conclusively presumed to have been present and, subject to other provisions of these rules, to have formed part of the quorum throughout the meeting.

60.4 Procedures

The provisions relating to the procedure of Board meetings and general meetings apply to the meeting to the extent they are capable of applying, and with the necessary changes where Technology is used.

61. ACCOUNTS

61.1 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.

61.2 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 two (2) authorised persons.

61.3 The operation of any electronic accounts must be restricted so that there is a requirement for authorisation by two (2) authorised persons.

61.4 For the purposes of this rule, an **authorised person** is:

- (a) a Director; or
- (b) a person approved by the Board.

62. FINANCIAL REPORTS TO MEMBERS

62.1 The Co-operative must prepare financial reports and statements in accordance with the CNL, the National Regulations and these rules.

63. APPOINTING AN AUDITOR OR REVIEWER FOR SMALL CO-OPERATIVE

- 63.1 The Co-operative must appoint either an auditor or a reviewer in respect of its financial statements. The Board will determine whether to appoint an auditor or a reviewer by an ordinary resolution for each financial year.
- 63.2 An auditor or a reviewer appointed under this rule (as applicable) is to conduct an audit or review of the Co-operative's financial statements as presented to Members.
- 63.3 The appointment of the auditor or the reviewer to conduct the audit or review under this rule is to be made at an annual general meeting and the appointment is only to conduct the audit or review for the relevant financial year (it is not a standing appointment).
- 63.4 The Co-operative may appoint another auditor or reviewer at a subsequent annual general meeting if there is a vacancy in the office of the auditor or reviewer.
- 63.5 The provisions of [insert either "section 300(2) of the Law" (for all jurisdictions except WA) or "section 244ZM(2) of the Law" (for WA)] apply to an auditor or a reviewer (as 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.

64. APPOINTING AN AUDITOR OR REVIEWER FOR A SMALL CO-OPERATIVE IF THERE IS A DIRECTION UNDER THE LAW

- 64.1 If a small Co-operative is directed to prepare a financial report (by its Members or the Registrar under 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.
- 64.2 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.

65. DISPOSAL OF SURPLUS FUNDS DURING A FINANCIAL YEAR

- 65.1 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.
- 65.2 [Insert either "All or part of" or "No more than x% of"] the surplus may be applied for charitable purposes.
- 65.3 Subject to rule 67, no part of the surplus may be paid or transferred directly or indirectly, by way of profit, to Members of the Co-operative.

66. PROVISION FOR LOSS

- 66.1 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 real prejudice to the Co-operative's solvency.

67. WINDING UP

- 67.1 The winding up of the Co-operative must be in accordance with [insert either "Part 4.5 of the Law" (for all jurisdictions except WA) or "Part 12 Division 3 of the Law" (for WA)].
- 67.2 If at the time the Co-operative is wound up the Co-operative is a charity (and/or holds deductible gift recipient status), there remains after the satisfaction of all its debts and liabilities any surplus assets:
- (a) the Co-operative will refund the amounts paid up on all shares on issue to the Members (and if there is insufficient funds to refund the amounts paid up for all shares, the Co-operative will do so on a pro-rata basis); but

- (b) the remainder of the surplus must not be distributed to a Member or former Member of the Co-operative, unless that Member or former Member is a charity described in rule 67.3.

67.3 Subject to the Law and any other applicable Act, and any court order, any surplus assets that remain after the Co-operative is wound up must be distributed to one or more charities:

- (a) (where the Co-operative is endorsed as a deductible gift recipient): with deductible gift recipient status; and
- (b) with charitable purpose(s) similar to, or inclusive of, the purpose in rule 3.1; and
- (c) which also prohibit the distribution of any surplus assets to its Members to at least the same extent as the Co-operative.

The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, or in default, by a judge of a Court with jurisdiction in this matter.

and/or

67.4 If at the time the Co-operative is wound up the Co-operative is not a charity, there remains after the satisfaction of all its debts and liabilities any surplus property:

- (a) the Co-operative will refund the amounts paid up on all shares on issue to the Members (and if there is insufficient funds to refund the amounts paid up for all shares, the Co-operative will do so on a pro-rata basis); but
- (b) the remainder must not be paid to or distributed among the Members of the Co-operative and instead must be given or transferred to an organisation with similar purposes to the Co-operative's purpose.

The decision as to the organisation to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, or in default, by a judge of a Court with jurisdiction in this matter.

Resident & General Member Model

A Non-Distributing Co-operative with Share Capital.

Commentary on Template Rules

(Resident & General Member
Model)

A Non-Distributing Co-operative with Share Capital.

General

While all provisions within the Rules can be modified to suit the needs of the proposed founding members and each co-operative, rules which contain drafting in **[square brackets with yellow text]** need to be completed or amended.

As stated earlier, the CNL applies in all States and Territories except Western Australia. In Western Australia the Co-operatives Act applies. You will need to use the appropriate drafting for the definitions of “the Law” and “the National Regulations” (and update the various legislative references throughout), based on your chosen jurisdiction for registration.

Not all provisions in the Rules have a drafting or explanatory note. If anything is unclear then you should seek legal advice on what the provision means. The numbers and headings below refer to the references in the draft Rules.

All references to the legislation (and monetary amounts/thresholds) are correct as at the date of publication (June 2024).

1. Application of the rules and name of the co-operative

You will need to select a name for your co-operative. A co-operative may include “co-operative” or “co-op” in its name. “Ltd” or “Limited” must also be included in the name of the co-operative to designate its legal structure.

As mentioned, we note that groups should be aware that the word “trust” cannot be used in an entity’s name without express ministerial consent, as it may mislead the public about the legal nature of the co-operative’s activities.

3.1 Purpose

In this iteration of the rules, the authors have deliberately chosen a high-level purpose for the co-operative to hold the property to deliver permanently affordable housing and community benefit (see rule 3.1(a)). The reasons for this are two-fold.

First, a purpose is not necessary to include in the Rules under the CNL or Co-operatives Act, but having one stated will help guide the members and directors as to the co-operative’s core objective. A purpose may be needed if you are applying for charitable registration or DGR endorsement. Under the CNL and the Co-operatives Act, a co-operative must specify its ‘primary activities’. Any purpose stated here needs to align with the primary activities set out in rule 3.3 (see also commentary on rule 3.3). Keeping the purpose ‘high level’ allows flexibility for the co-operative as to how it delivers on the purpose in the future, with the focus being on the primary activity/ies.

Second, in addition to delivering permanently affordable homes that could be rented or owned, a number of community land trusts also provide a range of community facilities and services, open space, and/or commercial properties in response to local need, hence the inclusion of “community benefit”.

The purpose of the co-operative is, however, entirely for each group to decide.

Subrules 3.1(c) and (d) are optional but are useful if you are applying for charitable registration. These subrules are drafted to show the ‘not-for-profit’ element of the co-operative.

3.2 Values and Principles

A co-operative does not need to include a list of any values or principles it wishes to adopt. Some co-operatives do have certain values that are important and which the founders want to be binding on the members and directors. Any values or principles to be enshrined should be stated in rule 3.2, otherwise you can delete this rule. Please be aware that separate to any chosen principles, the co-operative principles in ss. 10 and 11 of the CNL and ss. 6 and 7 of the Co-operatives Act, will apply to the co-operative and to the construction of the Rules to promote these principles.

3.3 Primary Activity

A co-operative must articulate its primary activities in its rules, and a co-operative must have at least one primary activity (s.147 of the CNL and s.113 of the Co-operatives Act). The primary activity must be connected with the purpose for which the co-operative exists. The activity need not be the only function of the co-operative, but it must contribute at least 10% to the turnover, income, expenses, surplus or business of the co-operative (note this percentage is correct at the time of publication but please review the National Regulations at the time of drafting).

The template sets out a number of primary activities you can choose from to suit the purpose of the co-operative as a community land custodian or steward. Some of these activities may be better suited as part of the 'purpose' of the co-operative.

Where a group is seeking to form a charitable organisation, or register for DGR endorsement, the group should pay particular attention to language used for the purpose and primary activities to ensure it meets the test under those laws.

For example, you may have a purpose similar to: "relieve the distress, misfortune, hardship, disability or poverty experienced by people in need, by facilitating access to affordable housing with a focus on people living in *insert name of local area*." With the primary activities being one or more of the following:

- (a) providing quality, affordable rental housing for those otherwise unable to access housing in and around the *insert name of local area*;
- (b) facilitating the provision of equitable, non-discriminatory access to housing within eligibility guidelines and within households' capacity to pay;
- (c) providing affordable housing ownership options to individuals or families who are financially disadvantaged, and are otherwise unable to afford home ownership in order to achieve a modest standard of living in the Australian community without experiencing financial distress; or
- (d) providing affordable housing or land (for rental or ownership purposes) to the beneficiaries of other charitable or benevolent organisations with similar views and purposes, provided that such beneficiaries fall within.

Note these are examples only. As with the purpose, the primary activities of the co-operative are entirely for each group to decide.

3.4 Active Membership

The rules of a co-operative must specify how a member must:

- (a) use or support an activity of, or maintain a relationship or an arrangement with, the co-operative, for carrying on the primary activity; or
- (b) maintain any other relationship or arrangement with the co-operative for carrying on the primary activity.

This is called “active membership” (see s.145 of the CNL and s.111 of the Co-operatives Act). Essentially this is the minimum commitment and support from members to ensure the co-operative’s ongoing operations. Despite the obligation to include an active membership requirement, the nature of active membership is decided by the co-operative in its rules.

In a non-distributing co-operative, the active membership requirement may simply be the payment of a regular subscription by the member to be applied to the primary activity of the co-operative (s.151(1) of the CNL and s.117(1) of the Co-operatives Act).

A co-operative may choose to include additional active membership requirements around participating in the primary activities of the co-operative, to use the co-operative’s services, to be a co-owner of property or resident of a dwelling (etc).

In this iteration of the rules we have chosen an obligation to pay an annual subscription fee, to be a resident of a dwelling, and to actively engage in conflict resolution. Failing to be an active member is grounds for cancelling membership. For resident members in particular, it is important that they are obliged to engage in some form of conflict resolution process because conflicts are more likely to occur amongst the residents and are likely to be higher impact on the management of the co-operative. The desire is to create a safe and harmonious space for resident members to live and (if a dispute cannot be resolved) then there is a mechanism to cancel membership.

The dispute resolution mechanism within the rules applies to all members (including non-residents), and the rules have been prepared so that if there is another document which governs the relationship between resident members (in respect of the dwellings – such as a lease) then any conflict resolution mechanism in that document will apply first.

Where you are drafting additional active membership requirements, those obligations must be clear, reasonable and clearly define a period in which a member is required to use or support an activity of the co-operative and/or maintain a relationship within the co-operative. The Registrar will reject any active membership rules which are vague in how they are measured. If you have different classes of membership, you should describe whether there are different active membership tests for each class of member.

4.1 Qualifications for Membership

Qualifications for membership are set out in s.112 of the CNL and s.58 of the Co-operatives Act, and essentially there must be reasonable grounds for believing the person will be an active member of the co-operative, and they otherwise meet the eligibility criteria (if any) under the rules. You do not need to have any ‘additional’ qualifications, but rule 4.1 is a suggested set of drafting if desired.

One example of a qualification may be that the member must be an individual (and membership is not open to companies, trusts etc). If you are looking to limit membership in such a way you should consider the longer-term impact for such a restriction as amending the rules (to change membership eligibility) will require pre-approval of the Registrar in addition to approval by the members by a special resolution.

Another qualification which may be relevant to a community land trust model is that each member has to be a resident of a dwelling (on land owned or controlled by the co-operative) where the land is held to ensure perpetual affordability for only those that fall into a certain class of individuals (artists for example).

A common practice for CLTs in the US is to encourage wide community support base by specifying different membership classes. Such classes might include “resident member” and “general member”. For this iteration of the Rules, the authors have created separate classes of “resident members” and “general members”. Resident members have the qualification that they must have entered into a lease or co-ownership arrangement with the co-operative (depending on how the co-operative is structured). The authors have otherwise kept the consequences of membership largely the same for the two groups. The way in which the authors have proposed membership differs is:

- (a) different active membership tests (see rule 3.4);
- (b) General Members get to vote upon a set number of directors to the Board (from amongst themselves) and Resident Members get to vote upon a set number of directors to the Board (from amongst themselves) (see rules 40 and 43);
- (c) the fees payable are different for each class of members (see rule 5); and
- (d) the number of shares for each class of member may differ.

The way in which membership classes differ are up to you, however you should make it clear (in this rule) whether there are different qualifications for membership for each class of member. Remember also that the right to vote attaches to membership (not shareholding) so you cannot give additional rights to vote (or take away the right to vote) amongst different classes of members.

It is possible to charge different fees to members within the same class of membership (for example, to allow discounts for those on pensions or low-incomes) but care should be taken to ensure you do not inadvertently create unnecessary divisions amongst those members from a cultural perspective but also an administrative perspective.

In rule 4.1(c) if a Resident Member ceases to meet the eligibility criteria to be a Resident Member the template suggests their membership will be cancelled unless they specifically opt to be a General Member instead. Alternative drafting could be that their membership is automatically transferred/downgraded to a General Member (rather than cancellation).

4.2 Joint Members

Section 81 of the CNL and s.59 of the Co-operatives Act, allows membership to be joint unless the rules state otherwise. You will need to decide whether joint membership is permitted or not. Alternative drafting is set out in rule 4.2.

5 Entry Fees and Regular Subscriptions

In rules 5.1 and 5.2, you may want the members to approve entry/application fees and/or annual subscription fees, in which case you will need to remove “by the Board” and replace it with “by an ordinary resolution of the Members”.

You can also set out in the rules the amount of the entry fee or annual subscription fee – but it then requires a special resolution of the Members to amend the rules if co-operative ever wanted to change the fee. If you are concerned about the potential fees to be charged in the future, you could also propose a monetary cap, so that the Board (or Members) can approve the relevant fee provided it is “not greater than xxx”.

7.1 Cessation of Membership

Sections 117 and 118 of the CNL and ss.63 and 64 of the Co-operatives Act set out where membership will be cancelled. The template includes what is set out in the Law but you should add any other instances where you expect membership to cease. In this template, for example, it is a condition of membership for ‘Resident Members’ that there be a lease or co-ownership arrangement in place with the co-operative. If they cease to have that in place, they no longer meet the eligibility requirements and their membership might be cancelled (see subrule 7.1(n)).

In subrule 7.1(b) the notice period and method of resignation is a decision for each co-operative.

Subrules 7.1(e) and (f) replicate what appears under the Law but you can choose alternate drafting with a different consequence to occur.

8.1 Expulsion of Members

You are not obliged to include a ‘expulsion’ clause within the rules, but if you do not have such a clause, there is no way under the Law to remove a member from membership unless they are no longer an active member. This template sets out a basic procedure for expulsion.

8.4 Expulsion of Members

Only include rule 8.4 if you permit joint members, otherwise delete.

9 Suspension of Members

You are not obliged to include a ‘suspension’ clause within the rules, but if you do not have such a clause, there is no way under the Law to suspend a member from the benefits of membership unless they are no longer an active member. This template sets out a basic procedure for suspension.

11 Dispute Resolution

Section 129 of the CNL and s.79 of the Co-operatives Act, require the rules of a co-operative to set out a grievance procedure for dealing with disputes under the rules between members, and between members and the co-operative. The process for dispute resolution is up to each co-operative. The template drafting is taken from the model rules which form part of the National Regulations.

The authors have added additional drafting in rule 11.1 to clarify that if a dispute arises from the occupancy or ownership arrangements with the Resident Member (rather than disputes under these rules) then the dispute resolution procedures under the agreement documenting that arrangement will apply to that dispute.

12 Fines Payable by Members

Sections 56 and 126 of the CNL and ss. 71 and 98 of the Co-operatives Act allow the co-operative to impose a fine on a member for an infringement of the rules. There is no obligation to do so. The Law allows a maximum penalty of \$500 (for co-operatives with a charitable purpose, and \$1,000 for all other co-operatives). The template provides alternate drafting – use either rule 12.1 (where no fines will be permitted), or rules 12.2 and 12.3 (where a fine is permitted).

13.2 Joint Members

Only include rule 13.2 if you permit joint membership, otherwise delete.

14 Capital and Shares

Sections 76-82 of the CNL and ss.140 to 146 of the Co-operatives Act allow for multiple classes of share capital. In this template, the authors have provided for only one class of shares (ordinary shares) but with the right for the Board to approve additional classes of shares from time to time.

Where you intend to have multiple classes of shares, you will need to ensure rule 14 includes the rights and entitlements attached to each class of shares. Groups should carefully consider why different classes of shares are necessary or desired, noting that no dividends can be declared on shares in a non-distributing co-operative and the right to vote attaches to membership (not shareholding).

Shares in a co-operative have a fixed value and shares must be repurchased by the co-operative on a member ceasing to be a member of the co-operative (subject to rights of the co-operative to defer or be exempt from payment in certain circumstances). Groups should consider this liability when considering the number of shares to be acquired by each member and the fixed value attributed to those shares.

14.1 Nominal Value

Section 76(2) of the CNL and s.140(2) of the Co-operatives Act states that shares have a fixed value, you will need to decide what that value will be.

14.2 Minimum number of shares

Section 77 of the CNL states that the minimum number of shares must be stated in the rules⁴. The minimum number of shares could be zero, and the acquisition of shares is optional.

The authors have chosen to require the different classes of membership to acquire a different (minimum) number of shares to reflect the fact the Resident Member has additional financial commitments under its lease and/or ownership arrangement.

14.4 Fully paid or partly paid

Section 78(1) of the CNL and s.142(1) of the Co-operatives Act state that a share must not be allocated unless at least 10% of the nominal value of the share has been paid. The co-operative may choose what percentage to allow, and that may require full payment before a share is allotted.

⁴ Note there is no equivalent provision in the Co-operatives Act.

15 Calls on Shares

This rule will only be relevant where a share is issued partly-paid. Rule 15 sets out when the Board can require the remainder of the amount owing on the share to be paid to the co-operative.

15.5 Joint Members

Only include rule 15.5 if you permit joint membership, otherwise delete.

18 Forfeiture and Cancellations – Inactive Members

Sections 156 to 166 of the CNL and ss.120 to 130 of the Co-operatives Act set out the rules for inactive membership. Membership can be cancelled if a member is inactive (i.e. they have failed to comply with the active membership test) or their whereabouts are unknown for periods of 3 years or less (as stated in the rules). The template uses 3 years but you can use a lesser period. The two periods in rule 18.1 do not need to be identical (but commonly are).

21-23 Death, Bankruptcy and Mental Incapacity

These provisions include processes for what happens upon the death, bankruptcy or loss of mental capacity of a Member (including the possible transfer or cancellation of Membership).

As outlined in rule 4.1(c), where a Resident Member no longer has a lease or co-ownership arrangement in place with the co-operative they cease to be eligible as a 'Resident Member'. The template has suggested their Membership is cancelled unless they opt to become a 'General Member'.

It is not intended that the Constitution will void or terminate any lease or co-ownership deed in place with a Resident Member, just because that person no longer wants to be a member of the co-operative. It is entirely possible that a resident or co-owner is not a member of the co-operative, but still resides in a dwelling.

Groups should consider how they want the relationship to work between the co-operative and the residents (in their capacity as members and as residents). You may need to include additional rights of termination in the relevant lease/co-ownership arrangement if the co-operative expects all residents to remain members to be eligible to reside in the dwelling. That said, groups should seek legal advice on the implications of the residential tenancy legislation on such an arrangement.

25 Issue & Transfer of CCUs

Rule 25 sets out the right to issue co-operative capital units (**CCUs**) in the co-operative. As set out in the Introduction, CCU holders need not be members (but can be).

It is a requirement of the CNL and the Co-operatives Act that the rules of a co-operative specifically permit the co-operative to issue CCUs, before the co-operative has a right to do so. The authors have therefore included a broad clause to allow the co-operative to issue CCUs. Before issuing any CCUs the Board of the co-operative will need to:

1. determine the *terms* on which the CCUs are issued (including how they interact with the rights of the members under the rules);

2. have those terms and an accompanying disclosure statement approved by the Registrar of Co-operatives; and
3. have those documents (and the issue of CCUs) approved by the members.

Groups should seek legal advice on the process for issuing CCUs, and what restrictions (if any) they wish to build into the rules on the process or terms of issuing CCUs.

The reference in rule 25.2 to an entitlement of the CCU holder to vote – is only a right to vote in a meeting of CCU holders on matters which affect them. Unless the CCU holder is also a member of the co-operative, the CCU holder does not get a right to vote at any general meeting of the co-operative or in any postal ballot or special postal ballot.

27.2 Members' power to requisition a general meeting

Section 257 of the CNL and s.195 of the Co-operatives Act state that members who can cast 20% of the votes at a meeting of members, can requisition a meeting. However, the Law also allows a co-operative to lower that percentage through its rules. Groups should consider whether to lower the percentage in rule 27.2 or leave at 20%.

30.2 Quorum

Section 255 of the CNL and s.193 of the Co-operatives Act allow the co-operative to determine the quorum. You can specify a specific number, a percentage, or you can have a 'sliding scale' or combination based on the number of members. Much will depend on how large you anticipate growing the membership. For example, if your co-operative will only ever have between 8 and 10 members, a quorum of 4 or 5 members may be appropriate. If your co-operative grows to 100 members, a quorum of 4 or 5 members may be too low and need to be updated by a rule amendment. The whole of rule 30.2 is an example only of possible drafting.

32.2 Joint Members

Only include rule 32.2 if you permit joint membership, otherwise delete.

32.3 Joint Members

Only include rule 32.3 if you permit joint membership, otherwise delete.

32.4 Joint Members

Only include rule 32.4 if you permit joint membership, otherwise delete.

35 Determining the outcome where equality of votes

Section 256(5) of the CNL and s.194(5) of the Co-operatives Act allow the chairperson of the meeting to have a second vote at a general meeting. Directors are given discretion to regulate their own meetings. The drafting of rule 35 can be used in the alternate. Use rules 35.1 to 35.3 if you want to give a chairperson a second/casting vote at both a general meeting and board meeting. Use 35.4 if you do not want the chairperson to have a second/casting vote at any meeting.

36 Proxy Votes

Section 229 of the CNL and s.168 of the Co-operatives Act allow the rules to determine whether you permit proxies or not. The drafting of this rule can be used in the alternate. Use rule 36.1 if you do not permit proxies at all. Use all remaining rules if you do permit proxies. You can choose the parameters around how many can be held by a single member.

37 Postal Ballots

Postal ballots can be held at the discretion of the Board. Section 250 of the CNL and s.188 of the Co-operatives Act allow for members holding at least 20% of the votes that can be cast at a general meeting, to requisition a postal ballot. However, the Law also allows a co-operative to lower that percentage through its rules. Groups should consider whether to lower the percentage in rule 37.1 or leave at 20%.

38 Special Postal Ballots

Please be aware that there are certain ‘significant’ decisions that must be made by the members by a special resolution by a special postal ballot. These are set out in s.249 of the CNL and s.187 of the Co-operatives Act. Examples include the conversion of the legal structure, a requirement for members to subscribe for additional shares or to provide loans to the co-operative, and to acquire or sell certain assets.

You should consider whether you add any additional decisions to be made by the ‘super majority’ required of special postal ballots, and include these in rule 38.

40.2 Board

Section 172(2) of the CNL and s.197(2A) of the Co-operatives Act require a minimum of three (3) directors, two of whom are ordinarily resident in Australia. The co-operative can otherwise set that minimum (or a higher minimum) and can set a maximum (if it chooses). There is no requirement to set a maximum number of directors but it is useful to ensure the Board does not become so large that it cannot function. The Australian Institute of Company Directors’ Board Size Director Tool may be useful to determining the number.

In order to align with the more ‘classic’ CLT model (as described in the CLT Manual) the template requires that one third of directors be appointed by the General Members, one third of directors be appointed by the Resident Members and the remainder of the directors be independent directors (appointed by the Board).

If you anticipate there will be a construction / development phase to the operation of the co-operative, your rules may need to provide for two different mechanisms for determining the Board. The first *during* the construction / development phase (where ‘Resident Members’ may be defined as those *intending* on residing at the property; or where there are no Resident Members and 2/3 of directors are taken from the ‘General Member’ pool). The second *after* the construction / development phase – where each class of members gets 1/3 of the directors, with the final 1/3 appointed by the Board to fill expertise/experience needed. The CLT Manual has good information on the possible pool of directors.

The CLT Manual makes an important point that “persons appointed to the Board are required to under the [Corporations Act] to act “in the best interests of the company as a whole”. That is Directors do not sit on the Board in a representative capacity to serve the interests of a particular

group of members. The intention of the three separate categories of Directors accordingly cannot be to gain representation on the Board for a particular membership class.” Similarly to the Corporations Act, the CNL and Co-operatives Act impose the same obligation on all directors to act in the best interests of the co-operative as a whole.

41 Qualifications of Directors

Section 174 of the CNL and s.199 of the Co-operatives Act require the Board to be made up of a majority of member-directors, but that is the only qualification for membership. The template allows for some basic qualifications but each co-operative may wish to decide these for itself. Consideration should also be given to the mix of (or skill sets of) directors recommended by the CLT Manual.

43 First Directors and election of Member Directors

Section 173 of the CNL and s.198 of the Co-operatives Act allow the co-operative to specify the process for electing directors, the number of years/terms the directors can serve, etc. It is common for the ‘non-member directors’ to be appointed by the Board directly to fill any skills gap (they are also referred to as independent directors). The template sets out one possible process for member-directors to be elected (and non-member directors to be appointed in the following rule 44) and has been formulated based on the model rules attached to the National Regulations.

46 Vacation of the office of Director

Section 179(2) of the CNL and s.205(2) of the Co-operatives Act sets out six circumstances in which a director will vacate their office. The template rules refer to that legislation and add two additional reasons. You may wish to add additional reasons which trigger an automatic removal of a director. Consideration should be given as to whether you create a rule which requires a director to stand down where they hold an ongoing material personal interest in the business of the co-operative that it prevents them from discharging their duties to the co-operative.

47 Casual Vacancies and Alternate Directors

A co-operative does not have to permit alternate directors. The template allows for alternative drafting – use rule 47.2 if you do not permit alternates. Use rules 47.3 to 47.6 if you permit alternates.

48.1 Proceedings of the Board

Section 175(1) of the CNL and s.201(2) of the Co-operatives Act require the directors to meet at least once every three (3) months, but meetings may be held as often as the rules provide, or as often as necessary. The template uses this language but you can change the frequency of the meetings.

49.1 Quorum for Board Meetings

Section 175(4) of the CNL and s.201(5) of the Co-operatives Act provide that a quorum for a board meeting is 50% of the number of directors or greater number provided in the rules. Section 175(5) of the CNL and s.201(6) of the Co-operatives Act also provides the number of member-directors must outnumber the non-member directors by at least 1 or greater number specified in the rules. The template uses the 50% measure rounded up (for quorum) and 1 (for how many member directors must outnumber the non-member directors).

55 Custodian of Land

Rule 55 has been adapted from the template rules provided in the CLT Manual. You can modify to suit the co-operative's needs.

56 Restriction on Sale Price

Rule 56 has been adapted from the template rules provided in the CLT Manual. As stated in the CLT Manual "Any lease or co-ownership document must include a reversion formula. [Our Rule 56] sets out some principles upon which a reversion formula must be based." The reversion formula may be one of several options – see Chapter 8 of the CLT Manual for guidance.

You can modify to suit the co-operative's needs.

60.5 Joint Members

Only include rule 60.5 if you permit joint membership, otherwise delete.

66 Disposal of surplus funds during a financial year

Rules 66.1 and 66.2 reflect the rights stated under ss.355 and 356 of the CNL and ss.269 and 270 of the Co-operatives Act. The rules of a co-operative must limit the amount that can be applied to a charitable purpose to a stated proportion – it is up to the co-operative to determine that proportion. The template provides alternate drafting with a limit of the whole of the surplus or a set percentage.

A non-distributing co-operative is one that is prohibited from giving returns or distributions on surplus or share capital to members, other than the nominal value of shares (if any) at winding up (see s.19(1) of the CNL and s.14(1) of the Co-operatives Act).

Section 4 of the CNL and s.4 of the Co-operatives Act defines 'surplus' as:

surplus, in relation to a co-operative, means the excess of income over expenditure after making adequate allowance for taxation expense, for depreciation in value of the property of the co-operative and for future contingencies.

Therefore rule 66.3 specifically prohibits the distribution of surplus to members.

Rule 66.3 does not prohibit the payment of any amounts due under the terms of a co-operative capital unit or debenture (these would be liabilities of the co-operative which must be paid prior to the 'surplus' being calculated).

68 Winding Up

On the winding up of a non-distributing co-operative, the 'surplus property' of the co-operative must be distributed as required by the rules of the co-operative (per s.448 of the CNL and s.319 of the Co-operatives Act). Groups have flexibility on what will happen on a winding up. 'Surplus property' is defined slightly differently in the legislation (although there is no practical difference in the interpretation).

In s.448(3) of the CNL:

surplus property means property of the co-operative remaining after satisfaction of the debts and liabilities of the co-operative and the costs, charges and expenses of the winding up.

In s.319(1) of the Co-operatives Act:

surplus property means property of the co-operative that remains after satisfaction of the debts and liabilities of the co-operative and the costs, charges and expenses of the winding up.

If the co-operative intends to apply for charitable registration then it will need to prevent the surplus property from being distributed to members to meet the requirements of the ACNC. Separately, shares can be repurchased by the co-operative at their nominal value (as identified earlier under rule 66). Rules 68.2 and 68.3 are to address this approach to surplus property, although the language used is to repay 'amounts paid up' on the shares – in case shares are not fully paid up at the time of winding up.

If the co-operative is not a charity but wants to ensure the perpetual affordability of land (in line with its purpose as a community land trust) then it should prevent the surplus property from being distributed to members (allowing for the shares to be repurchased at their nominal value). Rule 68.4 is intended to address this approach to surplus property.

In addition to Rule 68.1 (which is the overarching reference to the procedures under the Law), groups may wish to choose to use:

- (a) Rules 68.2 and 68.3; or
- (b) Rule 68.4; or
- (c) Rules 68.2, 68.3 and 68.4 – in case the intention is to apply to be a charity, but for whatever reason charitable status is lost at the time of winding up.

It is also possible to create a different regime for winding up of the non-distributing co-operative but groups will need to seek legal advice on the interaction with any other laws that will govern the co-operative.

===== End of Commentary on Template Co-operative Rules for Resident & General Member Model

Template Rules

(Resident & General Member Model)

A Non-Distributing Co-operative with Share Capital.

[Co-operative Name]

Rules

[Month 20XX]

CONTENTS

1.	APPLICATION OF THESE RULES & NAME OF THE CO-OPERATIVE	4
2.	DEFINITIONS & INTERPRETATION	4
3.	PURPOSE, VALUES, PRIMARY ACTIVITY & ACTIVE MEMBERSHIP	6
4.	QUALIFICATIONS FOR MEMBERSHIP.....	7
5.	ENTRY FEES AND REGULAR SUBSCRIPTIONS	8
6.	MEMBERSHIP APPLICATIONS	8
7.	CESSATION OF MEMBERSHIP	8
8.	EXPULSION OF MEMBERS	9
9.	SUSPENSION OF MEMBERS	10
10.	MONETARY CONSEQUENCES OF EXPULSION OR RESIGNATION	10
11.	DISPUTE RESOLUTION	11
12.	FINES PAYABLE BY MEMBERS	12
13.	LIABILITY OF MEMBERS TO CO-OPERATIVES.....	12
14.	CAPITAL AND SHARES	12
15.	CALLS ON SHARES	13
16.	REPURCHASE OF MEMBERS' SHARES.....	13
17.	TRANSFER OF SHARES.....	14
18.	FORFEITURE AND CANCELLATIONS—INACTIVE MEMBERS	15
19.	FORFEITURE OF SHARES	15
20.	FORFEITED SHARES—LIABILITY OF MEMBERS	15
21.	DEATH OF MEMBER	16
22.	RIGHTS AND LIABILITIES OF MEMBERS UNDER BANKRUPTCY OR MENTAL INCAPACITY	16
23.	ENTITLEMENTS AND LIABILITIES OF PERSON REGISTERED AS TRUSTEE, ADMINISTRATOR ETC.....	16
24.	TRANSFER AND TRANSMISSION OF DEBENTURES	17
25.	ISSUE & TRANSFER OF CCUS	17
26.	ANNUAL GENERAL MEETING	18
27.	MEMBERS' POWER TO REQUISITION A GENERAL MEETING.....	18
28.	NOTICE OF GENERAL MEETINGS	19
29.	BUSINESS OF GENERAL MEETINGS	19
30.	QUORUM AT GENERAL MEETINGS.....	19
31.	CHAIRPERSON AT GENERAL MEETINGS	20
32.	ATTENDANCE AND VOTING AT GENERAL MEETINGS	20
33.	VOTING ON A SHOW OF HANDS	21

34.	VOTING ON A POLL	21
35.	DETERMINING THE OUTCOME WHERE EQUALITY OF VOTES	21
36.	PROXY VOTES.....	21
37.	POSTAL BALLOTS (OTHER THAN SPECIAL POSTAL BALLOTS)	22
38.	SPECIAL POSTAL BALLOTS	23
39.	SPECIAL RESOLUTIONS.....	23
40.	BOARD	23
41.	QUALIFICATIONS OF DIRECTORS	24
42.	CHIEF EXECUTIVE OFFICER	24
43.	FIRST DIRECTORS AND ELECTION OF MEMBER DIRECTORS	24
44.	APPOINTMENT OF NON-MEMBER DIRECTORS	26
45.	REMOVAL FROM OFFICE OF DIRECTOR.....	26
46.	VACATION OF OFFICE OF DIRECTOR	26
47.	CASUAL VACANCIES AND ALTERNATE DIRECTORS	27
48.	PROCEEDINGS OF THE BOARD	27
49.	QUORUM FOR BOARD MEETINGS	27
50.	CHAIRPERSON OF BOARD	27
51.	CONFLICTS OF INTEREST.....	28
52.	DELEGATION AND BOARD COMMITTEES	28
53.	OTHER COMMITTEES.....	29
54.	MINUTES	29
55.	CUSTODIAN OF PROPERTY	29
56.	RESTRICTION ON SALE PRICE	30
57.	SEAL	30
58.	INSPECTION OF RECORDS AND REGISTERS	30
59.	SAFE KEEPING OF SECURITIES.....	30
60.	NOTICES TO MEMBERS	31
61.	TECHNOLOGY	31
62.	ACCOUNTS	32
63.	FINANCIAL REPORTS TO MEMBERS	32
64.	APPOINTING AN AUDITOR OR REVIEWER FOR SMALL CO-OPERATIVE.....	32
65.	APPOINTING AN AUDITOR OR REVIEWER FOR A SMALL CO-OPERATIVE IF THERE IS A DIRECTION UNDER THE LAW	32
66.	DISPOSAL OF SURPLUS FUNDS DURING A FINANCIAL YEAR.....	33
67.	PROVISION FOR LOSS	33
68.	WINDING UP	33

Preliminary

1. APPLICATION OF THESE RULES & NAME OF THE CO-OPERATIVE

These rules are the rules of [insert co-operative name] Ltd (the Co-operative).

2. DEFINITIONS & INTERPRETATION

2.1 Definitions

In these rules:

- (a) **Ballot Paper** means a ballot paper in paper or electronic form.
- (b) **Basic Minimum Financial Statements** means the financial statement required of a small Co-operative under the National Regulations.
- (c) **Board** means the board of the Co-operative.
- (d) **Business Day** means a day other than a Saturday, Sunday, or public holiday in [insert the State/Territory in which the co-operative is to be registered].
- (e) **Business Hours** means between 9.00am and 5.00pm on a Business Day.
- (f) **co-operative capital unit** and **CCU** have the meaning given to that term in the Law.
- (g) **Director** means a director of the Co-operative.
- (h) **Financial Year** means a year commencing on 1 July in any year and ending on 30 June in the following year.
- (i) **General Member** means a person who meets the qualifications for membership in rule 4.1(a) and is admitted by the Board of the co-operative as a General Member under the process described in rule 6.
- (j) **the Law** means [insert either "the Co-operatives National Law as applying in this jurisdiction" (for any jurisdiction other than WA) or "the Co-operatives Act 2009 (WA)"].
- (k) **Member** means a person whose name is entered into the register of members as either a:
 - (i) Resident Member; or
 - (ii) General Member.
- (l) **Member Director** and **Non-member Director**—see [insert either "section 174 of the Law" (for jurisdictions other than WA) or "section 199 of the Law" (for WA)] and rule 41.
- (m) **Resident Member** means a person who meets the qualifications for membership in rule 4.1(b) and is admitted by the Board of the co-operative as a General Member under the process described in rule 6.
- (n) **Standard Postal Times** means the times when properly addressed and prepaid letters would be delivered in the ordinary course of post.
- (o) **Technology** includes all information and communications devices for audio, visual, audio-visual or electronic communication including, but not limited to, radio, telephone, facsimile, closed circuit television, data storage devices, internet communication via an automated or user operated system, electronic mail, automated election processes, direct recording electronic voting systems, or any other electronic means available.

- (p) **the National Regulations** means [insert either “the Co-operatives National Regulations as applying in this jurisdiction” (for any jurisdiction other than WA) or “the *Co-operatives Regulations 2010 (WA)*”].

2.2 Interpretation

- (a) 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.
- (b) In these rules, unless a contrary intention appears:
- (i) words importing the singular include the plural and vice versa;
 - (ii) words importing any gender include all other genders;
 - (iii) any headings inserted in these rules are included for convenience and shall not affect its construction;
 - (iv) the word "includes" in any form is not a word of limitation;
 - (v) the word "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (vi) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (vii) a reference to "currency", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency; and
 - (viii) the word or phrase “present” or “present in person” includes present at a meeting through the use of Technology.

2.3 Rules constitute a contract

- (a) The rules of the Co-operative have the effect of a contract under seal –
- (i) between the Co-operative and each Member;
 - (ii) between the Co-operative and each holder of a CCU;
 - (iii) between the Co-operative and each Director, the chief executive officer and the secretary of the Co-operative;
 - (iv) between a Member and each other Member; and
 - (v) between a holder of CCUs and each other holder of CCUs and each Member.
- (b) The Co-operative has the powers set out in the Law (and where applicable the *Corporations Act 2001* (Cth)) but only to do all things that are necessary, convenient or incidental to carry out the primary activities of the Co-operative.
- (c) Any amendment of the rules must be approved by special resolution.
- (d) 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.
- (e) A Member is entitled to a physical copy of the rules upon payment of a fee, as determined by the Board from time to time (but which is not greater than \$....). A Member is entitled to an electronic copy of the rules for free.

3. PURPOSE, VALUES, PRIMARY ACTIVITY & ACTIVE MEMBERSHIP

3.1 Purpose of the Co-operative

- (a) The Co-operative is formed to act as a community property custodian, and the main purpose of the Co-operative is to hold title (or long-term leases) to property to deliver permanently affordable housing and community benefit.
- (b) The main purpose of the Co-operative is supported by the following further objects:
 - (i) to develop and maintain any income-generating activities compatible with and complementary to the main purpose set out in rule 3.1(a), to support the Co-operative financially so that the Co-operative can operate sustainably;
 - (ii) to finance and develop property, such as affordable and resource efficient homes; and
 - (iii) undertaking other incidental activities that the Co-operative considers will support the main object set out in rule 3.1(a).
- (c) The income and assets of the Co-operative are to be applied solely to further the Co-operative's purpose. No portion of the income or assets of the Co-operative may be paid, distributed, or transferred either directly or indirectly including by way of dividend, bonus or otherwise to any Member.
- (d) Nothing in rule 3.1(c) prevents the Co-operative from:
 - (i) the payment in good faith of reasonable and proper remuneration to any employed officer or other employee;
 - (ii) payment in good faith of reasonable and proper remuneration to a Member in return for services actually rendered, or goods actually supplied, in the ordinary course of the Co-operative's operations;
 - (iii) reimbursement of officers for out-of-pocket expenses in performing their duties as an officer of the Co-operative;
 - (iv) payment of interest on money lent or otherwise owing by the Co-operative;
 - (v) payment for sale or hire of goods or payment of rent for premises let to the Co-operative; or
 - (vi) repayment of the nominal value of the share capital upon a Member ceasing to be a Member of the Co-operative, or on a winding up of the Co-operative.

3.2 Values

- (a) The Co-operative adopts both the co-operative values and co-operative principles.
- (b) The co-operative values are self-help, self-responsibility, democracy, equality, equity and solidarity. Co-operative members must believe in, and support, the ethical values of honesty, openness, social responsibility and caring for others.
- (c) The co-operative principles are stated in [insert either "s.10 of the Law" (for any jurisdiction other than WA) or "s.6 of the Law" (for WA)] and are as follows:
 - (i) voluntary and open membership;
 - (ii) democratic member control;
 - (iii) member economic participation;

- (iv) autonomy and independence;
- (v) education, training, and information;
- (vi) co-operation amongst co-operatives; and
- (vii) concern for community.

3.3 Primary Activity

For the purposes of the Law, the primary activities of the Co-operative are:

- (a) assisting in or overseeing the development, delivery and provision of affordable housing options on property owned or controlled by the Co-operative, including rentals, price-restricted home ownership, co-operative housing, emergency shelter or temporary accommodation;
- (b) acquiring and retaining property, or interests in property, in order to facilitate the provision of affordable housing;
- (c) the provision of commercial leases to businesses and the community in order to be a source of local revenue, employment, and community development, and to sustain the operations of the Co-operative;
- (d) the provision of affordable housing in [insert relevant area]; and
- (e) provide training, advice, and other support to home buyers.

3.4 Active membership requirements

In order to maintain an active Membership:

- (a) a General Member must pay the annual subscription fee in accordance with rule 5.2 (which money will be used towards the primary activities of the Co-operative); and
- (b) a Resident Member must:
 - (i) pay the annual subscription fee in accordance with rule 5.2 (which money will be used towards the primary activities of the Co-operative);
 - (ii) reside in a dwelling owned, leased or managed by the Co-operative; and
 - (iii) engage in the conflict resolution procedures set out in these Rules and set out in any other policies or agreements applying to residency of dwellings owned, leased or managed by the Co-operative.

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

4. QUALIFICATIONS FOR MEMBERSHIP

4.1 Qualifications for Membership

- (a) A person qualifies for Membership as a General Member of the Co-operative if:
 - (i) they are aligned with the Co-operative purpose and values set out in these rules;
 - (ii) they are able to use or contribute to the services of the Co-operative; and
 - (iii) [insert any other qualification you expect the member to have].
- (b) A person qualifies for Membership as a Resident Member of the Co-operative if:

- (i) they meet the qualifications in rule 4.1(a); and
 - (ii) they have entered into (and maintain for the duration of their Membership) a [insert the relationship of the resident to the co-operative, the drafting excepts the resident to have entered into either a 'long term lease', 'lease', or 'co-ownership deed' with the co-operative depending on how the dwellings are rented/owned].
- (c) If a Resident Member ceases to meet the eligibility criteria in rule 4.1(b)(ii), then they will cease to be a Resident Member on the date they cease to meet the eligibility criteria but the person can choose to continue as a General Member or cancel their membership. If the person fails to make an election within [insert time period] then their Membership is cancelled.

4.2 **Joint Members**

Joint membership is permitted provided that each proposed Member meets the relevant qualifications for Membership in rule 4.1.

or

Joint membership is not permitted.

5. **ENTRY FEES AND REGULAR SUBSCRIPTIONS**

- 5.1 The entry fee for an application for each class of Membership will be determined, from time to time, by the Board and published at the registered office or on the website of the co-operative.
- 5.2 The annual subscription fee (also known as an annual membership fee) for each class of Membership will be determined, from time to time, by the Board and published at the registered office or on the website of the co-operative. Such a fee shall be payable annually from the time that the person becomes a Member.

6. **MEMBERSHIP APPLICATIONS**

- 6.1 Applications for Membership must be lodged at the registered office in the application form approved by the Board, and must be accompanied by:
- (a) payment of any applicable entry fee or subscription set under rule 5.1; and
 - (b) payment for allotment of the minimum number of shares in the Co-operative as specified in rule 14.
- 6.2 Every application must be considered by the Board.
- 6.3 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.
- 6.4 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.
- 6.5 The Board may, at its discretion, refuse an application for Membership.
- 6.6 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. **CESSATION OF MEMBERSHIP**

- 7.1 A person ceases to be a Member in any of the following circumstances:
- (a) if the Member is expelled pursuant to these Rules;

- (b) if the Member resigns (by giving 3 months notice, or a lesser period of time's notice approved by the Board, in writing in the form approved by the Board);
- (c) if an individual Member dies;
- (d) if the Member's membership is cancelled under the Law;
- (e) if an individual Member becomes bankrupt, or a corporate Member becomes insolvent;
- (f) if the Member's property becomes subject to control under the law relating to bankruptcy;
- (g) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (h) if a corporate Member is deregistered;
- (i) if the Member's total shareholding is transferred to another Member and the transferee is registered as the holder of the shareholding;
- (j) if the Member's total shareholding is forfeited under the Law or these rules;
- (k) if the Member's total shareholding is purchased by the Co-operative under the Law or these rules;
- (l) 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;
- (m) the amount paid up on the Member's shares is repaid to the Member under these rules; or
- (n) (in the case of Resident Members) they cease to meet the qualifications for Membership in rule 4.1(b), and do not opt to become a 'General Member' in the time frame permitted by rule 4.1(c).

8. EXPULSION OF MEMBERS

8.1 A Member may be expelled from the Co-operative by special resolution of the Members where:

- (a) 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 [insert either "section 125 of the Law" (for all jurisdictions except WA) or "section 70 of the Law" (for WA)]; or
- (b) 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 the Law and has caused the Co-operative harm.

8.2 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.

8.3 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; and
- (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.

8.4 Expulsion of one joint Member means expulsion of all Members holding Membership jointly with the expelled Member.

8.5 An expelled Member must not be re-admitted as a Member unless the re-admission is approved by special resolution.

8.6 A Member re-admitted must not have restored to them any shares that were cancelled on their expulsion.

9. SUSPENSION OF MEMBERS

9.1 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.

9.2 In order to suspend a Member, the procedure for expulsion of a Member set out in rule 8 is to be followed as if references to expulsion were references to suspension.

9.3 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.

10. MONETARY CONSEQUENCES OF EXPULSION OR RESIGNATION

10.1 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.

10.2 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.

10.3 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.

10.4 Subject to rule 10.5 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).

- 10.5 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.
- 10.6 Subject to [insert either "section 128 of the Law" (for all jurisdictions except WA) or "section 73 of the Law" (for WA)], 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 [insert either "section 128 of the Law" (for all jurisdictions except WA) or "section 73 of the Law" (for WA)], 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.
- 10.7 The repayable amount to the expelled or resigning Member may be applied in any of the ways set out in [insert either "section 128(2) of the Law" (for all jurisdictions except WA) or "section 73(2) of the Law" (for WA)].

11. DISPUTE RESOLUTION

11.1 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.

If a Resident Member has a grievance or dispute with the Co-operative in relation to [insert description of agreement/occupancy that has been set out in rule 4.1(b)(i)] then the dispute resolution procedures under that agreement will apply to that grievance/dispute. If there is no such dispute resolution procedure, this rule 11 will apply.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 The mediator may (but need not) be a Member of the Co-operative, unless the Member is a party to the dispute.

11.7 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

- 11.8 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.
- 11.9 The mediator cannot determine the dispute.
- 11.10 The mediation must be confidential and without prejudice.
- 11.11 The costs of the mediation are to be shared equally between the parties unless otherwise agreed.
- 11.12 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.
- 11.13 Nothing in this rule applies to any dispute involving the expulsion or suspension of a Member or the imposition of a fine.
- 11.14 If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the CNL or otherwise at law.

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

12. FINES PAYABLE BY MEMBERS

- 12.1 The Board must not impose a fine on a Member for a contravention of these rules.
- or**
- 12.2 The Board may impose on a maximum fine of \$[xxx] on a Member for a contravention of these rules.
- 12.3 A fine must not be imposed on a Member under rule 12.2 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.

13. LIABILITY OF MEMBERS TO CO-OPERATIVES

- 13.1 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.
- 13.2 Joint Members are jointly and severally liable for any amount unpaid on shares and to any such charges mentioned in rule 13.1.

14. CAPITAL AND SHARES

- 14.1 The capital of the Co-operative comprises of the issue of ordinary shares of nominal value of \$[xxx] each, and any other class of shares approved by the Board from time to time.
- 14.2 Minimum number of shares:
- (a) Each General Member must hold a minimum of [xxx] ordinary shares in the Co-operative.

(b) Each Resident Member must hold a minimum of [xxx] ordinary shares in the Co-operative.

14.3 If a Member chooses to purchase ordinary shares more than the minimum set out in rule 14.2, they 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 [insert either "section 363 of the Law" (for all jurisdictions except WA) or "section 278 of the Law" (for WA)].

14.4 No share is to be allotted unless [100%] of the nominal value of the share has been paid.

14.5 A share in the Co-operative does not carry a vote.

14.6 The right to vote in the Co-operative is attached to Membership and governed by [insert either "section 228 of the Law" (for all jurisdictions except WA) or "section 167 of the Law" (for WA)].

15. CALLS ON SHARES

15.1 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.

15.2 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.

15.3 The Directors may revoke or postpone a call.

15.4 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.

15.5 The joint holders of a share are jointly and severally liable to pay all calls for the share.

15.6 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 [xx]% per annum, the Directors decide, but the Directors may waive payment of all or part of the interest.

15.7 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.

15.8 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.

15.9 The Board may accept from a Member all or part of the money uncalled and unpaid on shares held by the Member.

15.10 The Board may authorise payment by the Co-operative of interest on all or part of an amount accepted under rule 15.9 until the amount becomes payable, at a rate agreed between the Board and the Member paying the amount, of not more than [xx]% per annum or another rate fixed by the Co-operative by special resolution.

16. REPURCHASE OF MEMBERS' SHARES

16.1 The Co-operative may (but is not obliged) to repurchase any share of a Member at the request of a Member in accordance with the Law.

16.2 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 [insert name of the co-operative] (the co-operative) 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 Law.

Signed.....

Dated.....

Witness (name and signature).....

16.3 The Board of the Co-operative must consider each request for repurchase in accordance with the CNL and cancel any shares that have been repurchased.

17. TRANSFER OF SHARES

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

17.2 The transferor is taken to remain the holder of the share until the name of the transferee is entered in the register of Members.

17.3 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.

17.4 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 3.4 and 4; or
- (b) as otherwise provided by these rules or the Law,

provided the transferee will hold the minimum number of shares required by rule 14.

17.5 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.

17.6 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 [insert either "section 363 of the Law" (for all jurisdictions other than WA) or "section 278 of the Law" (for WA)].

17.7 The Board may decline to recognise an instrument of transfer unless:

- (a) a fee of [XXXX] (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.

17.8 The Board must maintain a record of all transfers made in the proper books of the Co-operative.

17.9 The Board may suspend the registration of transfers during the 45 days immediately before the annual general meeting in each year.

17.10 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.

17.11 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.

17.12 The transfer of share in the Co-operative is not effective until the transfer is registered and the name of the transferee is entered in the register of Members.

18. FORFEITURE AND CANCELLATIONS—INACTIVE MEMBERS

18.1 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 3 years; or
- (b) the Member is not presently active and has not been active within the meaning of rule 3.4 in the past 3 years.

19. FORFEITURE OF SHARES

19.1 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.

19.2 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.

19.3 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.

19.4 Forfeited shares must be cancelled.

20. FORFEITED SHARES—LIABILITY OF MEMBERS

20.1 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.

20.2 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.

20.3 The Co-operative has set-off rights against share capital as specified in [insert either "section 127 of the Law" (for all jurisdictions except WA) or "section 72 of the Law" (for WA)].

21. DEATH OF MEMBER

21.1 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 ofbeing 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.

22. RIGHTS AND LIABILITIES OF MEMBERS UNDER BANKRUPTCY OR MENTAL INCAPACITY

22.1 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 [insert either "section 95 of the Law" (for all jurisdictions except WA) or "section 154 of the Law" (for WA)].

22.2 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.

22.3 The liabilities attaching to the shares of a person under bankruptcy or mental incapacity continue in accordance with [insert either "section 96 of the Law" (for all jurisdictions except WA) or "section 155 of the Law" (for WA)].

22.4 Upon application by a person appointed to manage the affairs of a Member referred to in rule 22.2, 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.

23. ENTITLEMENTS AND LIABILITIES OF PERSON REGISTERED AS TRUSTEE, ADMINISTRATOR ETC.

23.1 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.

23.2 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.

23.3 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.

24. TRANSFER AND TRANSMISSION OF DEBENTURES

24.1 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.

24.2 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.

24.3 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.

24.4 The Board may decline to recognise an instrument of debenture and may decline to register a debenture unless:

- (a) a fee of [XXXX] (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.

24.5 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 of20

Signed by transferor.

In the presence of witness.

Signed by..... transferee.

In the presence of witness

25. ISSUE & TRANSFER OF CCUS

25.1 The Board may confer an interest in the capital of the Co-operative by issuing CCUs in accordance with the Law.

25.2 Each holder of CCUs is entitled to [insert either "one vote" or "one vote per CCU held"] at a meeting of the holders of CCUs.

25.3 The Board may issue CCUs to a person whether or not that person is a Member of the Co-operative.

- 25.4 The terms on which CCUs are issued under this rule 25 must:
- (a) be approved by a special resolution of the Co-operative,
 - (b) be made pursuant to an offer accompanied by a statement approved by the Registrar for the purposes of the issue (which is approved by the Registrar); and
 - (c) include the following information:
 - (i) details of entitlement to repayment of capital;
 - (ii) details of entitlement to participate in surplus assets and profits (including how the entitlements are balanced with the members' rights to participate in surplus assets and profits (if applicable));
 - (iii) details of entitlement to interest on capital, including whether interest is cumulative or non-cumulative;
 - (iv) details of how capital and interest on capital are to rank for priority of payment on a winding up; and
 - (v) whether there is a limit on the total holding of CCUs that may be acquired by persons who are not Members of the Co-operative and, if there is a limit, what the limit is.
- 25.5 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.
- 25.6 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.
- 25.7 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.
- 25.8 Subject to rule 25.9 the transfer and transmission of a CCU is to follow the same process as for a debenture under rule 24.
- 25.9 If the terms of issue of a CCU differ from rule 24 in respect of the manner of transfer or transmission, the terms of its issue prevail.

26. ANNUAL GENERAL MEETING

- 26.1 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.

27. MEMBERS' POWER TO REQUISITION A GENERAL MEETING

- 27.1 The Board may, whenever it considers appropriate, call a special general meeting of the Co-operative.
- 27.2 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 20% of the total number of votes able to be cast at a meeting of the Co-operative.
- 27.3 The provisions of [insert either "section 257 of the Law" (for all jurisdictions except WA) or "section 195 of the Law" (for WA)] apply to a meeting requisitioned by Members.

28. NOTICE OF GENERAL MEETINGS

28.1 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 CNL / section 206A of the Co-operatives Act requires special notice of the resolution and 21 days notice of the meeting.

28.2 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.

28.3 The notice must state the place, day and hour of the meeting, what Technology (if any) will be used to transact the meeting, and include ordinary business as specified in rule 29 and, for special business, the general nature of any special business.

28.4 The notice must also include any business Members have notified their intention to move at the meeting under rule 28.6 (but only if the Members' notification has been made under these rules and within time).

28.5 The notice must be served in the manner provided in the Law or rule 60.

28.6 Members who together are able to cast 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.

29. BUSINESS OF GENERAL MEETINGS

29.1 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 elect the Directors (if an election year or if there are any casual vacancies on the Board).

29.2 The annual general meeting may also transact special business of which notice has been given to Members under these rules.

29.3 All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.

30. QUORUM AT GENERAL MEETINGS

30.1 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.

30.2 Unless these rules state otherwise:

(a) where the Membership of the Co-operative is less than or equal to 10 – then a quorum will be 50% of Members present or by proxy or representative, each being entitled to exercise a vote; and

(b) where the Membership of the Co-operative is 11 or more – then a quorum will be the lower of 50% of Members or 5 Members present or by proxy or representative, each being entitled to exercise a vote.

30.3 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.

30.4 If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the Members present constitute a quorum.

31. CHAIRPERSON AT GENERAL MEETINGS

31.1 The chairperson, if any, of the Board may preside as chairperson at every general meeting of the Co-operative.

31.2 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).

31.3 The chairperson may, with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place. However, the only business that can be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given just as for the original meeting. Apart from this it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

32. ATTENDANCE AND VOTING AT GENERAL MEETINGS

32.1 The right to vote attaches to Membership and not shareholding.

32.2 Joint Members have only one vote between them.

32.3 Every joint Member is entitled to attend and be heard at a general meeting.

32.4 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.

32.5 A resolution, other than a special resolution, must be decided by simple majority.

32.6 Subject to rules 32.7 and 32.8 a question for decision at any general meeting must be decided on a show of hands of Members present at the meeting.

32.7 A poll may be demanded on any question for decision.

32.8 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 or represented by proxy demand a poll;

the question for decision must be determined by a poll.

32.9 The poll must be taken when and in the manner that the chairperson directs.

- 32.10 A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
- 32.11 Once the votes on a show of hands or on a poll have been counted then, subject to rule 32.8 a declaration by the chairperson that a resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.
- 32.12 The result of the vote must be entered in the minute book.

33. VOTING ON A SHOW OF HANDS

- 33.1 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 CNL; or
 - (d) represented by a proxy (but only if proxies are allowed under these rules);
- may exercise only one vote.

34. VOTING ON A POLL

- 34.1 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 CNL; or
 - (d) represented by a proxy (but only if proxies are allowed under these rules);
- has one vote.

35. DETERMINING THE OUTCOME WHERE EQUALITY OF VOTES

35.1 This rule applies where the votes in favour and against a resolution are equal (either in a Board meeting or general meeting of Members).

35.2 The chairperson of the meeting may exercise a second or casting vote.

35.3 If the chairperson 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.

or

35.4 The chairperson of the meeting does not have a second or casting vote in either a Board meeting or a general meeting of Members. Where the votes in favour and against a resolution are equal, the resolution is taken to have failed.

36. PROXY VOTES

36.1 Proxy votes at general meetings are not permitted by these rules.

or

36.2 Voting may be by proxy at a general meeting.

- 36.3 The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- 36.4 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.
- 36.5 A person may be appointed as a proxy by [how many members?].
- 36.6 Only an active Member of the Co-operative may act as a proxy.
- 36.7 An instrument appointing a proxy may be in the following form, or another form the Board approves:
- [Co-operative name]
- 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/s.
- Signed this day of 20.....
- *Strike out if not applicable.
- #To be inserted if desired.
- 36.8 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.
- 36.9 A vote given in accordance with an instrument of proxy or a power of attorney is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the Co-operative at the registered office before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
- 37. POSTAL BALLOTS (OTHER THAN SPECIAL POSTAL BALLOTS)**
- 37.1 A postal ballot must be held in respect of a special resolution where Members who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the Co-operative may requisition the Board to conduct the special resolution by postal ballot.
- 37.2 If a postal ballot is requisitioned by Members under rule 37.1 the requisition should specify whether the postal ballot is to be a secret ballot.
- 37.3 A postal ballot requisitioned under rule 37.1 is to be conducted in accordance with the National Regulations and in the form and manner determined by the Board.
- 37.4 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 the use of Technology.
- 37.5 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.

- 37.6 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.
- 37.7 Ballot Papers (in such form and with such content as the Board may approve) must be sent to all voting Members giving:
- (a) particulars of the business in relation to which the postal ballot is being conducted; and
 - (b) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
 - (c) notice of the closing date and closing time of the postal ballot;
- and must be sent to Members so that they arrive (assuming Standard Postal Times) at least 21 days before the closing date of the postal ballot.

37.8 This rule does not apply in relation to special postal ballots.

38. SPECIAL POSTAL BALLOTS

- 38.1 This rule applies where a special postal ballot is required under [insert either “section 249 of the Law” (for all jurisdictions except WA) or “section 187 of the Law” (for WA)].
- 38.2 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.
- 38.3 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 Technology.
- 38.4 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.

39. SPECIAL RESOLUTIONS

- 39.1 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.
- 39.2 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).
- 39.3 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.

40. BOARD

- 40.1 The business of the Co-operative is 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.

- 40.2 The Board must have a minimum of **3** Directors and may have a maximum of **9** Directors drawn from the following process:
- (a) one third of Directors elected from amongst the General Members pursuant to rule 43;
 - (b) one third of Directors elected from amongst the Resident Members pursuant to rule 43; and
 - (c) the remainder of the Directors appointed by the Board pursuant to rule 44,
- provided always the Board has a majority of Member Directors.

41. QUALIFICATIONS OF DIRECTORS

41.1 A person is not qualified to be a Director of the Co-operative unless the person:

- (a) is an individual over the age of 18 years;
- (b) understands how a Co-operative works or be prepared to undertake training to become familiar with the model; and
- (c) is either:
 - (i) an active Member of the Co-operative or a representative of an entity that is an active Member of the Co-operative; or
 - (ii) 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.

41.2 A person qualified to be a Director under rule 41.1(c)(i) is known as a “Member Director”. A person qualified under rule 41.1(c)(ii) is known as a “non-Member Director”.

41.3 The Board of Directors must have a majority of Member Directors.

42. CHIEF EXECUTIVE OFFICER

- 42.1 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.
- 42.2 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.
- 42.3 The conditions and the period of appointment including termination must be decided by the Board.
- 42.4 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.
- 42.5 The chief executive officer cannot be required to be an active Member of the Co-operative.
- 42.6 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.

43. FIRST DIRECTORS AND ELECTION OF MEMBER DIRECTORS

43.1 The first Directors are elected by poll at the formation meeting of the Co-operative.

- 43.2 The term of office of the first Directors shall be determined at the formation meeting in order to enable their retirement by rotation and in any event shall be no more than **three (3)** years ending on the day of the third annual general meeting after the formation meeting.
- 43.3 The term of office of all elected Member Directors thereafter, is to commence from the annual general meeting at which they are elected and ends on the day of the **[3rd]** annual general meeting thereafter.
- 43.4 The Member Directors of the Board are to be elected in the manner specified in this rule.
- 43.5 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 the number of vacancies in each Membership group (see subrules 40.2(a) and 40.2(b)); and
 - (ii) advise the Members of:
 - A. their eligibility to nominate as a Director; and
 - B. the duties and responsibilities of a Director; and
 - C. the anticipated remuneration (if any); and
 - D. 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 in the same class of Membership (for example, a Director nominated from amongst the General Members must have two General Members endorse the nomination); 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.
- 43.6 If the number of nominees equals the number of vacancies, the nominees must be declared elected at the annual general meeting.

- 43.7 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.
- 43.8 If the number of nominees exceeds the number of vacancies, the Board will determine the nuances of the procedures but 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 for the General Member appointment (rule 40.2(a)) are to be listed on the ballot form in alphabetical order. All nominees for the Resident Member appointment (rule 40.2(b)) are to be listed on the ballot form in alphabetical order.
 - (c) [Only General Members have the right to vote on the General Member appointments (rule 40.2(a)) and only Resident Members have the right to vote on the Resident Member appointments (rule 40.2(b)) or All Members may vote on all nominees.]
 - (d) The returning officer is responsible for determining the validity of and counting of the votes.
 - (e) If there is an equality of votes, the outcome must be determined by lot.
 - (f) The returning officer is to declare the election results.
- 43.9 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 47.1.

43.10 Subject to rule 43.11, each Director is eligible for re-election.

43.11 All Member Directors may serve no more than **three terms** in total, whether consecutive terms or not, unless the Members approve a further term by a special resolution at a general meeting.

44. APPOINTMENT OF NON-MEMBER DIRECTORS

44.1 Non-member Directors shall be appointed by the Board in their absolute discretion.

44.2 The term of office of Non-member Directors will be 3 years, unless re-appointed for a further term by the Board after their term expires.

44.3 All Non-Member Directors may serve no more than **three terms** in total, whether consecutive terms or not, unless the Members approve a further term by a special resolution at a general meeting.

45. REMOVAL FROM OFFICE OF DIRECTOR

45.1 The Co-operative may by resolution under [insert either "section 180 of the Law" (for all jurisdictions except WA) or "section 206A of the Law" (for WA)], 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.

46. VACATION OF OFFICE OF DIRECTOR

46.1 In addition to the circumstances set out in the Law, a Director vacates office if the Director:

- (a) dies;
- (b) loses decision-making capacity for a period of more than [xx time period]; or
- (c) [insert other].

47. CASUAL VACANCIES AND ALTERNATE DIRECTORS

47.1 The Board may appoint a qualified person to fill a casual vacancy in the office of Director until the next annual general meeting.

47.2 The Board must not appoint a person to act as a Director (an alternate director) in the place of an absent Director.

or

47.3 The Board may appoint a qualified person to act as a director (an **alternate director**) in the place of an absent director.

47.4 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.

47.5 An alternate director holds office for the duration of the absent director's term of office.

47.6 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 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 [insert either "section 179(2)(b) of the Law" (for all jurisdictions except WA) or "section 205(2)(b) of the Law" (for WA)] do not apply in relation to the alternate director).

48. PROCEEDINGS OF THE BOARD

48.1 Meetings of the Board (including the transaction of business conducted outside Board meetings) 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.

48.2 A meeting may be held with one or more of the Directors participating by using a form of Technology that allows reasonably contemporaneous and continuous communication between the Directors taking part in the meeting.

48.3 Questions arising at a meeting must be decided by a majority of votes.

48.4 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.

49. QUORUM FOR BOARD MEETINGS

49.1 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).

49.2 For a quorum, the number of Member Directors must outnumber the non-Member Directors by at least one.

50. CHAIRPERSON OF BOARD

50.1 The chairperson of the Board is to be elected by the Board.

- 50.2 The term of the chairperson shall be determined by the Board.
- 50.3 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.
- 50.4 The chairperson may be removed, and a new chairperson elected, by ordinary resolution of the Board.

51. CONFLICTS OF INTEREST

- 51.1 A Director must disclose any actual, potential or perceived Conflicts of Interest to the Chairperson and CEO (if applicable) as soon as reasonably practicable after the individual has identified the interest.
- 51.2 Where a Director has a material personal interest in an issue arising in the course of their duties, they must immediately inform the chairperson in writing and must not deal with the issue except under the chairperson's written direction.
- 51.3 If the chairperson does not issue a written direction pursuant to rule 51.2:
- (a) the Director must not be counted in quorum;
 - (b) the Director must not vote or use their personal influence on the matter;
 - (c) the Director must not be present when the matter is discussed by the Board; and
- 51.4 The minutes of the meeting will reflect that a disclosure was made, and the abstention from voting or any other resolution action undertaken.

52. DELEGATION AND BOARD COMMITTEES

- 52.1 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;
- 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.
- 52.2 A power delegated under this rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- 52.3 A delegation under this rule may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- 52.4 Despite any delegation under this rule, the Board may continue to exercise the power delegated.
- 52.5 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.

52.6 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.

52.7 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 outcome shall be the same as in rule 35.

53. OTHER COMMITTEES

53.1 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.

53.2 Rules 52.6 and 52.7 apply to committees appointed under this rule, with the changes approved by the Board.

53.3 The quorum for a meeting of the committee is half the number of committee Members (or, if half is not a whole number, the whole number next higher than one half).

54. MINUTES

54.1 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.

54.2 Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate was held.

54.3 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.

55. CUSTODIAN OF PROPERTY

55.1 Before the Board may make a decision regarding the use of any property owned by the Co-operative, including use of such property by Members, the Board must take into account the following principles:

- (a) the needs of potential residents;
- (b) the just distribution of property use rights;
- (c) the preservation of affordable access to property and housing for future residents and/or Members;
- (d) the promotion of the long-term wellbeing of the community and long term health of the environment.

55.2 Both the Board and the Members at a General Meeting must approve a decision to mortgage or otherwise encumber property owned by the Co-operative.

55.3 Property owned by the Co-operative must not be sold except in extraordinary circumstances and only in accordance with the following:

- (a) the sale must be first approved by a two-thirds majority of the Board; and
- (b) the sale must be approved by a special resolution of the Members passed by a special postal ballot.

55.4 Despite rule 55.3, property owned by the Co-operative must not be sold whilst it remains subject to a lease or co-ownership arrangement with a Member.

56. RESTRICTION ON SALE PRICE

56.1 The Board must restrict the price that a Member may receive when they sell housing and other improvements located on property owned by the Co-operative.

56.2 The Board must establish such restrictions in the form of a reversion formula adopted by the Board and approved by the Members at a General Meeting in accord with the following principles:

- (a) The reversion formula must allow the seller to receive a price based on the value that the seller has invested in the property being sold; and
- (b) The reversion formula must limit the price of the property to an amount that will be affordable for the Member purchasing the housing.

56.3 The Board must ensure that as a condition of any lease or co-ownership of Co-operative property with a Member, the price receivable for a sale described in rule 56.1 is restricted in accordance with rule 56.2.

57. SEAL

57.1 This rule applies if the Co-operative chooses to authenticate a document under the common seal of the Co-operative.

57.2 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.

57.3 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.

57.4 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.

58. INSPECTION OF RECORDS AND REGISTERS

58.1 Subject to rule 58.2, Members of the Co-operative shall have access to the records and registers referred to in [insert either "section 214(1) of the Law" (for all jurisdictions except WA) or "section 232(1) of the Law" (for WA)], and they may make a copy of any entry in the registers.

58.2 The Co-operative may require that the Member pay a fee not exceeding the amount that would be charged if the Member obtained a copy from the Registrar for such access.

58.3 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.

59. SAFE KEEPING OF SECURITIES

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

60. NOTICES TO MEMBERS

60.1 This rule applies in addition to the Law regarding how a notice or other document may be given to a Member of the Co-operative.

60.2 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, where the Member has given consent and notified the Co-operative of the relevant contact details.

60.3 A notice is deemed to be given:

- (a) if sent by pre-paid post, three (3) Business Days after it is posted;
- (b) if sent by email or other Technology during Business Hours, on the day it was sent; and if sent outside Business Hours, on the first Business Day after the day it was sent; and
- (c) if delivered during Business Hours, on the day of delivery; and if delivered outside Business Hours, on the first Business Day after the day of delivery.

60.4 In proving service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

60.5 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.

60.6 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:

- (a) to that person by name to the contact details listed in the register of Members; or
- (b) 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:
 - (i) the address should be that supplied for the purpose by the person claiming to be entitled; or
 - (ii) 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.

61. TECHNOLOGY

61.1 General Meetings by Using Technology

Without limiting the discretion of the Board to regulate their meetings and general meetings, the Board may, if it sees fit, give notice of meetings, confer, meet, hold elections or conduct postal ballots or special postal ballots using any Technology.

61.2 Resolutions, Postal Ballots & Special Postal Ballots

Notwithstanding that the Board or the Members (as applicable) are not present together in one place at the time of the meeting, a resolution passed by the use of Technology will be deemed to have been passed at a meeting of the Board or the Co-operative held on the day and time at which the meeting was held.

61.3 Quorum

A Director or Member (as applicable) present at the commencement of the meeting will be conclusively presumed to have been present and, subject to other provisions of these rules, to have formed part of the quorum throughout the meeting.

61.4 **Procedures**

The provisions relating to the procedure of Board meetings and general meetings apply to the meeting to the extent they are capable of applying, and with the necessary changes where Technology is used.

62. **ACCOUNTS**

62.1 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.

62.2 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 two (2) authorised persons.

62.3 The operation of any electronic accounts must be restricted so that there is a requirement for authorisation by two (2) authorised persons.

62.4 For the purposes of this rule, an **authorised person** is:

- (a) a Director; or
- (b) a person approved by the Board.

63. **FINANCIAL REPORTS TO MEMBERS**

63.1 The Co-operative must prepare financial reports and statements in accordance with the CNL, the National Regulations and these rules.

64. **APPOINTING AN AUDITOR OR REVIEWER FOR SMALL CO-OPERATIVE**

64.1 The Co-operative must appoint either an auditor or a reviewer in respect of its financial statements. The Board will determine whether to appoint an auditor or a reviewer by an ordinary resolution for each financial year.

64.2 An auditor or a reviewer appointed under this rule (as applicable) is to conduct an audit or review of the Co-operative's financial statements as presented to Members.

64.3 The appointment of the auditor or the reviewer to conduct the audit or review under this rule is to be made at an annual general meeting and the appointment is only to conduct the audit or review for the relevant financial year (it is not a standing appointment).

64.4 The Co-operative may appoint another auditor or reviewer at a subsequent annual general meeting if there is a vacancy in the office of the auditor or reviewer.

64.5 The provisions of [insert either "section 300(2) of the Law" (for all jurisdictions except WA) or "section 244ZM(2) of the Law" (for WA)] apply to an auditor or a reviewer (as 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.

65. **APPOINTING AN AUDITOR OR REVIEWER FOR A SMALL CO-OPERATIVE IF THERE IS A DIRECTION UNDER THE LAW**

65.1 If a small Co-operative is directed to prepare a financial report (by its Members or the Registrar under 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.

65.2 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.

66. DISPOSAL OF SURPLUS FUNDS DURING A FINANCIAL YEAR

66.1 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.

66.2 [Insert either "All or part of" or "No more than x% of"] the surplus may be applied for charitable purposes.

66.3 Subject to rule 68, no part of the surplus may be paid or transferred directly or indirectly, by way of profit, to Members of the Co-operative.

67. PROVISION FOR LOSS

67.1 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 real prejudice to the Co-operative's solvency.

68. WINDING UP

68.1 The winding up of the Co-operative must be in accordance with [insert either "Part 4.5 of the Law" (for all jurisdictions except WA) or "Part 12 Division 3 of the Law" (for WA)].

68.2 If at the time the Co-operative is wound up the Co-operative is a charity (and/or holds deductible gift recipient status), there remains after the satisfaction of all its debts and liabilities any surplus assets:

- (a) the Co-operative will refund the amounts paid up on all shares on issue to the Members (and if there is insufficient funds to refund the amounts paid up for all shares, the Co-operative will do so on a pro-rata basis); but
- (b) the remainder of the surplus must not be distributed to a Member or former Member of the Co-operative, unless that Member or former Member is a charity described in rule 68.3.

68.3 Subject to the Law and any other applicable Act, and any court order, any surplus assets that remain after the Co-operative is wound up must be distributed to one or more charities:

- (a) (where the Co-operative is endorsed as a deductible gift recipient): with deductible gift recipient status; and
- (b) with charitable purpose(s) similar to, or inclusive of, the purpose in rule 3.1; and
- (c) which also prohibit the distribution of any surplus assets to its Members to at least the same extent as the Co-operative.

The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, or in default, by a judge of a Court with jurisdiction in this matter.

and/or

68.4 If at the time the Co-operative is wound up the Co-operative is not a charity, there remains after the satisfaction of all its debts and liabilities any surplus property:

- (a) the Co-operative will refund the amounts paid up on all shares on issue to the Members (and if there is insufficient funds to refund the amounts paid up for all shares, the Co-operative will do so on a pro-rata basis); but
- (b) the remainder must not be paid to or distributed among the Members of the Co-operative and instead must be given or transferred to an organisation with similar purposes to the Co-operative's purpose.

The decision as to the organisation to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, or in default, by a judge of a Court with jurisdiction in this matter.

Contact Us



**CO-OPERATION
HOUSING**

Building strong communities
through co-operative living.

Thank you for taking the time to read this report. If you have any questions or would like to discuss our findings further, please don't hesitate to reach out to us.



PO Box 165, Hamilton Hill WA 6963



(08) 9336 5045



admin@co-operationhousing.org.au



www.co-operationhousing.org.au