



Queensland

*Cooperatives Act 1997*

# Cooperatives Regulation 1997

Reprinted as in force on 1 July 2011

Reprint No. 3E

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This regulation is reprinted as at 1 July 2011. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

# Cooperatives Regulation 1997

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# Cooperatives Regulation 1997

[as amended by all amendments that commenced on or before 1 July 2011]

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Cooperatives Regulation 1997*.

### 2 Commencement

This regulation commences on 1 September 1997.

### 3 Documents that are not debentures

For the Act, dictionary, definition *debenture*, a document is exempt from the definition if it is—

- (a) a document that—
  - (i) contains all or some of the conditions on which deposits are accepted by, or withdrawn from, a cooperative; and
  - (ii) acknowledges the receipt of a deposit with a cooperative; and
  - (iii) enables further deposits to be made adding to the balance of an existing deposit; and
  - (iv) enables all or part of the balance of a deposit to be withdrawn, whether at call or on the giving of a fixed period of notice; and
  - (v) acknowledges the amount of the withdrawal and the balance remaining; or

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- (b) a document acknowledging a debt incurred by a cooperative—
  - (i) in the ordinary course of carrying on so much of a business as is not, or is not part of, a business of borrowing money and providing finance; and
  - (ii) in relation to money that is or may be deposited with or lent to the cooperative by a person in the ordinary course of a business carried on by the cooperative; or
- (c) a document issued by a company that is evidence of a debt owed by the company to a cooperative that is a holding company (within the meaning of the Corporations Act) of the company; or
- (d) a document issued by a cooperative that is evidence of a debt owed by the cooperative to a corporation that is a subsidiary of the cooperative.

## **Part 2                      Rules**

### **5                      Content of rules**

- (1) For the Act, section 101(1), the rules of a cooperative with share capital must state—
  - (a) the minimum number of shares to which a member of the cooperative must subscribe; and
  - (b) the way in which the minimum number must be decided, including, for example, by reference to the use made of the cooperative by a member.
- (2) For the Act, section 101(7), the maximum fine a cooperative may impose on a member under its rules is—
  - (a) for a trading cooperative—10 penalty units; or
  - (b) for a non-trading cooperative—1 penalty unit.

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## Part 3 Active membership

### 6 Factors and considerations for deciding primary activities etc.

- (1) For the Act, section 118(2)(c), a relevant factor and consideration is that the cooperative actually carries on its primary activities.
- (2) For the Act, section 118(3), an activity makes a significant contribution to the business of a cooperative—
  - (a) if it contributes at least—
    - (i) 10% of the cooperative's turnover; or
    - (ii) 10% of the cooperative's income; or
    - (iii) 10% of the cooperative's expenses; or
    - (iv) 10% of the cooperative's surplus; or
  - (b) if, in the registrar's opinion, failure by the cooperative to conduct the activity would reduce the business conducted by the cooperative by more than 10%.

### 7 Particulars for register of cancelled memberships

For the Act, section 135, the particulars for the register of cancelled memberships are in schedule 2, section 5.

## Part 4 Shares and voting

### 8 Notice about bonus shares

For the Act, section 152(c), each of the following may give a certificate of the value of assets—

- (a) for land—a registered valuer under the *Valuers Registration Act 1992*;

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- (b) for another kind of asset—a person who has been engaged in valuing assets of the kind, for, or for periods totalling, at least 5 years.

## **9 Postal ballots**

For the Act, section 193, a postal ballot must be conducted in accordance with schedule 3.

Maximum penalty—20 penalty units.

# **Part 5 Management and administration of cooperatives**

## **10 Disqualified persons**

For the Act, section 208, each of the following may give a certificate about a person's release from prison—

- (a) for a person imprisoned in Victoria—the governor of the prison in Victoria that had legal custody of the person on the person's release;
- (b) for a person imprisoned in New South Wales—the Corrective Services Commission of New South Wales;
- (c) for a person imprisoned in Queensland—the manager of the prison in Queensland that had legal custody of the person on the person's release;
- (d) for a person imprisoned in Western Australia—the permanent head of the Department of Corrective Services of Western Australia;
- (e) for a person imprisoned in South Australia—the chief executive of the Department for Correctional Services of South Australia;
- (f) for a person imprisoned in Tasmania—the director of Corrective Services in Tasmania;



- 
- (g) for a person imprisoned in the Northern Territory—the director of Correctional Services of the Northern Territory.

## **12 Requirements for financial records and financial reports**

For the Act, section 232(1)(j), the following changes to the Corporations Act, chapter 2M are prescribed—

- (a) *omit* ‘this Act’ and *insert* ‘the Act’; and
- (b) the changes in schedule 1, part 1.

## **13 Registers to be kept by cooperatives**

- (1) For the Act, section 237, a cooperative must keep—
  - (a) a register of fixed assets; and
  - (b) a register of subordinated debt; and
  - (c) a register of names of persons who have provided to the cooperative financial accommodation that is subordinated debt.
- (2) The registers must contain the particulars in schedule 2 in written or electronic form.
- (3) A register may include any document in the English language in which the required particulars are recorded.

## **14 Inspection of registers etc.**

- (1) For the Act, section 239(1), the following registers of a cooperative are open for inspection—
  - (a) the register of loans made or guaranteed by the cooperative, and of securities taken by the cooperative;
  - (b) the register of cancelled memberships;
  - (c) the register of names of persons who have provided to the cooperative financial accommodation that is subordinated debt;

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- (d) the register of notifiable interests.
- (2) For the Act, section 239(5), the maximum amount a cooperative may charge for a copy of an entry in the register is \$5 for the first page and \$1 for each additional page.
- (3) For the Act, section 239(7), a cooperative must have the following documents available for inspection—
  - (a) a copy of the Act and this regulation;
  - (b) a copy of the cooperative's rules;
  - (c) a copy of the last annual report of the cooperative given to the registrar under section 242 of the Act.

## **15 Notice of appointment etc. of directors and officers**

For the Act, section 241, the particulars to be included in a notice of appointment or cessation of appointment of a director, principal executive officer or secretary are—

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

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**16 Notice of change of certain particulars about directors and officers**

A cooperative must give the registrar notice of the following changes in particulars about a director, principal executive officer or secretary—

- (a) for a change of name—
  - (i) the name previously notified; and
  - (ii) the new name; and
  - (iii) the date of change; and
  - (iv) the office holder's date and place of birth; and
  - (v) the office held;
- (b) for a change of address—
  - (i) the new residential address, including suburb or city, State and postcode, and country (if not Australia); and
  - (ii) the date of change; and
  - (iii) the office holder's date and place of birth; and
  - (iv) the office held.

**17 Annual report to registrar**

For the Act, section 242, the other particulars to be included in a cooperative's annual report are—

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

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- (e) the number of persons employed full-time and part-time by the cooperative at the end of the financial year; and
- (f) the number of persons who performed voluntary services for the cooperative; and
- (g) the number of members in the cooperative at the end of the financial year; and
- (h) the number of shares forfeited under part 6 of the Act in the financial year covered by the report; and
- (i) the number of memberships cancelled under the Act in the financial year covered by the report; and
- (j) the number and class of shares issued to members during the financial year; and
- (k) the date of the annual general meeting.

## **18 Unsuitable names**

For the Act, section 245(5), a name is an unsuitable name if it contains anything included in schedule 5.

## **19 Change of name of cooperative**

For the Act, section 248(2), the way a change of name of a cooperative must be advertised is for the cooperative, within 28 days after the registrar registers the change of name, to advertise the change of name in at least 1 newspaper circulating in the locality or localities in which the cooperative carries on business.

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## **Part 6 Funds and property**

### **20 Fund raising to be in accordance with Act and regulations**

- (1) For the Act, section 251, a deposit-taking cooperative must not obtain financial accommodation by accepting deposits of money from persons other than its members and employees.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not prevent a person whose money was deposited with the cooperative immediately before 1 September 1997 continuing to deposit money with the cooperative.

### **21 Requirements for accepting deposits**

- (1) Before a deposit-taking cooperative first accepts money on deposit from a person after the commencement of this section, the cooperative must give to the person a disclosure statement, not more than 1 year old, containing the information in subsection (2).

Maximum penalty—20 penalty units.

- (2) The information for subsection (1) is—
- (a) the latest statement of the cooperative's assets and liabilities available to members; and
  - (b) the latest statement of the cooperative's financial position available to members; and
  - (c) the latest profit and loss statement for the cooperative available to members; and
  - (d) any other information the cooperative considers reasonably necessary to enable a person to make an informed assessment of the cooperative's financial prospects; and
  - (e) any other information the registrar reasonably requires to be in the statement.

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(3) The first disclosure statement under this section must be prepared as soon as practicable after the first annual general meeting after 31 August 1997.

(4) Within 1 month after its annual general meeting, the cooperative must file a copy of the disclosure statement with the registrar.

Maximum penalty—20 penalty units.

(5) The registrar may require a deposit-taking cooperative to give to a depositor, within the time the registrar decides, a document that—

(a) contains all or some of the conditions on which deposits are accepted by, or withdrawn from, a cooperative; and

(b) acknowledges the receipt of a deposit with a cooperative; and

(c) enables further deposits to be made adding to the balance of an existing deposit; and

(d) enables all or part of the balance of a deposit to be withdrawn, whether at call or on the giving of a fixed period of notice; and

(e) acknowledges the amount of the withdrawal and the balance remaining.

(6) This section does not apply to—

(a) the acceptance of money by a deposit-taking cooperative for the issue of debentures; or

(b) the acceptance by a cooperative of a deposit of money for goods or services to be supplied by the cooperative in the ordinary course of business.

(7) Subsection (1) does not prevent a deposit-taking cooperative accepting money on deposit after 31 August 1997 and before the first disclosure statement is prepared under this section if the cooperative gives to the person the latest available information of the type mentioned in subsection (2).

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## **22 Compulsory loan by member to cooperative**

For the Act, section 260, the maximum term of a proposal by a cooperative requiring its members to lend money to the cooperative is 10 years.

## **23 Charges required to be registered**

For the Act, schedule 3, section 8, each of the following laws is a law of a State under which a lien or charge on a crop, a lien or charge on wool or a stock mortgage is registrable—

- (a) *Liens on Crops and Wool and Stock Mortgages Act 1898* (NSW) (parts 2 and 3);
- (b) *Instruments Act 1958* (Vic) (parts 7 and 8);
- (c) *Bills of Sale and Other Instruments Act 1955* (Qld) (part 2, to the extent to which it relates to the registration of stock mortgages, liens on crops and liens on wool, and part 4);
- (d) *Liens on Crops of Sugar Cane Act 1931* (Qld);
- (e) *Bills of Sale Act 1899* (WA) (sections 7 and 8 and parts 9, 10 and 11);
- (f) *Liens on Fruit Act 1923* (SA);
- (g) *Stock Mortgages and Wool Liens Act 1924* (SA);
- (h) *Bills of Sale Act 1900* (Tas) (section 36);
- (i) *Stock, Wool and Crop Mortgages Act 1930* (Tas);
- (j) *Instruments Act 1933* (ACT) (parts 4 and 5);
- (k) *Instruments Act 1966* (NT).

## **24 Inspection of register of charges**

For the Act, schedule 3, section 41(3)(b), the maximum amount payable for each inspection of a cooperative's register of charges is \$10.

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## **25 Copies of register of charges**

For the Act, schedule 3, section 41(5)(a), the maximum amount payable for a copy of the register of charges or a part of the register is \$5 for the first page and \$1 for each additional page.

## **26 Limited dividend**

For the Act, section 266, definition *limited dividend*, the amount is 10% more than the maximum rate of the nominal value of interest payable on a Commonwealth Bank 5 year term deposit of \$100000 offered during the relevant financial year.

# **Part 7 Restrictions on the acquisition of interests in cooperatives**

## **27 Notice required to be given of voting interest**

- (1) For the Act, section 270, the particulars in subsection (2) must be included in a notice of—
  - (a) acquisition of a relevant interest in the right to vote of a member of a cooperative; or
  - (b) a change in the relevant interest in the right to vote of a member of a cooperative.
- (2) The particulars are as follows—
  - (a) the name of the cooperative to whom the notice is given;
  - (b) the full name and address of the person giving notice;
  - (c) the date the person acquired or ceased to have the relevant interest;



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- (d) the name of the member whose right to vote was affected;
  - (e) the date of giving notice.

## **28 Notice required to be given of substantial share interest**

For the Act, section 271(1), the particulars to be included in a notice that a person has a substantial share interest are as follows—

- (a) the name of the cooperative to whom the notice is given;
- (b) the name and address of the person giving notice;
- (c) the date the relevant interest was acquired;
- (d) in relation to each holder of the relevant interest—
  - (i) the name and address of the holder; and
  - (ii) the number and description of the shares in which the interest is held; and
  - (iii) the name and address of each person registered as the holder of the shares in which the interest is held; and
  - (iv) the name and address of each person entitled to be registered as the holder of the shares in which the interest is held; and
  - (v) the date of each acquisition of a relevant interest in the previous year and the number of shares acquired at that date (if any); and
  - (vi) the valuable consideration for each acquisition in the previous year, including the nature of consideration that did not consist of money; and
  - (vii) the total number of shares in which the holder has a substantial interest;
- (e) particulars of any contract, scheme, arrangement or other circumstance because of which the holder of the relevant interest acquired the relevant interest (but not interests acquired more than a year earlier) if the holder

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has, for the year immediately before the date of the notice, been the registered shareholder of those shares;

- (f) particulars of the nature of the relevant interest;
- (g) particulars of any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers of the relevant shares;
- (h) particulars of any additional benefit (other than valuable consideration mentioned in paragraph (d)) anyone from whom a relevant interest was acquired has or may become entitled to receive, whether or not on a contingency happening, in relation to the acquisition;
- (i) the date the notice is given.

## **29 Notice required to be given of change in substantial share interest**

For the Act, section 271(2), the particulars to be included in a notice of a substantial change in a substantial share interest are as follows—

- (a) the name of the cooperative to whom notice is being given;
- (b) the full name and address of the person giving notice;
- (c) the following particulars applicable before the change—
  - (i) the name and address of the holder of the relevant interest;
  - (ii) the number and description of the shares in which the relevant interest was held;
  - (iii) the name and address of the person registered as the holder of the shares;
  - (iv) the name and address of the person entitled to become registered as the holder of the shares;
  - (v) the total number of shares in which the holder of the relevant interest held the relevant interest;
- (d) the following particulars relating to the change—

- (i) the date of the change;
  - (ii) particulars of the valuable consideration given in relation to the change, including the nature of consideration that did not consist of money;
  - (iii) particulars of any contract, scheme, arrangement or other circumstance because of which the change happened;
  - (iv) particulars of any qualification of the power of a person to exercise, control the exercise of, or influence, voting powers in the shares in relation to which the change in the relevant interest happened is held;
  - (v) particulars of any additional benefit a person has or may become entitled to receive, whether on the happening of a contingency or not, because of a change in the relevant interest;
- (e) the following particulars applicable after the change—
- (i) the name and address of the holder of the relevant interest;
  - (ii) the number and description of the shares in which the relevant interest is held;
  - (iii) the name and address of the person entitled to be registered as the holder of the shares;
- (f) the date the notice is given.

### **30 Notice required to be given of cessation of substantial share interest**

For the Act, section 271(3), the particulars to be included in a notice of cessation of a substantial share interest in a cooperative are as follows—

- (a) the name of the cooperative to whom notice is given;
- (b) the full name and address of the person giving notice;

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- (c) the full name and address of the person ceasing to have the substantial share interest;
- (d) the date the person ceased to have the substantial share interest;
- (e) particulars of any agreement or other circumstance because of which the person ceased to hold the substantial share interest;
- (f) in relation to each change in a substantial share interest of the person since the person was last required to give notice of a change in a substantial share interest to the cooperative—
  - (i) the date of the change; and
  - (ii) the nature of the change; and
  - (iii) the consideration given in relation to the change; and
  - (iv) the class and number of shares affected by the change;
- (g) the date the notice is given.

### **31 Cooperative to keep register**

For the Act, section 278, the maximum fee a cooperative may charge for inspection of the register of notifiable interests is \$10.

## **Part 8 Merger, transfer of engagements, winding up**

### **32 Application for transfer**

For the Act, section 300(d), the *Aboriginal Councils and Associations Act 1976* (Cwlth) is a law under which a

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cooperative may, if approved, become registered or incorporated.

### **33 Winding up on registrar's certificate**

For the Act, section 307(6), the security a liquidator must give is \$50000 in the form of—

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

### **34 Application of Corporations Act to winding-up**

For the Act, section 308, the changes to the Corporations Act, sections 461, 464 and 542 stated in schedule 1, part 2 are prescribed.

## **Part 9 Arrangements and reconstructions**

### **35 Registrar to be given notice and opportunity to make submissions**

For the Act, section 333(2), definition *draft explanatory statement*, paragraph (b)(i), the information that must be in a draft explanatory statement is the information in schedule 6.

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**36 Explanatory statement required to accompany notice of meeting etc.**

For the Act, section 341(3)(b)(i), the information that must be in an explanatory statement is the information in schedule 6.

**37 Acquisition of shares pursuant to notice to dissenting shareholder**

For the Act, section 347, a compulsory acquisition notice must be given in the approved form.

Maximum penalty—10 penalty units.

**38 Notice to remaining shareholders**

For the Act, section 349(1)(a), a notice to a remaining shareholder must be given in the approved form.

Maximum penalty—10 penalty units.

**39 Effect of out-of-jurisdiction compromise or arrangement**

For the Act, section 354, the following provisions of laws of another State are provisions corresponding to part 13 of the Act—

- (a) the *Co-operatives Act 1992* (NSW), section 344;
- (b) the *Co-operatives Act 1996* (Vic), section 339;
- (c) the *Co-operatives Act 1997* (NT), section 334;
- (d) the *Co-operatives Act 1997* (SA), section 334.

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## Part 10 Foreign cooperatives

### 40 Cooperatives law

For the Act, part 14, each of the following is a cooperatives law—

- (a) the *Co-operatives Act 1992* (NSW);
- (b) the *Co-operatives Act 1996* (Vic);
- (c) the *Co-operatives Act 1997* (NT);
- (d) the *Co-operatives Act 1997* (SA).

### 41 Application for registration of participating cooperatives

- (1) For the Act, section 361(1), a participating cooperative proposing to carry on business as a cooperative in Queensland must apply to the registrar in the approved form to be registered as a foreign cooperative.
- (2) A director or the secretary of the applicant cooperative must verify the statement required under the Act, section 361(2)(d) and a copy of an instrument of appointment required under the Act, section 361(2)(e) by statutory declaration.

### 42 Application for registration of non-participating cooperatives

- (1) For the Act, section 362(1), a non-participating cooperative proposing to carry on business as a cooperative in Queensland must apply to the registrar in the approved form to be registered as a foreign cooperative.
- (2) A director or the secretary of the applicant cooperative must verify the statement required under the Act, section 362(2)(b) and a copy of an instrument of appointment required under the Act, section 362(2)(c) by statutory declaration.
- (3) For the Act, section 362(2)(d), the other documents that must accompany an application by a non-participating cooperative to be registered as a foreign cooperative are—

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- (a) a copy of the cooperative's certificate of registration; and
- (b) a copy of the latest audited accounts of the cooperative; and
- (c) the full name, date and place of birth and residential address of each director of the cooperative.

#### **43 Application of Act to foreign cooperatives**

For the Act, section 366—

- (a) the provisions of the Act in schedule 7, part 1 apply to a participating cooperative; and
- (b) the provisions of the Act and this regulation in schedule 7, part 2 apply to a non-participating cooperative.

#### **44 Registrar to be notified of certain changes**

For the Act, section 367, the following documents must accompany particulars of a change a foreign cooperative files with the registrar—

- (a) for a change of name resulting in the issue of a new or amended certificate of registration in the cooperative's home State—a certified copy of the new or amended certificate;
- (b) for a change affecting the rules of the cooperative—a certified copy of the new or amended rules.

Maximum penalty—20 penalty units.

#### **45 Cooperative proposing to register as a foreign cooperative**

- (1) For the Act, section 370(1), the provisions of the Act a cooperative proposing to apply for registration as a foreign cooperative in another participating State must comply with are—
  - (a) part 5;





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## **Part 12 Administration of the Act**

### **47 Inspection of register**

For the Act, section 440(1)(b), the documents kept by the registrar relating to a cooperative that a person may inspect are documents given to, or issued by, the registrar under the Act other than the following—

- (a) a document given to the registrar under 1 of the following provisions of the Act—
  - section 243
  - section 244
  - section 318(4)
  - section 323
  - section 406(4)
  - section 412(3)
  - section 416(1)
  - section 416(2);
- (b) a report made or filed under the Act, schedule 4, section 13;
- (c) a document given to the registrar under any of the following provisions of the Corporations Act as applied by the Act—
  - section 311
  - section 438D
  - section 533.

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## **Part 13**                      **Relevant interests**

### **48**      **Exclusions—holders of prescribed offices**

For the Act, schedule 2, section 13, a relevant interest in a share or right to vote held by each person holding an office mentioned in schedule 8 is to be disregarded.

## **Part 14**                      **Miscellaneous**

### **49**      **Fees**

- (1) The fees payable under the Act are in schedule 9.
- (2) The amount of the additional fee the registrar may impose for late filing of a document required to be filed under the Act is also in schedule 9.

### **50**      **Waiver of fees**

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

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

### **51**      **Model rules**

- (1) The model rules in the attachment are approved.
- (2) The attachment is not part of this regulation.

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- (3) The attachment must be revised so that it is an accurate copy of the model rules as amended from time to time.
- (4) The revision under subsection (3) must happen in the first reprint of this regulation after an amendment of the model rules.

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## Schedule 1      **Changes to Corporations Act provisions**

sections 12 and 34

### Part 1                      **Changes for the Act, section 232**

**1      Section 324(1)(f) and (2)(g) and (h), ‘except where the company is a proprietary company,’—**

*omit.*

**2      Section 324—**

*insert—*

‘(2A) Despite subsection (2)(d), if at least 1 member of a firm is—

- (a) ordinarily resident in Australia; and
- (b) a person who the registrar considers is suitably qualified or experienced; and
- (c) approved by the registrar for the purposes of the Act in relation to the audit of the cooperative’s financial reports;

the firm may be appointed as auditor of the cooperative, subject to any terms and conditions stated in the approval.

‘(2B) A firm appointed as auditor under subsection (2A) is, in relation to the auditing of the cooperative’s financial reports, if any, taken to have at least 1 member who is a registered company auditor who is ordinarily resident in Australia.

‘(2C) Subsection (2B) applies subject to any terms and conditions of the approval.’.

**3 Section 324(12), from ‘Where’ to ‘business’—**

*omit, insert—*

‘Despite subsection (1)(d)’.

**4 Section 324(14) and (15)—**

*omit, insert—*

‘(13A) A person who, immediately before 1 September 1997, was the cooperative’s auditor and continues to be the auditor is taken, for the cooperative, to be a registered company auditor.

‘(13B) A firm that, immediately before 1 September 1997, was the cooperative’s auditor and continues to be the auditor is taken, for the cooperative, to have at least 1 member who is a registered company auditor who is ordinarily resident in Australia.

‘(14) If a person approved by the registrar under subsection (12) is acting as auditor of a cooperative, the registrar may at any time, by notice in writing given to the cooperative amend or revoke the terms and conditions of the registrar’s approval.

‘(15) If a member of a firm is approved by the registrar for the purposes of the Act in relation to the audit of the cooperative’s financial reports and the firm is acting as auditor of a cooperative, the registrar may, at any time, by written notice to the cooperative amend or revoke the terms and conditions of the registrar’s approval.’

**5 Section 329(1A), note—**

*omit.*

**6 Section 329—**

*insert—*

‘(1B) Despite subsection (1A), the cooperative may pass the resolution only if at least 21 days notice of the meeting has been given.’



**12 Section 542(3)—**

*insert—*

- ‘(d) for a winding-up on a certificate of the registrar under the *Cooperatives Act 1997*, section 306—with the consent of the registrar.’.



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## **Schedule 2      Particulars to be included in registers**

sections 7 and 13

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

- (1) The register of members, directors and shares of a cooperative must contain the following particulars of each member—
  - (a) the name and address of each member;
  - (b) the date each member was admitted to the cooperative;
  - (c) the folio reference to the minute evidencing the board's decision to admit the member;
  - (d) if the cooperative has share capital, a statement in relation to each member by whom shares are held of the following—
    - (i) the number of shares held beneficially and non-beneficially;
    - (ii) the identifying number of each share held;
    - (iii) the date the shares were allotted;
    - (iv) the amount paid or agreed to be considered as having been paid on the shares;
  - (e) if applicable, the date of and circumstances under which the member's membership ended;
  - (f) if shares are purchased under section 170(1) of the Act—a statement of the number of shares purchased and the date the shares were purchased;
  - (g) if shares are forfeited under section 274 of the Act—a statement of the number of shares forfeited and the date the forfeiture was effected;
  - (h) if there is a conversion to a cooperative without share capital—the date of repayment of the share capital or

the date of disposal and the name and address of the person or body to whom the share capital was repaid.

- (2) The register of members, directors and shares of a cooperative must contain the following particulars for each director—
- (a) the name, date and place of birth, and address of each director;
  - (b) the date of that person's election or appointment as a director;
  - (c) whether the director is a non-member director;
  - (d) if applicable, the date of termination of office;
  - (e) if applicable, the way of termination of office.

## **2 Register of loans, securities given by, debentures issued by and deposits received by a cooperative**

- (1) The register of loans to, securities given by, debentures issued by and deposits received by a cooperative is required to contain the following particulars for each loan—
- (a) the name of the person by whom the loan is made;
  - (b) the amount of the loan;
  - (c) the date the loan was received by the cooperative;
  - (d) the folio reference to the minute evidencing the board's decision to accept the loan;
  - (e) a reference identifying the account created for the loan;
  - (f) the date of each payment made in relation to the loan and the amount of each payment made;
  - (g) if the loan is secured by a mortgage of real property—the address and particulars of title of the property and a reference identifying the mortgage agreement;
  - (h) if the loan is secured other than by a mortgage of real property—particulars of the security given and a reference identifying the agreement that evidences the security;

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- (i) the location of the documents relating to the security given for the loan;
  - (j) particulars of any movement of the documents from that location;
  - (k) the date of the final repayment made in relation to the loan.
- (2) The register of loans to, securities given by, debentures issued by and deposits received by a cooperative must contain the following particulars for each debenture issued—
- (a) the name and address of each person to whom a debenture is payable;
  - (b) the number and series of the debenture;
  - (c) the date of its issue;
  - (d) the amount of the debenture;
  - (e) the rate of interest;
  - (f) the dates of payment of principal;
  - (g) the place of payment;
  - (h) the name of the trustee (if applicable);
  - (i) the ledger folio;
  - (j) the name and address and occupation of the transferor;
  - (k) the date of transfer.
- (3) The register of loans to, securities given by, debentures issued by and deposits received by a cooperative must contain the following particulars for each deposit received by the cooperative—
- (a) the name and address of the depositor;
  - (b) the date of receipt;
  - (c) the amount deposited;
  - (d) the rate of interest (if any);
  - (e) the amount repaid;

- (f) the date of conversion to shares or debentures (if applicable);
- (g) the due date for repayment;
- (h) the balance.

**3 Register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by a cooperative**

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

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

**4 Register of loans made or guaranteed by and securities taken by a cooperative**

- (1) The register of loans made or guaranteed by and securities taken by a cooperative must contain the following details for each loan made—
  - (a) the name of each member to whom a loan is made;
  - (b) the amount of the loan;
  - (c) the date the loan was approved;
  - (d) the folio reference to the minute evidencing the board's decision to make the loan;
  - (e) a reference identifying the account created for the loan;

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- (f) the date of each advance made in relation to the loan and the amount of each advance made;
  - (g) if the loan is secured by a mortgage of real property—the address and particulars of title of the property and a reference identifying the mortgage agreement;
  - (h) if the loan is secured otherwise than by a mortgage of real property—particulars of the security taken and a reference identifying the agreement that evidences that security;
  - (i) the location of the documents relating to the security taken for the loan;
  - (j) particulars of any movement of the documents from that location;
  - (k) the date of the final repayment made in relation to the loan.
- (2) The register of loans made or guaranteed by and securities taken by a cooperative must contain the following particulars for each loan guaranteed by the cooperative—
- (a) the name of the member;
  - (b) the name of the lender;
  - (c) the amount of the loan;
  - (d) the date of the guarantee;
  - (e) the security documents held and any other information necessary to identify the parties to the security documents;
  - (f) the due date for repayment;
  - (g) the folio reference to the minutes evidencing the board's decision to guarantee the loan.

## **5 Register of memberships cancelled**

- (1) The register of memberships cancelled under the Act must contain the following particulars for each member whose membership is cancelled—

- (a) the name of the member;
  - (b) if the whereabouts of the member are unknown—
    - (i) the date the required period of the member's whereabouts being unknown started; and
    - (ii) if the amount required to be paid to the member because of the cancellation is more than \$50—the date of publication of the required notice in a newspaper and the name of the newspaper;
  - (c) if the whereabouts of the member are known—
    - (i) the date of the member's last active dealing with the cooperative; and
    - (ii) the date of giving the required notice to the member;
  - (d) the date and folio number of the board's resolution cancelling the membership.
- (2) Also, if the member's shares are forfeited because of cancellation of the person's membership, the register must contain the following—
- (a) the amount subscribed in respect of the shares forfeited;
  - (b) the date and folio number of the board's resolution forfeiting the shares;
  - (c) if the date fixed by the board resolution for repayment of the amount paid up on shares is within 1 year of forfeiture—
    - (i) the date of repayment; or
    - (ii) if the amount is dealt with under the Act, section 132—the date and how the amount is applied;
  - (d) if the amount due is to be transferred to a debenture or deposit account—
    - (i) the date of repayment; and
    - (ii) the date of transfer to the account.
- (3) Subsection (2) applies only to cooperatives that have a share capital.

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**6 Register of fixed assets**

The register of fixed assets of a cooperative must contain the following particulars—

- (a) a short description of the fixed asset;
- (b) the method of financing any fixed asset that is leased;
- (c) the physical location of the asset;
- (d) the date of its purchase or installation;
- (e) the manner in which depreciation is calculated;
- (f) the annual percentage at which depreciation is calculated;
- (g) the annual amount of depreciation or amortisation;
- (h) the total amount of depreciation or amortisation;
- (i) the revaluation increment;
- (j) the sale price;
- (k) the date sold.

**7 Register of subordinated debt**

The register of subordinated debt must contain for each subordinated debt incurred—

- (a) the name and address of the person to whom the debt is owed;
- (b) the amount of the debt;
- (c) the date the debt was incurred;
- (d) the folio reference to the minute evidencing the board's decision to incur the debt;
- (e) a reference identifying the account created for the debt;
- (f) the date of each payment made in relation to the debt and the amount of each payment made;
- (g) the date of the final repayment made in relation to the debt.

## **8 Register of names for subordinated debt**

The register of names of persons who provided to a cooperative financial accommodation that is subordinated debt must contain the following details for each person—

- (a) the person's full name and address;
- (b) a reference to the relevant entry in the register of subordinated debt.



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## **Schedule 3      Postal ballots**

### **section 9**

#### **1      Ballots**

The board must formulate the proposal or proposals on which a ballot is to be held and fix a date for the close of the ballot.

#### **2      Returning officer**

- (1) The board must appoint a person (other than a director) as returning officer for a ballot.
- (2) For performing the duties of returning officer, the returning officer may appoint, as assistants, anyone eligible to be a returning officer.

#### **3      Preparation of voting roll and ballot papers**

The returning officer must—

- (a) prepare a roll specifying—
  - (i) the name and address of each member of the cooperative, as disclosed by the register of members, directors and shares; and
  - (ii) the number of votes to which each member is entitled under the rules of the cooperative; and
- (b) cause the following to be sent to each member at least 21 days before the date fixed for the close of the ballot—
  - (i) a ballot paper, and an inner, middle and outer envelope;
  - (ii) a copy of the proposal on which the vote is to be held;
  - (iii) for a special postal ballot—a copy of the disclosure statement mentioned in section 194 of the Act.

#### **4 Duplicate ballot papers**

The returning officer may send a duplicate ballot paper to a voter if the returning officer is satisfied—

- (a) the voter has not received a ballot paper; or
- (b) the ballot paper received by the voter has been lost, spoiled or destroyed and that the voter has not already voted.

#### **5 Voting**

A voter casts a vote—

- (a) by writing 'yes' or 'no' in the appropriate place or places on the ballot paper or indicating the voter's intention in another way; and
- (b) by completing any other particulars required by the ballot paper; and
- (c) by sending the ballot paper, in the envelopes supplied, to the returning officer.

#### **6 Safe keeping of ballot papers**

The returning officer must place all outer envelopes received before the close of the ballot (and their contents) in a locked ballot box.

#### **7 Counting of votes**

- (1) As soon as practicable after the close of the ballot, the returning officer must open the ballot box and deal with the contents as follows—
  - (a) each outer envelope and middle envelope containing particulars that identify the voter is to be removed from the ballot box;
  - (b) any middle envelope that bears a name that does not correspond to 1 of the remaining names on the voting roll is to be rejected;

- (c) a line is to be drawn on the voting roll through the name of each person from whom an unrejected middle envelope has been received;
  - (d) each outer envelope, and each middle envelope that has not been rejected, is to be discarded and the inner envelope containing the ballot paper is to be placed in the ballot box;
  - (e) after all the outer envelopes, and middle envelopes that have not been rejected, have been discarded and all the inner envelopes put into the ballot box, each inner envelope is to be removed from the ballot box;
  - (f) each ballot paper is to be removed from its inner envelope;
  - (g) the votes on the ballot papers are then to be counted.
- (2) A ballot paper is to be rejected as informal if—
- (a) it is not initialled by the returning officer; or
  - (b) it is so imperfectly marked the returning officer can not find out the voter's intention with certainty.
- (3) For each proposal, the returning officer must work out from the ballot papers—
- (a) the number of formal votes cast in favour of the proposal concerned; and
  - (b) the number of formal votes cast against the proposal; and
  - (c) the number of informal votes cast.

## **8 Report**

- (1) After the votes have been counted, the returning officer must report to the board the results of the ballot.
- (2) The returning officer must retain locked in the ballot box until the board directs the returning officer to destroy them—
  - (a) all ballot papers; and

Schedule 3

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- (b) all rejected middle envelopes (and their contents); and
- (c) all voting rolls used for the conduct of the ballot.

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## Schedule 5      Undesirable matter for names

### section 18

- 1 Names that are likely to be confused with or mistaken for—
  - (a) a name reserved or registered under the Corporations Act or registered under the *Business Names Act 1962*, section 7; or
  - (b) the name of any of the following registered in Queensland—
    - an incorporated association
    - a building society
    - a cooperative
    - a cooperative housing society
    - a credit union
    - a foreign cooperative
    - a foreign society
    - a friendly society.

*Example—*

It may be unsuitable for a cooperative to be called Hypothetical Cooperative Limited if a corporation known as Hypothetical Limited already exists.

- 2 Names that are misleading in relation to the nature, objects or purposes of the businesses conducted or to be conducted under the names or any other matter.
- 3 Names that may be offensive to members of the public or a section of the public.

- 4 Names containing the following words or phrases, any abbreviation of them or any similar words, phrases or abbreviations—
- aboriginal corporation
  - aboriginal council
  - building society
  - chamber of commerce
  - chamber of industry
  - chamber of manufacturers
  - chartered
  - college of advanced education
  - consumer
  - cooperative housing society
  - credit cooperative
  - credit society
  - credit union
  - executor
  - friendly society
  - futures exchange
  - guarantee
  - incorporated
  - institute of advanced education
  - made in Australia
  - savings
  - Starr Bowkett
  - stock exchange
  - Torres Strait Islander corporation
  - trust

- trustee
  - university.
- 5 Names that in the context in which they are proposed to be used are capable of suggesting either of the following—
- (a) a connection with a member of the Royal Family that does not exist;
  - (b) that Royal patronage has been received when this is not the case.
- 6 Names that, in the context in which they are proposed to be used, are capable of suggesting a connection with the State, the Government of the Commonwealth or a State or another part of the Queen’s dominions, possessions or territories.
- 7 Names that include the words ‘Commonwealth’ or ‘federal’.
- 8 Names that in the context in which they are proposed to be used, are capable of suggesting a connection with the government of a foreign country.
- 9 Names that in the context in which they are proposed to be used, are capable of suggesting a connection with a department, authority or instrumentality of the government of the Commonwealth or a State or with a local government.
- 10 Names that in the context in which they are proposed to be used are capable of suggesting either of the following—
- (a) connection with an ex-servicemen’s organisation that does not exist;
  - (b) that the members of an organisation are totally or partially incapacitated when this is not the case.

- 11 Names that are subject to restrictions under Commonwealth Acts including, but not limited to the following—
- *International Organisations (Privileges and Immunities) Act 1963* to the extent it prevents assumption or use in connection with a trade, business, profession, calling or occupation, of the name or an abbreviation of the name of the United Nations or any other prescribed international organisation
  - *Banking Act 1959* to the extent it prevents the assumption or use, in relation to financial business, of ‘bank’, ‘banker’, or ‘banking’ or any similar word
  - *Protection of Word “Anzac” Regulations* to the extent it prevents the assumption or use of the word ‘Anzac’ or any word resembling it in connection with any trade, business, calling or profession, any entertainment, lottery or art union or as the name or part of the name of a private residence, boat, vehicle or charitable or other institution, or any building of the institution
  - *Defence (Prohibited Words and Letters) Regulations* to the extent it prohibits the use in connection with a trade, business, calling or profession or by an organisation or body of persons of the words and letters set out in the regulation (being words and letters indicative of a part of the armed forces of Australia)
  - *Scout Association Act 1924* to the extent it prevents the use of the name ‘Scout Association’ or any name implying that any other society or body is the association or a branch of the association
  - *Geneva Conventions Act 1957* to the extent it prevents the use of ‘Red Cross’, ‘Geneva Cross’, ‘Red Crescent’, or ‘Red Lion and Sun’ or wording resembling any of those expressions.
- 12 Names that are subject to restrictions under Queensland Acts including, but not limited to, the following—
- *Architects Act 2002*



- *Dental Technicians Registration Act 2001*
- Health Practitioner Regulation National Law
- Medical Radiation Technologists Registration Act 2001
- *Occupational Therapists Registration Act 2001*
- *Police Service Administration Act 1990*
- *Speech Pathologists Registration Act 2001*
- *Surveyors Act 1977*
- *Veterinary Surgeons Act 1936.*

*Editor's note—*

*Surveyors Act 1977—see the Acts Interpretation Act 1954, section 14H and Surveyors Act 2003.*

13 A name that contains—

- ‘24th’, ‘twenty-fourth’ or ‘XXIVth’ and the word ‘Olympic’, ‘Olympics’ or ‘Games’
- ‘27th’, ‘twenty-seventh’ or ‘XXVIIth’ and the word ‘Olympiad’
- ‘Share the Spirit’
- ‘Sydney’ and the number ‘2000’ or the words ‘two thousand’
- ‘gold’ and the number ‘2000’ or the words ‘two thousand’
- ‘games’ and the number ‘2000’ or the words ‘two thousand’
- ‘games city’
- ‘summer games’
- ‘Sydney games’
- ‘millennium games’
- ‘gold Games’

Schedule 5

- a word or an abbreviation of a word in an item in column 1 or 2 and 1 or more words or abbreviations of words in column 3
- a word or an abbreviation of a word in column 1 or 2 that, in the context in which it is proposed to be used, suggests a connection with—
  - the Summer Games of the 27th Olympiad to be conducted under the auspices of the International Olympic Committee (*Sydney Olympic Games*)
  - the Paralympic Games to be held in Sydney in the year 2000 and conducted under the auspices of the International Paralympic Committee (*Sydney Paralympic Games*)
  - the Sydney Olympic Games or the Sydney Paralympic Games in some other way—

Column 1	Column 2	Column 3
Olympic	Paralympic	City
Olympics	Paralympics	Gold
Olympiad	Paralympian	Games
Olympian		Millennium
		Summer
		Sydney
		Two Thousand
		2000

- 14 (1) Section 13 so far as it relates to matters specified in the table does not apply if the relevant authority has consented in writing to the use of the proposed name.
- (2) In subsection (1)—  
*relevant authority* means—

- (a) for a name that suggests a connection with the Summer Games of the Twenty-Seventh Olympiad—the Sydney Organising Committee for the Olympic Games; or
- (b) for a name that suggests a connection with the Paralympic Games to be held in Sydney in the year 2000—
  - (i) if the application is lodged before the registration of a company to be known as the Sydney Paralympic Organising Committee Limited—the Director-General of the Premier’s Department of New South Wales; or
  - (ii) if the application is lodged after the incorporation of the company—the Sydney Paralympic Organising Committee Limited.

## **Schedule 6      Information for draft explanatory statements and explanatory statements**

sections 35 and 36

### **1      Definitions for schedule**

In this schedule—

*explanatory statement* includes draft explanatory statement.

*internal creditor*, of a cooperative, means a creditor who is—

- (a) a member of the cooperative; or
- (b) a relative or spouse of a member of the cooperative; or
- (c) a relative of the spouse of a member of the cooperative.

*scheme* means the proposed compromise or arrangement.

*scheme cooperative* means a cooperative to whom a scheme applies.

*scheme creditor* means a creditor or class of creditors of a cooperative to whom the scheme is to apply.

*scheme member* means a member or class of members of a scheme cooperative.

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

- (1) If the proposed compromise or arrangement is with creditors, the information the explanatory statement must include in relation to the proposed compromise or arrangement is—
  - (a) the expected dividend that would be available to scheme creditors if the cooperative were to be wound up within 6 months after the date of hearing of the application to the Supreme Court under the Act, section 332; and

- 
- (b) if a composition of debts is proposed—the expected dividend that would be paid to scheme creditors if the scheme were put into effect; and
  - (c) a list of the names of all known scheme creditors and the debts owed to them; and
  - (d) if a scheme creditor is known to be a guaranteed creditor—the name of the creditor and the amount of the debt owed to the creditor; and
  - (e) if a scheme creditor is known to be an internal creditor—the name of the creditor and the amount of the debt owed to the creditor.
- (2) The explanatory statement must also state that an order under the Act, section 332 is not an endorsement of, or expression of opinion on, the scheme.
- (3) The statement must also contain or include—
- (a) a report of the cooperative in the approved form, showing the financial position of the cooperative at a day, within 1 month before the day the intended application under the Act, section 332 is to be made to the court; and
  - (b) a copy, certified by a director or the principal executive officer or secretary of the cooperative to be a true copy, of all accounts, including any group accounts, required to be laid before the cooperative at its annual general meeting; and
  - (c) a copy of each document required by law to be attached to the accounts mentioned in paragraph (b); and
  - (d) if the scheme cooperative is a trustee—a statement—
    - (i) of the number of trusts the trustee administers; and
    - (ii) whether the trustee carries on any business separate from the trust; and
    - (iii) how the scheme creditors may obtain a copy of the relevant trust deed, free of charge, before the date of the meeting; and

- (e) if any person who would be appointed to manage the scheme proposes to charge for his or her services and services of his or her staff under a particular scale of charges—the scale of charges.

### **3 Information about proposed compromise or arrangement with members or class of members**

- (1) If the proposed compromise or arrangement is with members or a class of members, the information the explanatory statement must include in relation to the proposed compromise or arrangement is—
  - (a) unless paragraph (b) applies—in relation to each director of the cooperative—
    - (i) whether the director recommends accepting or rejecting the scheme and the reasons for the recommendation; or
    - (ii) if the director is not available to consider the scheme—that the director is not available to consider the scheme and the reasons the director is not available to consider it; or
    - (iii) in any other case—that the director does not wish to make, or does not consider himself or herself justified in making, a recommendation and, if the director requires, the reasons for not making a recommendation; or
  - (b) if the cooperative is not being wound up or is under official management—in relation to each liquidator or official manager—
    - (i) whether the liquidator or official manager recommends accepting or rejecting the scheme and the reasons for the recommendation; or
    - (ii) if the liquidator or official manager does not wish to make a recommendation—the reasons for not wishing to make the recommendation.
- (2) The statement must also include—

- 
- (a) the number, description and amount of marketable securities of the cooperative the subject of the scheme held by or for each director of the cooperative or, if none are held by or for the director, a statement to that effect; and
  - (b) whether each director of the cooperative who holds shares, or for whom shares are held, in the cooperative—
    - (i) intends to vote for or against the scheme; or
    - (ii) has not decided whether to vote for or against the scheme; and
  - (c) if the other party to the proposed reconstruction or amalgamation is or includes a corporation—whether any marketable securities of the corporation are held by or for a director of the scheme cooperative and, if so, the number, description and amount of the marketable securities; and
  - (d) particulars of any payment or other benefit that is proposed to be made or given to—
    - (i) any director, principal executive officer or secretary of the scheme cooperative as compensation for loss of, or as consideration for his or her retirement from, office in the cooperative or a related corporation; or
    - (ii) any director, principal executive officer or secretary of a related corporation as compensation for loss of, or as consideration for his or her retirement from, office in the related corporation or the scheme cooperative; and
  - (e) if there is any other agreement or arrangement made between a director of the scheme cooperative and another person in relation to or conditional on the outcome of the scheme—particulars of the agreement or arrangement; and
  - (f) if the object of the scheme is for a cooperative to acquire control of another corporation that is a company—particulars of the nature and extent of any

interest of a director of the company in any contract entered into by the cooperative; and

- (g) whether, within the knowledge of—
  - (i) the directors of the cooperative the subject of the scheme; or
  - (ii) if the cooperative is in liquidation or under official management—the liquidator or official manager;the financial position of the cooperative has materially changed since the date of the last balance sheet laid before the cooperative in a general meeting and if so, full particulars of the change; and
- (h) any other information material to making a decision in relation to the scheme, being information that has not previously been disclosed to the scheme members and is within the knowledge of any director, liquidator or official manager of a scheme cooperative or a related scheme.

(3) If—

- (a) the other party to the proposed reconstruction or amalgamation of the scheme cooperative has a prescribed shareholding in the cooperative; or
- (b) a director of any corporation that is the other party to the proposed reconstruction or amalgamation is a director of a scheme cooperative;

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

(4) If the scheme cooperative obtains 2 or more reports, each of which could be used for subsection (3), the statement must include a copy of each report.

(5) If—

- (a) the scheme cooperative obtains a report for subsection (3); and



- 
- (b) the report contains—
    - (i) a forecast of the profits or profitability of the cooperative; or
    - (ii) a statement that the market value of an asset or assets of the cooperative or a related corporation differs from an amount at which the value of the asset or assets is shown in the books of the cooperative or the related corporation;

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

- (6) For subsection (3)—
  - (a) a person has a prescribed shareholding in a cooperative if the person is entitled to at least 30% of the voting shares in the cooperative; and
  - (b) a person has a prescribed shareholding in a cooperative in which the voting shares are divided into 2 or more classes of shares if the person is entitled to at least 30% of the shares in 1 of those classes.
- (7) If all or part of the consideration to be offered to a scheme member consists of marketable securities issued, or to be issued, by a corporation, the statement must set out the formula to be applied to find out the number of marketable securities to be issued to each scheme member and the basis on which the formula was developed.
- (8) If marketable securities of the same class as those mentioned in subsection (7) are granted official quotation on a securities exchange, the statement must state the fact, specify the securities exchange concerned, and state—
  - (a) the latest recorded sale price before the date the statement is sent to the registrar; and
  - (b) the highest and lowest recorded sale prices in the 3 months immediately before the date the statement is sent to the registrar and the dates of the relevant sales; and

- (c) if the scheme has been the subject of a public announcement in newspapers or in any other way before the statement was sent to the registrar—the latest recorded sale price immediately before the public announcement.
- (9) If the marketable securities mentioned in subsection (8) are granted official quotation on more than 1 securities exchange, it is enough compliance with subsection (8)(a) and (c) if information on the marketable securities is given for the securities exchange at which there has been the greatest number of recorded dealings in the securities in the 3 months immediately before the date the statement is sent to the registrar.
- (10) However, if the securities have not been granted official quotation on a securities exchange, the statement must include all the information a director, liquidator or official manager of the scheme cooperative or of a related corporation has about the number of securities sold in the 3 months immediately before the explanatory statement was prepared and the price of the securities or, if the information or any part of it can not be found, a statement to that effect.
- (11) The statement must include particulars of the intentions of the directors of the cooperative the subject of the scheme in relation to—
  - (a) the continuation of the business of the cooperative or, if the undertaking of the cooperative or any part of the undertaking is to be transferred, how the undertaking or the part of the undertaking is to be conducted in the future; and
  - (b) any major changes to be made to the business of the cooperative, including any redeployment of fixed assets of the cooperative; and
  - (c) the future employment of the present employees of the cooperative.

**Schedule 7**      **Provisions of Act and regulation applying to participating and non-participating cooperatives**

section 43

**Part 1**                      **Provisions applying to participating cooperatives**

- 1 part 1, division 4
- 2 section 247
- 3 section 254
- 4 section 308 (but only to the extent that it adopts the Corporations Act, part 5.4B)
- 5 part 17
- 6 section 464

**Part 2**                      **Provisions applying to non-participating cooperatives**

- 1 part 1, divisions 3 and 4
- 2 section 13(2)
- 3 section 14
- 4 section 15
- 5 part 3, divisions 1 to 4
- 6 section 79

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- 7 part 4, division 5
- 8 section 100
- 9 section 102
- 10 section 103
- 11 section 243
- 12 section 244
- 13 section 247
- 14 part 10, division 1
- 15 part 12, divisions 3 to 7
- 16 part 13
- 17 part 17
- 18 section 464

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## Schedule 8 Holders of prescribed offices

section 48

### Commonwealth

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

### Australian Capital Territory

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

### New South Wales

- 7 Treasurer
- 8 The public trustee under the *Public Trustee Act 1913* (NSW)
- 9 The master under the *Supreme Court Act 1970*, (NSW) part 8, division 1

- 10 The supervisor of loan fund companies under the *Loan Fund Companies Act 1976* (NSW)
- 11 The protective commissioner under the *Protected Estates Act 1983* (NSW)

## Northern Territory

- 12 Treasurer
- 13 Public trustee under the *Public Trustee Act 1979* (NT)
- 14 Master of the Supreme Court of the Northern Territory
- 15 Commissioner for corporate affairs

## Queensland

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

## South Australia

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

## Tasmania

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

## Victoria

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

## Western Australia

- 33 Treasurer
- 34 Commissioner for corporate affairs
- 35 Public trustee under the *Public Trustee Act 1941* (WA)
- 36 Master or registrar of the Supreme Court of Western Australia under the *Supreme Court Act 1935* (WA)

## Schedule 9 Fees

section 49

	\$
1 Submission of a proposed disclosure statement for approval under section 17, 149, 194, 257, 260, 294 or 374 of the Act . . . . .	291.70
2 Application for an exemption under section 143B, 233, 268, 282, 290, 294, 374 or schedule 3, section 44 of the Act . . . . .	291.70
3 Submission of proposed rules for approval under section 18 of the Act . . . . .	143.20
4 Application for registration under section 19, 24 or 361 of the Act . . . . .	143.20
5 Application for registration under section 362 of the Act . .	716.10
6 Certificate issued under section 34 or 60 or schedule 3, section 42 of the Act . . . . .	36.05
7 Uncertified copy of rules under section 102(3) of the Act or a document under section 440(1)(e) of the Act—	
(a) for the first page . . . . .	7.10
(b) for each additional page . . . . .	1.25
8 Submission of a proposed alteration of rules for approval under section 106 of the Act—	
(a) for each rule to be altered . . . . .	14.30
(b) maximum fee . . . . .	143.20
9 Application for the registration of an alteration of rules under section 109 of the Act . . . . .	36.05
10 Application about a member’s eligibility to vote under section 121(3) of the Act . . . . .	143.20
11 Application to review a matter under section 180 of the Act . . . . .	143.20
12 Filing fee for the registration of a special resolution under section 191 of the Act . . . . .	36.05
13 Application under section 238(1)(d) of the Act to keep a register at an office approved by the registrar . . . . .	36.05



	\$
14 Giving a notice of appointment or cessation of appointment of person as director, principal executive officer or secretary under section 241 of the Act . . . . .	nil*
15 Filing an annual report under section 242 of the Act . . . . .	nil*
16 Application for approval of an abbreviation or elaboration of a name mentioned in section 246(e) of the Act . . . . .	36.05
17 Giving a notice of new address under section 249(3) of the Act . . . . .	nil*
18 Application for the registrar's statement of a maximum share interest mentioned in section 273(2) of the Act . . . . .	291.70
19 Approval of a resolution by the registrar under section 273(5) of the Act . . . . .	143.20
20 Application for approval of a share offer under section 284(1) of the Act . . . . .	291.70
21 Application for an extension of time under section 286(5) of the Act . . . . .	72.10
22 Application for the registrar's consent mentioned in section 71(2), 293(2) or 373(3) of the Act or this regulation, schedule 6, section 3(5) . . . . .	72.10
23 Application for approval of a merger or transfer of engagements under section 295 or 375 of the Act . . . . .	291.70
24 Giving a notice of hearing under section 333(1)(a) of the Act . . . . .	72.10
25 Application to approve an explanatory statement as mentioned in section 342 of the Act . . . . .	716.10
26 Filing an office copy of an order under section 344(4) of the Act . . . . .	nil*
27 Filing particulars of a change concerning a foreign cooperative under section 367 of the Act . . . . .	nil*
28 Filing a copy of a balance sheet under section 368 of the Act . . . . .	nil*
29 Giving notice of the cessation under section 369 of the Act . . . . .	nil*
30 Application for a certificate under section 370 of the Act . . . . .	864.60
31 Application to have the registrar call a special meeting or hold, or appoint an inspector to hold, an inquiry under section 425 of the Act . . . . .	291.70

Schedule 9

	\$
32 Application for an extension of time under section 431 of the Act . . . . .	72.10
33 Inspection of a register or prescribed documents under section 440(1)(a) or (b) of the Act . . . . .	14.30
34 Extract from a register under section 440(1)(c) of the Act .	14.30
35 Certified copy of a document under section 440(1)(d) of the Act—	
(a) for the first page . . . . .	29.10
(b) for each additional page . . . . .	2.70
36 Application for permission to give notice by newspaper under section 464(2)(c)(iii) of the Act . . . . .	72.10
37 Filing a notice under schedule 3, section 13(1), 17(1) or 36(1) or (2) of the Act . . . . .	36.05*
38 Application for an extension of time under schedule 3, section 20(3)(b) of the Act . . . . .	72.10
39 Filing a memorandum of discharge under schedule 3, section 37(2) of the Act . . . . .	36.05
40 Application for a direction under schedule 4, section 3(1)(f) of the Act . . . . .	36.05
41 Filing a managing controller’s report under schedule 4, section 12(2) of the Act . . . . .	nil*
42 Inspection of a managing controller’s report under schedule 4, section 12(3)(b) of the Act . . . . .	14.30
43 Filing a receiver’s report under schedule 4, section 13(1)(c) of the Act . . . . .	nil
44 Filing a notice of obtaining an order under schedule 4, section 18(1)(a) of the Act . . . . .	nil*
45 Filing a notice of appointment of a person to enter into possession or take control of property of a cooperative under schedule 4, section 18(2)(a) of the Act . . . . .	nil*
46 Filing, under schedule 4, section 18(3) of the Act, a notice that a person has entered into possession or taken control of property of cooperative . . . . .	nil*
47 Filing a notice of change in the situation of a controller’s office under schedule 4, section 18(5) of the Act . . . . .	nil*

	\$
48 Filing a notice of cessation as a controller under schedule 4, section 18(6) of the Act . . . . .	nil*
49 Filing a copy of a reporting officers' report under schedule 4, section 20(2)(c) of the Act . . . . .	nil*
50 Filing a copy of a notice under schedule 4, section 20(4) of the Act . . . . .	nil
51 Filing a copy of a court order under schedule 4, section 20(5) of the Act . . . . .	nil
52 Filing a controller's account under schedule 4, section 23(1) of the Act . . . . .	nil*
53 Filing a report under the Corporations Act, section 320 as applied by the Act . . . . .	nil*
54 Filing a disclosure document under the Corporations Act, section 718 as applied by the Act . . . . .	2 487.80
55 Filing a supplementary or replacement disclosure document under the Corporations Act, section 719 as applied by the Act . . . . .	nil*
56 Filing an application for the registrar to exercise powers conferred by the Corporations Act, section 601AE or 601AF as applied by the Act . . . . .	291.70
57 Filing any other document under the Corporations Act as applied by the Act . . . . .	nil*
58 Application for an exemption under the Corporations Act, section 111AT, 283GA or 741 as applied by the Act . . . . .	291.70
59 Filing an application or request to the registrar to exercise a power, or to do an act the registrar is authorised or required to exercise or do on application or request, for which no other fee is prescribed . . . . .	36.05
60 Late fee—	
(a) less than 28 days late . . . . .	72.10
(b) 28 days late or later . . . . .	291.70

\* indicates late fee stated in item 60 applies

## Attachment not forming part of regulation

### Model Rules 1997

section 51

## Rules of a non-trading cooperative without share capital registered under the Cooperatives Act 1997 (Qld)

### 1 Interpretation

In these rules—

*Editor's note—*

This section only contains definitions required for the rules. Other defined terms may be found in the Act or the *Acts Interpretation Act 1954*, for example, section 36 (Meaning of commonly used words and expressions).

***active member*** means a member who is in active membership within section 5.

***auditor*** means auditor or auditors for the time being of the cooperative appointed under the regulation.

***director*** includes deputy director.

***financial institution account*** means an account at a financial institution into which the cooperative's money may be paid.

***financial year*** means the financial year of the cooperative specified in section 51.

***member*** means a member of the cooperative.

***special resolution*** means a resolution passed in accordance with section 33.

***the regulation*** means the *Cooperatives Regulation 1997*.

## **2 Rules**

- (1) The rules of the cooperative have the effect of a contract under seal—
  - (a) between the cooperative and each member; and
  - (b) between the cooperative and each director, the principal executive officer and the secretary of the cooperative; and
  - (c) between a member and each other member.
- (2) Under the contract, each of those persons agrees to observe and perform the rules as in force for the time being so far as those provisions apply to the person. [s 100]
- (3) The rules may be altered by a special resolution, [s 107] by a resolution of the board in accordance with section 108 of the Act or as otherwise permitted by the Act.
- (4) An alteration to these rules does not take effect until it is registered by the registrar. [s 109]
- (5) A member is entitled to obtain a copy of the rules on payment of \$... (maximum \$5 for the first page and \$1 for each additional page or if no fee is fixed, \$5). [s 102(1)]
- (6) Any person may obtain a copy of these rules from the registrar on payment of the prescribed fee. [s 102(3)]

## **3 Powers**

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

## **4 Name**

- (1) The name of the cooperative is [s 245] .....
- (2) The cooperative may change its name under section 248 of the Act.
- (3) The cooperative may abbreviate its name under section 246 of the Act.

**5 Active membership provisions**

(1) Under part 6 of the Act—

**Primary activity**

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

is a primary activity of the cooperative; and

**Active membership requirements**

a member must—

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

to establish active membership of the cooperative.

\*\*Payment of a regular subscription to be applied to the cooperative's primary activity is enough to establish active membership.

- (2) All members of a cooperative must be active members.
- (3) A member who fails to be or ceases to be an active member must, subject to the Act, in particular to section 132 of the Act, have their membership cancelled and their interest forfeited.

**6 Qualifications for membership**

A person is not qualified to be admitted to membership of the cooperative unless there are reasonable grounds for believing the person will be an active member of the cooperative. [s 61]

## **7 Membership, subscriptions, periodic fees**

- (1) The cooperative must give to a person intending to become a member written notice of entry fees or regular subscriptions payable by a member of the cooperative. [s 72]
- (2) An application for membership and any amount required must be lodged at the registered office in the application form approved by the board.
- (3) Every application must be considered by the board.
- (4) If the board approves of the application, the applicant's name and any other information required under the Act must be entered in the register of members.
- (5) The applicant must be notified in writing of the entry in the register and the applicant is then entitled to the privileges attaching to membership.
- (6) The board may, at its discretion, refuse an application for membership. The board need not assign reasons for the refusal. On refusal any amounts accompanying the application for membership must be refunded without interest.

## **8 Ceasing membership**

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

- (a) if the member's membership is cancelled under part 6 (Active membership requirements);
- (b) if the member is expelled under these rules;
- (c) if the member becomes bankrupt and the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the cooperative;
- (d) on death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;

- (f) on the expiry of 1 month's written notice of the member's intention to resign from membership, given by the member to the secretary;
- (g) for a corporation—if the corporation is dissolved. [ss 66, 67]

## **9 Expulsion of members**

- (1) Subject to the Act, part 6, division 4, a member may be expelled from the cooperative by special resolution to the effect—
  - (a) that the member has failed to discharge the member's obligations to the cooperative under these rules or a contract; or
  - (b) that the member has acted in a way that has—
    - (i) prevented or hindered the cooperative in carrying out its primary activity or one or more of its primary activities; or
    - (ii) brought the cooperative into disrepute; or
    - (iii) been contrary to one or more cooperative principles as described in section 7 of the Act and has caused the cooperative harm.
- (2) Written notice of the proposed resolution must be given to the member at least 28 days before the date of the meeting at which the special resolution is to be moved, and the member must be given a reasonable opportunity of being heard at the meeting.
- (3) If a general meeting is to be called under this section the following procedures apply—
  - (a) at the meeting, the member must be afforded a full opportunity to be heard and is entitled to call witnesses and cross examine witnesses called against the member;
  - (b) if the member fails to attend at the time and place mentioned, without reasonable excuse, the act must be considered and the cooperative may decide on the evidence before it, despite the absence of the member;



- (c) once the act is considered, the cooperative may decide to expel the member who committed the act;
  - (d) the cooperative must not make a decision on the act or on expulsion, except by vote by secret ballot of the members present and entitled to vote. A motion for the decision is not taken to be passed unless two-thirds of the members present and entitled to vote, vote in favour of the motion.
- (4) If a member is expelled from the cooperative all amounts owing by the member to the cooperative become immediately payable in full.
  - (5) Payment to the expelled member of any amount owing by the cooperative to the member must be made at the time decided by the board but within 1 year from the date of expulsion. [s 76]
  - (6) An expelled member must not be re-admitted as a member unless the re-admission is approved by special resolution. [s 76]

## **10 Suspension of members**

- (1) The cooperative may, in general meeting, suspend a member, by special resolution, for not more than 1 year, who does any of the following acts—
  - (a) contravene any of these rules (other than by-laws);
  - (b) fail to discharge obligations to the cooperative, whether under these rules or a contract;
  - (c) act detrimentally to the interests of the cooperative.
- (2) If in the opinion of the board, a member does an act mentioned in subsection (1), the board may call a special general meeting, if required, within 28 days of the occurrence of the act to consider it.
- (3) If a general meeting is to be called under this section the procedure in section 9(3) applies and all references to expulsion in section 9(3) are taken to be references to suspension.

## 11 Disputes

- (1) If there is a dispute or grievance existing between members, a member or members and the cooperative (the *parties involved*) then—
  - (a) all parties must meet to discuss, and if possible resolve, the dispute or grievance within the earlier of 14 days of the dispute or grievance arising to the knowledge of all involved, or a party giving notice to the other party's involved of the dispute or grievance;
  - (b) if the dispute or grievance is not resolved under paragraph (a), within 10 days of the meeting required in that paragraph taking place a further meeting must be held by all parties involved in the presence of a mutually agreed referee. In the absence of agreement as to a referee then the meeting must be held in the presence of a referee, whether a member of the cooperative or otherwise, appointed by the board of the cooperative.
- (2) The referee must not make a decision binding on the parties but must conciliate and mediate.
- (3) If the grievance or dispute is not settled under subsection (1)(b) then all parties must agree to seek resolution within 10 days by the assistance and with the mediation of the Alternative Dispute Resolution Division of the Department of Justice.

(If there is an entitlement to expel a member under the Act, rules, regulations or contract the grievance procedure does not apply unless the members, by special resolution vote for the procedure to apply, or vote for it to apply while reserving the right to vote on expulsion if the matter is not resolved by the grievance procedure)

- (4) In subsection (1)—

*members* does not include independent directors, non-member employees or non-member officers. [s 82]

**12 Fines payable by members**

- (1) The board may impose on a member a maximum fine of \$... (not more than \$100) for a contravention of the rules.
- (2) A fine must not be imposed on a member under subsection (1) unless—
  - (a) written notice of intention to impose the fine and the reason for it has been given to the member; and
  - (b) the member has been given a reasonable opportunity to appear before the board in person (with or without witnesses), or to send to the board a written statement, to show cause why the fine should not be imposed.

**13 Liability of members to cooperatives**

- (1) A member is, under section 70 of the Act, liable to pay to the cooperative the charges, including entry and periodic fees, payable by the member to the cooperative under these rules.
- (2) On the death of a member, the member's estate is subject to the same liability as the member would have been until the member's personal representative or some other person is registered in the member's place. [s 66(2)]
- (3) Joint members are jointly and severally liable for charges mentioned in subsection (1).

**14 Forfeiture and cancellations—inactive members**

- (1) The board must, after giving notice under section 130 of the Act, declare the membership of a member who was a member for the period stated in the notice cancelled if—[s 125]
  - (a) the whereabouts of the member are not presently known to the cooperative and have not been known to the cooperative for a continuous period of at least ... (not more than 3 years, section 125) ... years before that date; or
  - (b) the member is not presently an active member and has not been an active member at any time in the past ...

(not more than 3 years, section 125) ... years immediately before that time.

- (2) The cooperative must, in a form approved of by the registrar, keep a register of cancelled memberships under subsection (1), which must include the particulars in the *Cooperatives Regulation 1997*, schedule 2.

## 15 Death of member

- (1) Subject to section 167(1) of the Act the board must transfer the deceased member's interest in the cooperative to—
  - (a) the personal representative of the deceased, (this is, an executor or administrator of the estate of the deceased);  
or
  - (b) to the person the deceased's personal representative may specify, in an application made to the cooperative within 3 months after the death of the member.
- (2) The board may approve the transfer of the interest to a person other than the executor or administrator and in considering whether to approve the transfer the board must consider whether—
  - (a) there are reasonable grounds for believing the proposed transferee will be an active member of the cooperative;  
or
  - (b) the proposed transferee is qualified to be a member of the cooperative under these rules. [ss 78(b) & 167]
- (3) If the total value of the deceased member's interest in the cooperative is less than \$10000 or another amount fixed by the regulation the board may transfer the interest under section 79 of the Act if there has not been a grant of letter of administration or probate of the deceased's will. [s 79]
- (4) Under section 80 of the Act, the board must decide the value of the interest of a deceased member as the amount payable to the deceased member less any amounts owing to the cooperative by the deceased member.

**16 Dealings of members with cooperatives**

- (1) The cooperative may, under section 73 of the Act, make a contract with a member requiring the member to have specified dealings with the cooperative for a fixed period.
- (2) The contract may require a member—
  - (a) to sell products through or to the cooperative; or
  - (b) to obtain supplies or services through or from the cooperative; or
  - (c) to pay to the cooperative specified amounts as liquidated damages for a contravention of a requirement authorised by this section.
- (3) Any amount specified as liquidated damages is to be considered as a debt payable to the cooperative for which the cooperative has, under section 75 of the Act, a charge on each of the following—
  - (a) the credit balance and deposits of the member or past member;
  - (b) any entry and periodic fees required to be repaid to a member when the member ceases to be a member.

**17 Registration of official trustee in bankruptcy**

If a member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the interest held by the bankrupt member. [s 162(1)]

**18 Registration as administrator of estate on incapacity of member**

A person appointed under a law of a State to administer the estate of a member who, through mental or physical infirmity is incapable of managing his or her affairs, may be registered as the holder of the member's interest in the cooperative. [s 161]

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

- (1) A person entitled to hold the interest of a member because of the death, bankruptcy or the incapacity of the holder of the interest, is entitled to the advantages to which the member would be entitled if he or she were the registered holder of the interest, however before being registered as a member, the person can not exercise any right conferred by membership in relation to meetings of the cooperative.
- (2) A person registered under section 15, 17 and 18 has, while registered, the same liabilities the dead person, incapable person or the bankrupt person would have been liable if he or she had remained a member with full legal capacity.

## **20 Transfer and transmission of debentures**

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

reasonably requires, in particular evidence showing the right of the transferor to make the transfer; and

(c) any government stamp duty payable is paid.

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

I, A.B. (the transferor) of ..... in the State of ..... in consideration of the sum of \$... paid to me by C.D (the transferee), of ..... in the State of ..... transfer to the transferee the debenture(s) numbered ..... to be held by the transferee, the transferee’s executors, administrators, and assigns, subject to any 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) on the conditions mentioned.

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

Signed by ....., transferor.

In the presence of ....., witness.

Signed by ....., transferee.

In the presence of ....., witness.

**21 Annual general meetings**

(1) An annual general meeting must, under section 198 of the Act, be held each year at a place and on a date and time decided by the board within 5 months after the end of the cooperative’s financial year or the further time the registrar may allow or fixed under a regulation. [s 198]

(2) A general meetings of the cooperative other than the annual general meeting must be a special general meeting.

(3) If an annual general meeting is not held as required by subsection (1), the members may, under section 203 of the Act and section 22 of these rules, requisition an annual general meeting.

## **22 Special general meetings**

- (1) The board may, whenever it considers appropriate, call a special general meeting of the cooperative.
- (2) The board must call a general meeting of the cooperative on the requisition in writing by active members who together are able to cast at least (...% max 20%) of the total number of votes able to be cast at a meeting of the cooperative.
- (3) The requisition must—
  - (a) state the objects of the meeting; and
  - (b) be signed by the requisitioning members (and may consist of several documents in like form each signed by 1 or more of the requisitioning members); and
  - (c) be served on the cooperative by being lodged at the cooperative's registered office.
- (4) A meeting requisitioned by members under these rules must be called within 21 days with the meeting being fixed to be held as soon as practicable and within 2 calendar months after the requisition is served.
- (5) If the board does not call a meeting within 21 days after the requisition is served, the following provisions apply—
  - (a) the requisitioning members (or any of them representing at least half their total voting rights) may call the meeting in the way, as nearly as possible, meetings are called by the board;
  - (b) for that purpose they may ask the cooperative to supply a written statement of the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the cooperative;
  - (c) the board must send the statement to the requisitioning members within 7 days after the request for the statement is made;
  - (d) the meeting called by the requisitioning members must be held within 3 months after the requisition is served;



- (e) the cooperative must pay the reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting;
- (f) any amount required to be paid by the cooperative is to be retained by the cooperative out of amounts payable by the cooperative for fees or other remuneration for their services to the directors who were in default. [s 203]

## **23 Notice of general meetings**

- (1) At least 14 days notice (not including the day on which the notice is served or deemed to be served, but including the day for which notice is given) must be given of any general meeting in the way stipulated in section 59.
- (2) Notice must be given to the persons who are, under these rules entitled to receive the notices from the cooperative, but the non-receipt of the notice by a member does not invalidate the proceedings at the general meeting.
- (3) The notice must state the place, day and hour of the meeting and, for special business, the general nature of the business.
- (4) For a special resolution, notice must be given at least 21 days before the meeting. [s 186]
- (5) A member who has a resolution to submit to a general meeting must give written notice of it to the cooperative at least 28 days before the day of the meeting.
- (6) The board must include in a notice calling a general meeting any business a member has, before the notice calling the meeting is issued, notified his or her intention to move at the meeting (and the notice has been made under these rules).

## **24 Business of general meetings**

- (1) The ordinary business of the annual general meeting must be—
  - (a) to confirm minutes of the last preceding general meeting (whether annual or special); and

- (b) to receive from the board, auditors, or officers of the cooperative reports on the transactions of the cooperative in the financial year, including balance sheet, profit and loss account and the state of affairs at the end of that year; and
  - (c) to elect and decide the remuneration of directors, as prescribed by the rules.
- (2) The annual general meeting may also transact special business of which notice has been given to members under these rules.
  - (3) All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.

## **25 Quorum at general meetings**

- (1) No item of business must be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item. [s 201]
- (2) Unless these rules state otherwise ... active members present in person, each being entitled to exercise a vote, constitute a quorum. [s 201]
- (3) If within half an hour after the appointed time for the meeting a quorum is not present, 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. If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present constitute a quorum.

## **26 Chairperson at general meetings**

- (1) The chairperson, if any, of the board must preside as chairperson at every general meeting of the cooperative.
- (2) If there is no chairperson, or if at a meeting the chairperson is either not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, then the members present must choose someone from their

number to be chairperson (until the chairperson attends and is willing to act).

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

## **27 Standing orders at general meetings**

The following standing orders must be observed at the cooperative's meetings, subject to any suspension, amendment or addition to the orders adopted for a meeting by the members present at the meeting—

- (a) the mover of a proposition must not speak for more than 10 minutes. Subsequent speakers must be allowed 5 minutes, and the mover of the proposition 5 minutes to reply. The meeting may however by simple majority extend in a particular instance the time permitted by this section;
- (b) whenever an amendment to an original proposition is proposed, no second amendment must be considered until the first amendment is disposed of;
- (c) if an amendment is carried, the proposition as so amended must displace the original proposition and may itself be amended;
- (d) if an amendment is defeated, then a further amendment may be moved to the original proposition. However, only 1 amendment must be submitted to the meeting for discussion at 1 time;
- (e) the mover of every original proposition, but not of an amendment, has the right to reply. Immediately after this

the question must be put from the chair. No other member must speak more than once on the same question, unless permission is given for an explanation, or if the attention of the chairperson is called to a point of order;

- (f) propositions and amendments must be submitted in writing, if required by the chairperson;
- (g) discussion may be closed by a resolution 'that the question be now put' being moved seconded and carried. The resolution must be put to the meeting without debate;
- (h) any member, or visitor invited to attend the meeting by the board, may speak on any issue at a meeting with the permission of the chairperson but the permission may be conditional;
- (i) standing orders may be suspended by ordinary resolution.

## **28 Attendance and voting at general meetings**

- (1) At a meeting of the cooperative a member who has been given notice that the member's cooperative rights are required to be forfeited under the active membership provisions of the Act can not attend.
- (2) A member of the cooperative can not vote at a meeting of the cooperative unless the person is an active member of the cooperative.
- (3) At a general meeting a resolution put to the vote of the meeting must (as provided in section 202 of the Act) be decided on a show of hands. This is unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least 5 members. If no poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the cooperative must be evidence of the fact. No proof is needed of the number or proportion of

the votes recorded in favour of, or against, the resolution. [s 202]

- (4) On a show of hands or on a poll each representative of a corporation under section 64 of the Act, or each member (not under the age of 18), who is present at a meeting in person or represented by proxy or attorney, has subject to subsection (5), 1 vote. However, no member may vote, or is entitled or eligible to vote, contrary to the Act.
- (5) If the votes are equal, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, is entitled to a second or casting vote.
- (6) A resolution, other than a special resolution, must be decided by a simple majority.
- (7) An active member of a cooperative has 1 vote only in relation to a question or motion arising at a general meeting of the cooperative.
- (8) For joint membership, joint members have 1 vote only between them.
- (9) In the event of a dispute between joint members as to which member may exercise the vote, (subject to the grant of a proxy or power of attorney) the joint members whose name appears first in the register of members is the one to exercise the vote.
- (10) A member's right to vote is a personal right. [s 174]

## **29 Proxy votes**

- (1) The instrument appointing a proxy must be in writing signed by the appointee or the appointer's attorney properly authorised in writing.
- (2) An instrument appointing a proxy may direct the way the proxy is to vote in relation to a particular resolution and, if an instrument of proxy directs, the proxy can not vote on the resolution other than as directed in the instrument.
- (3) A person must not act as a proxy unless the person is an active member of the cooperative.

(4) A person must not act as proxy for more than 10 members, unless the proxy acts under an instrument of proxy mentioned in subsection (2).

(5) An instrument appointing a proxy may be in the following form, or another form the board approves—

..... (name of cooperative)

I/we ..... (name) of ..... (address)  
being a member/s of the cooperative appoint  
..... (name) of ..... (address) as  
my/our proxy, to vote for me/us and on my/our behalf at the  
\*annual general/\*general meeting of the cooperative, to be  
held on the ..... day of ..... 20...  
and at any adjournment of the meeting.

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

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

\*Strike out if not applicable.

#To be inserted if desired

(6) An instrument appointing a proxy must not be treated as 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, or, for a poll, at least 24 hours before the time appointed for the taking of the poll, at the registered office of the cooperative or at another place specified for the purpose in the notice calling the meeting.

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

**30 Restriction on voting entitlement under power of attorney**

A person can not exercise a member's right to vote under a power of attorney, if the person has a power of attorney to vote for another member.

**31 Postal ballot**

- (1) Voting must not be by fax or electronic means.
- (2) A postal ballot must be held when required by the Act, and in the following circumstances—
  - (a) when the members by ordinary resolution approve one;
  - (b) when the members by ordinary resolution approve a special resolution being decided by postal ballot.
- (3) A special postal ballot must be held when required by the Act, and in the following circumstances—
  - (a) when the members by ordinary resolution approve one;
  - (b) when the members by ordinary resolution approve a special resolution being decided by postal ballot. [ss 186(2) & 193]
- (4) A special postal ballot must be held for passing a special resolution in relation to any of the following matters relating to a cooperative—
  - (a) conversion of—
    - (i) a share capital cooperative to a non-share capital cooperative or vice versa; or
    - (ii) a trading cooperative to a non-trading cooperative or vice versa;
  - (b) transfer of incorporation;
  - (c) an acquisition or disposal of assets mentioned in the Act, section 268;
  - (d) the maximum permissible level of share interest in the cooperative;
  - (e) takeover;

- (f) merger;
  - (g) transfer of engagements;
  - (h) member's voluntary winding-up.
- (5) The cooperative may hold a postal ballot to decide a question or proposal by the members in the following way.
  - (6) The board must cause the details of the proposal on which the ballot is to be held to be set in a statement and fix the dates for the forwarding of ballots to members and closing the ballot.
  - (7) Every ballot must be conducted by the returning officer who must be appointed by the board. If non-one is appointed in enough time to allow the procedure in this section to be followed, the secretary, or in absence of the secretary the person acting as secretary, is the returning officer.
  - (8) A person, other than a director of the cooperative, may be appointed by the board to act as returning officer.
  - (9) The returning officer may be assisted in the performance of functions or powers under this section by the persons (who would be eligible to be returning officers) the returning officer appoints.
  - (10) The returning officer must prepare a roll of the full names and addresses of the members of the cooperative as disclosed by the register of members and shares together with particulars of the number of votes each member would be entitled to exercise on a poll.
  - (11) A person whose name is on the roll, may vote in a postal ballot, and no-one else is eligible or entitled to vote.
  - (12) The returning officer must cause ballot papers to be prepared in or to the following effect—

Name of cooperative .....

Ballot of members to decide the following proposal—

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



The ballot closes at noon on .....

How to Vote

- 1 Read these directions and the ballot paper carefully.
- 2 Complete and sign the details on the reverse side of the middle envelope.
- 3 If you are in favour of the proposal insert 'YES' in the square in the ballot paper hereunder. If you are not in favour of the proposal insert 'NO'.
- 4 After marking the ballot paper fold it and place it in the small envelope provided and seal the envelope. Then place this envelope in the middle envelope and place the middle envelope in the envelope addressed to the returning officer. Forward this envelope either by post or personal delivery to reach the returning officer by noon on .....
- 5 Unless the ballot paper is marked as indicated in 3 above and the details mentioned in 2 above are completed in full and signed, your vote may be rejected as informal.

.....

Initials of Returning Officer

BALLOT PAPER

Are you in favour of the proposal mentioned above?

- (13) Each ballot paper must be initialled by the returning officer. The returning officer must, at least 21 days before the day fixed for closing the ballot, send by post or otherwise deliver to every member entitled to vote in a ballot, 1 set of the following material—
  - (a) 1 ballot paper;
  - (b) an unsealed envelope (the *outer envelope*) addressed to the returning officer;
  - (c) a smaller envelope (the *middle envelope*) in which the voter must enclose the envelope containing the ballot

paper, the reverse side of which must be printed in or to the following effect—

.....  
(full name)

.....  
(address)

.....  
(signature)

- a Please use capital letters.
  - b If the vote is being cast on behalf of a cooperative or other corporate body also indicate the name of the cooperative or corporate body;
  - (d) a small envelope (the *inner envelope*) into which the ballot paper is enclosed;
  - (e) a copy of the statement (prepared by the board) giving the details of the proposal on which the decision of the members is to be sought.
- (14) Every member desiring to vote in the ballot must complete the details on the reverse side of the middle envelope and after marking their vote on the ballot paper according to the instructions on the ballot paper, seal the ballot paper in the inner envelope. The inner envelope containing the ballot paper must then be placed in the middle envelope and the middle envelope placed in the outer envelope addressed to the returning officer. The outer envelope must then be posted or personally delivered to the returning officer by noon on the day the ballot closes.
- (15) The returning officer must provide a ballot box.
- (16) The ballot box must be locked immediately before the ballot papers are delivered under subsection (13) and remain locked until the close of the ballot.
- (17) The returning officer must place the outer envelopes containing the ballot papers in the ballot box by noon on the day the ballot closes.

- (18) If a member makes and sends to the returning officer a declaration that the member has not received the ballot paper, or the ballot papers received by the member have been lost, spoiled or destroyed, and the member has not already voted, the returning officer may issue a duplicate set of the material required under subsection (13), having written 'duplicate' on the duplicate outer envelope.
- (19) A member must not make a declaration under subsection (18) that is false in a particular material.
- (20) Ballot papers received after noon on the day the ballot closes must not be taken into account at the ballot.
- (21) As soon as practicable after noon on that day, the returning officer in the presence of scrutineers appointed by the board must open the ballot box and deal with the contents in accordance with subsections (22) and (23).
- (22) The returning officer must—
- (a) remove the middle envelope from the outer envelope; and
  - (b) if a duplicate outer envelope has been issued and the original outer envelope is received—reject the original envelope and mark it 'rejected'; and
  - (c) according to the information on the middle envelope, mark for each set of voting papers returned, the voter's name on the roll by drawing a line through the name; and
  - (d) if a member's name has already been crossed out on the roll—reject the postal vote and mark it 'rejected'; and
  - (e) if the middle envelope has not been signed, or the details shown on the envelope are not enough to disclose by whom the vote is being exercised—reject the envelope and mark it 'rejected'; and
  - (f) extract or cause to be extracted the inner envelopes containing the ballot papers from all unrejected middle envelopes, separating the contents from the middle envelopes in a way that no inner envelope could later be identified with a particular voter; and

- (g) when all the middle envelopes have been dealt with, cause all inner envelopes not rejected to be opened and the ballot papers taken from them.
- (23) The ballot papers must be scrutinised by the returning officer who should supervise and reject as informal a ballot paper that—
- (a) is not initialled by the returning officer; or
  - (b) is so imperfectly marked the intention of the voter can not be decided by the returning officer; or
  - (c) has a mark or writing not authorised by this section that, in the opinion of the returning officer will enable someone to identify the voter; or
  - (d) has not been marked as prescribed on the ballot paper itself.
- (24) The decision of the returning officer as to the formality of a ballot paper is final and not open to appeal.
- (25) The returning officer must count votes cast and make out and sign a statement of—
- (a) the number of formal votes cast in favour of the proposal; and
  - (b) the number of formal votes cast against the proposal; and
  - (c) the number of informal votes cast; and
  - (d) the number of inner envelopes marked ‘rejected’; and
  - (e) the proportion of the formal votes polled which were in the affirmative; and
  - (f) on the declaration of the returning officer of the result of the postal ballot the secretary of the cooperative is to make an entry in the minute book showing the particulars mentioned in subsection (25)(a), (b) and (c).
- (26) The returning officer must forward the statement to the chairperson of the cooperative who must announce the result of the ballot at the next general meeting.

- (27) The proposal which received the required majority of votes must be declared won.
- (28) The returning officer must retain all ballot papers (whether formal or otherwise), rejected outer envelopes and rolls used for the conduct of the ballot, locked in the ballot box until the returning officer has been directed by the board, in writing to destroy them.
- (29) Notice of the result of the ballot (other than a ballot conducted to alter these rules) must be displayed on the notice board at the registered office of the cooperative.
- (30) For a postal ballot altering the rules, the cooperative must cause the alteration to be notified in writing to its members as soon as practicable after the alteration takes effect but not later than the day notice is given to the members of the next annual general meeting of the cooperative after the alteration takes effect.

### **32 Poll at general meetings**

- (1) If a poll is demanded it must be taken in the way the chairperson directs. Unless the meeting is adjourned the result of the poll is taken to be a resolution of the meeting at which the poll was demanded.
- (2) A poll demanded on the election of a chairperson, or on a question of adjournment, must be taken immediately.

### **33 Special and ordinary resolutions**

- (1) A special resolution is a resolution of which notice has been given of the intention to propose the resolution as a special resolution and which is passed either by two-thirds of the members who vote in person or by proxy or attorney, at a general meeting, or by a two-thirds majority in a postal ballot, or by three-quarters of the members who cast formal votes in a special postal ballot of members.
- (2) A special resolution has effect from the date it is passed, however a special resolution by special postal ballot has no effect until registered by the registrar. [s 190]

- (3) An ordinary resolution is one passed by a simple majority and has effect from the date it is passed

### **34 Board of directors**

- (1) The business and operations of the cooperative are to be managed and controlled by the board of directors, and for that purpose the board has and may exercise the powers of the cooperative as if expressly conferred on the board by a general meeting of the cooperative.
- (2) The board must have..... elected directors each of whom must be an individual, whether as a member of the cooperative, or as a representative of a corporation member, and at least 18 years old.
- (3) The powers of the board are subject to any restrictions imposed by the Act or by these rules.

### **35 Qualifications of directors**

A person is not qualified to be a director of a cooperative unless the person is—

- (a) a member of the cooperative or a representative of a corporation that is a member of the cooperative; or
- (b) an employee of the cooperative or a person qualified under section 36 of these rules to be an independent director.

### **36 Independent directors**

- (1) The elected directors may appoint persons with special skills to be independent directors of the cooperative on the conditions and for the period the directors decide and set the remuneration and allowances to be paid to independent directors for services as a director as approved at a general meeting of the cooperative under section 222 of the Act. An independent director is, subject to this section, a director of the cooperative for the period of the appointment. The ratio of

the number of independent directors to member directors must not be more than 1 to 3 in accordance with the Act.

- (2) Independent directors must not be counted for section 34.
- (3) Unless this section otherwise provides, all other rules relating to directors apply to an independent director.
- (4) On the termination of appointment as independent director by death, retirement, resignation or another way the independent director stops being a director of the cooperative.
- (5) An independent director can not vote at a meeting of directors on a motion about the conditions of his or her appointment, conditions of service or termination of service but may be permitted by the chairperson of the board to speak in relation to the motion.
- (6) Despite anything else in these rules no vote may be taken at a meeting of the board of directors unless, when the vote is taken, the number of independent directors present is less than the number of member directors present.
- (7) An independent director can not be appointed as chairperson of the board of directors however an independent director may be appointed to chair a subcommittee of the board which the board in its discretion might appoint.
- (8) Despite the term of appointment fixed under subsection (1), the appointment of an independent director must be ratified by the members of the cooperative at the general meeting next after the appointment of each independent director. Ratification must be by a simple majority of members of the cooperative present and entitled to vote at the meeting.
- (9) If the appointment of an independent director is not ratified by the members of the cooperative, anything done by the independent director since the appointment is taken to have been validly done even though the appointment is not ratified by the members of the cooperative.
- (10) Despite the terms of appointment, the members of the cooperative may, by special resolution at a general meeting of members, terminate the appointment of an independent director.

- (11) An independent director can not be required to be an active member of the cooperative.

### **37 Managing director**

- (1) The elected directors may, if they consider appropriate, appoint a person to be managing director of the cooperative and from time to time remove the person from office. The conditions and period of appointment must be decided by the directors
- (2) The managing director must not be counted for the purposes of section 34.
- (3) In all other respects the managing director has all the privileges of a director and all other rules relating to directors apply to the managing director.
- (4) On the termination of the appointment as managing director either by death, retirement, resignation or termination by the board, the managing director stops being a director of the cooperative.
- (5) The managing director is not entitled to be present or to vote at a meeting of directors on a motion concerning the conditions of his or her own appointment, conditions of service or termination of service.
- (6) A managing director can not be required to be an active member of the cooperative.
- (7) A managing director must be classified as an independent director under the Act.

### **38 First and subsequent directors**

- (1) The first directors must be elected at the meeting for the formation of the cooperative.
- (2) At the first annual general meeting of the cooperative ... of the directors must retire. At the annual general meeting in each subsequent year the directors must retire in rotation of ... and ... . Member directors are to be elected by ... (members by a postal ballot in the way outlined in section 31) /



(members by ballot at the annual general meeting of the cooperative). If 2 or more candidates receive an equal number of votes the candidate to be appointed must be decided by lot.

- (3) The directors to retire in any year are (subject to the provision as to filling casual vacancies) those who have been longest in office since their last election. If persons became directors on the same day, the order of retirement must (unless they otherwise agree among themselves) be decided by lot. The order for retirement is the order in which the names are withdrawn.
- (4) A retiring director is eligible for re-election.
- (5) At an annual general meeting at which a director retires or a casual vacancy occurs the vacated office must be filled by electing a person to it. Nominations for candidates to fill the vacant positions must be sought in the way the board decides. The election of directors must be conducted at the meeting in the usual and appropriate way as the board directs.

*Optional, select either (6) and (7) or (8)*

- (6) If at an annual general meeting at which an election of directors ought to take place the places of the retiring directors or any of them are not filled, the meeting must be adjourned till the same day in the next week at the same time and (unless another place is specified by a director or officer at the time of the adjournment or by written notice to members given before the day to which the meeting is adjourned) at the same place, and the adjourned meeting may receive nominations and elect directors to the vacancies in the usual and appropriate way as the facilitator directs.
- (7) If at the adjourned meeting the places of the retiring directors are not filled the retiring directors or such of them as have not had their places filled are taken to have been re-elected at the adjourned meeting.
- (8) If at the general meeting the places of the retiring directors are not filled the retiring directors or such of them as have not had their places filled, and who are in agreement, are taken to have been re-elected at the meeting.

### **39 Removal from office of director**

The cooperative may by special resolution 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 director. The person appointed must retire when the removed director would otherwise have retired. [s 213(2)]

### **40 Vacation of office of director**

A director vacates office if—

- (a) disqualified or otherwise unable to be a director under section 208 of the Act; or
- (b) the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave; or
- (c) the director resigns from the office of director by written notice given by the director to the cooperative; or
- (d) the director is removed from office by special resolution of the cooperative; or
- (e) the person ceases to hold the qualification because of which the person was qualified to be a director; or
- (f) an administrator of the cooperative's affairs is appointed under division 5 of part 12 of the Act.

### **41 Filling of casual vacancies**

- (1) The board may appoint a qualified person to fill a casual vacancy in the office of director until the next annual general meeting.
- (2) For this section, a casual vacancy arises if the office of director is vacated under section 40. [s 206(3)]

### **42 Remuneration**

- (1) Under section 222 of the Act the directors must not receive remuneration for their services other than fees, concessions

and other benefits approved at a general meeting of the cooperative.

- (2) All necessary expenses incurred by the board members in the business of the cooperative must be refunded to them.

#### **43 Deputy directors**

- (1) In the absence of a director from a meeting of the board, the board may appoint a qualified person to act as a deputy for the director and to accordingly act in the director's place on the board. [s 211(1)]
- (2) A deputy director appointed by the board is entitled to notice of meetings of the directors and to attend and vote at the meetings and to sign resolutions and to exercise the powers, authorities and discretions vested in or otherwise exercisable by the director he or she is deputy for.
- (3) A deputy director must vacate office if the director he or she acts as deputy for stops being a director or on a majority of the other directors removing him or her from office.
- (4) An appointment or removal under this section must be written and notice of the removal must be served on the deputy director and the appointment or removal takes effect immediately on service of the notice. Service of a notice of removal may be affected under section 59.
- (5) The remuneration of a deputy director is payable out of the remuneration payable to the director he or she acts as deputy for and must consist of the part of the director's remuneration agreed between the deputy director and the director. The attendance of the deputy director at a meeting of the board is taken to be attendance by the nominating director.
- (6) For this section a meeting of the directors includes a meeting conducted under section 45.

#### **44 Proceedings of the board**

- (1) Meetings of the board (including meetings conducted under section 45) are to be held as often as may be necessary for

properly conducting the business and operations of the cooperative and must be held at least quarterly.

- (2) Questions arising at a meeting must be decided by a majority of votes.
- (3) If votes are equal, the chairperson has a second or casting vote.
- (4) The chairperson or a director may, and the secretary must, if asked by the chairperson or a director at any time, call a meeting of the board. [s 209(2)]
- (5) Other than in special circumstances decided by the chairperson, at least 48 hours notice must be given to the directors of all meetings of the board.

#### **45 Transaction of business outside board meetings**

- (1) The board may under section 210 of the Act transact any of its business—
  - (a) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of the members is taken to be a decision of the board; or
  - (b) at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting, can be heard by the other members.
- (2) For this section the chairperson of the board and each member of the board have the voting rights they have at an ordinary meeting of the board.
- (3) A resolution approved under subsection (1)(a) is to be recorded in the minutes of the meetings of the board.
- (4) The secretary may circulate papers among members of the board for subsection (1)(a) by fax or other transmission of the information in the papers concerned.

**46 Quorum for board meetings**

- (1) The quorum for a meeting of the board is half the number of directors (or if half is not a whole number the whole number next higher than one-half) but independent directors must not constitute more than half the directors present at a meeting (or if half is not a whole number the whole number immediately lesser than one-half).
- (2) If at any time the number of directors is the equal to or less than the number of directors required to constitute a quorum of the board—
  - (a) the board may appoint enough directors so the number of directors is 1 more than a quorum; and
  - (b) for enabling the board to make an appointment, the number of directors required to constitute a quorum is the number of directors at the time.

**47 Chairperson of board**

- (1) The chairperson of the board may be elected by the board or at a general meeting of the cooperative.
- (2) If no chairperson is elected or the chairperson is not present within 5 minutes after the time fixed for holding the meeting or is unwilling to act as chairperson of the meeting, the directors present may choose 1 of their number to be chairperson of the meeting until the chairperson attends and is willing to act as chairperson.
- (3) The chairperson may be removed, and a new chairperson elected—
  - (a) if the chairperson was elected by the board—by ordinary resolution of the board; or
  - (b) if the chairperson was elected by ordinary resolution at a general meeting of the cooperative—by ordinary resolution at a general meeting of the cooperative.

## **48 Delegation and board committees**

- (1) The board may (under section 212 of the Act) by resolution delegate to a director or committee of 2 or more directors the exercise of the board's powers (other than this power of delegation) specified in the resolution. The cooperative or the board may by resolution revoke all or part of the delegation.
- (2) A power delegated under this section may, while the delegation remains in force, be exercised from time to time in accordance with the delegation.
- (3) A delegation under this section may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (4) Despite any delegation under this section, the board may continue to exercise the power delegated.
- (5) If a power is exercised by a director (alone or with another director) and the exercise of the power is evidenced in writing, signed by the director in the name of the board or in his or her own name on behalf of the board, the power is taken to have been exercised by the board. This is so whether or not a resolution delegating the exercise of the power to the director was in force when the power was exercised, and whether or not any conditions mentioned in subsection (3) were observed by the director exercising the powers.
- (6) An instrument purporting to be signed by a director under a delegation mentioned in section 212 of the Act must in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the cooperative under seal. Furthermore, until the contrary is proved, it must be taken to be an instrument signed by a delegate of the board under section 212 of the Act.
- (7) A committee may elect a chairperson of their meetings. If no chairperson is elected, or, if at a meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting, the members present may choose 1 of their number to be chairperson of the meeting.
- (8) A committee may meet and adjourn as it thinks appropriate. Questions arising at a meeting must be decided by a majority

of votes of the members present and voting and if the votes are equal, the chairperson has a second or casting vote.

#### **49 Other committees**

- (1) The board may by resolution appoint committees of members or other persons or both, to act in an advisory role to the board and to committees of directors.
- (2) Section 48(7) and (8) apply to committees appointed under this section, with the changes approved of by the board.
- (3) The quorum for a meeting of the committee must be one-half (or if one-half is not a whole number the whole number next higher than one-half) of the number of members in the committee.

#### **50 Minutes**

- (1) The board must keep minutes of meetings in books kept for the purpose, 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 cooperative and of directors and of committees of directors.
- (2) Minutes must be recorded in the minute book within 14 days after the meeting to which they relate is held.

#### **51 Financial year**

The financial year of the cooperative ends on ....

#### **52 Seal**

- (1) The cooperative must, as required by section 247(1)(a) of the Act, have the name of the cooperative appear in legible

characters on its common seal and on any official seal. The common seal must be kept at the registered office in the custody as the board directs.

- (2) The cooperative may, under section 48 of the Act, have for use in place of its common seal outside the State, 1 or more official seals. Each of the additional seals must be a facsimile of the common seal with the addition on its face of the name of the place where it is to be used.
- (3) The seal of the cooperative must not be fixed to an instrument other than under a resolution of the board. Two directors and the secretary must be present and must sign all instruments sealed while they are present. (The board may appoint someone other than the secretary for this).
- (4) The person fixing the official seal must certify in writing on the instrument to which it is fixed, the date and place at which it is fixed.

### **53 Custody and inspection of records and registers**

- (1) The cooperative must have at its registered office and available during normal office hours for inspection by any member free of charge [s 239(1)] the following—
  - (a) a copy of the Act and the regulation;
  - (b) a copy of the rules of the cooperative and any attachments under section 337;
  - (c) a copy of the last annual report of the cooperative under section 242;
  - (d) the register of directors and members;
  - (e) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the cooperative;
  - (f) the register of memberships cancelled under part 6 of the Act, required to be kept under section 237(1)(e) of the Act;
  - (g) the register of notifiable interests required to be kept under section 278 of the Act;



- (h) a copy of the minutes of each general meeting;
  - (i) the other registers required under the Act to be open for inspection.
- (2) A member may make a copy of an entry in a register mentioned in subsection (1) during normal office hours, free of charge, for the fee of \$5 for the first page and \$1 for each additional page.

#### **54 Accounts**

- (1) The board must have a financial institution account in the name of the cooperative, into which all amounts received must be paid as soon as possible after receipt.
- (2) All cheques drawn on the accounts and all drafts, bills of exchange, promissory notes, and other negotiable instruments for the cooperative, must be signed by 2 directors or by any 2 persons authorised by the board.

#### **55 Safe keeping of securities**

Shares, debentures, charges and any other certificate of or document or duplicates of them pertaining to securities must be safely kept by the cooperative in the way and with the provision for their security the board directs.

#### **56 Audit**

- (1) One or more auditors must be appointed, hold office, be remunerated, be removed and have qualifications, duties and responsibilities as provided by the regulation, or a gazette notice made by the registrar under section 233 of the Act. Audits must be carried out annually or, if the cooperative is a disclosing entity, every 6 months.
- (2) Within 1 month after the cooperative is registered, the directors must appoint an auditor of the cooperative, unless the cooperative at a general meeting has already appointed an auditor. An auditor appointed under this section holds office until the first annual general meeting of the cooperative.

- (3) The cooperative must at its first annual general meeting appoint an auditor of the cooperative and at each subsequent annual general meeting, if there is a vacancy in the office of auditor, the cooperative must appoint an auditor to fill the vacancy.
- (4) An auditor appointed under subsection (3) holds office until death, removal or resignation from office, or until stopping being capable of acting as auditor.
- (5) The board must fill a vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office, within 1 month after the vacancy happens, unless the cooperative at a general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as auditor of a cooperative under this subsection holds office until the next annual general meeting of the cooperative.
- (6) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.
- (7) The cooperative or the board must not appoint as auditor a person who has not consented in writing to the appointment or who has withdrawn the consent, or a person of whose nomination notice has not been given under the regulation.
- (8) A person is not qualified to be appointed auditor of the cooperative if—
  - (a) the person is not a registered company auditor, an existing auditor of the cooperative or a person exempted under section 233 of the Act; or
  - (b) the person or corporation in which the person is a substantial shareholder, is indebted to the cooperative (or to a subsidiary corporation of the cooperative) for an amount of more than \$5000; or
  - (c) the person is—
    - (i) an officer of the cooperative; or
    - (ii) is a partner, employer or employee of an officer of the cooperative; or
    - (iii) is a partner of an employee of an officer of the cooperative; or

- (iv) is an employee of an employee of an officer of the cooperative.
- (9) All reasonable fees and expenses of the auditor are payable by the cooperative.
- (10) The board must enable the auditor to have access to all books, accounts, vouchers, securities and documents of the cooperative, and to be given the information and explanation by board members or any other officers necessary for the performance of the duties of auditor.
- (11) The auditor may attend any general meeting of the cooperative and receive all notices of and other communications relating to any general meeting any member of the cooperative is entitled to receive. The auditor is also entitled to be heard, at any general meeting the auditor attends, on any part of the business of the meeting of concern to the auditor.
- (12) The auditor may be removed from office by resolution at a general meeting.
- (13) Notice of intention to move the resolution must be given to the cooperative at least 28 days before the meeting at which the resolution is moved, but if, after notice has been given, a meeting is called for a day 28 days or less after notice has been given, notice is taken to have been properly given.
- (14) If special notice of a resolution to remove an auditor is received by the cooperative, it must immediately send a copy of the notice to the auditor and file a copy of it with the registrar.
- (15) The cooperative must give notice of a resolution to remove the auditor to anyone entitled to be given notice of a meeting of the cooperative at the same time and in the same way it gives notice of a meeting or, if impracticable, in any way allowed by these rules at least 14 days before the meeting.
- (16) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not more than a reasonable length, to the cooperative and ask that before the meeting at which the resolution is to be considered, a copy of the representations be sent by the cooperative at its expense to

every member of the cooperative to whom notice of the meeting is sent.

- (17) Unless the registrar on the application of the cooperative otherwise orders, the cooperative must send a copy of the representations in accordance with the auditor's request. The auditor may require that the representations be read out at the meeting and may also speak at the meeting.
- (18) The auditor may, by written notice given to the cooperative, resign as auditor of the cooperative if—
  - (a) the auditor has, by written notice given to the registrar, applied for consent to resign and stated the reasons and, at or about the same time, notified the cooperative in writing of the application; and
  - (b) the auditor has received the consent of the registrar.
- (19) The resignation of the auditor takes effect on whichever of the following happens last—
  - (a) the date (if any) specified for the purpose in the notice of resignation;
  - (b) the date on which the registrar consents to the resignation;
  - (c) the date (if any) fixed by the registrar for the purpose.
- (20) Within 14 days after the removal from office of the auditor or the receipt of a notice of a resignation from an auditor, the cooperative must file with the registrar a notice of the removal or resignation in the approved form and, if there is a trustee for the holders of debentures of the cooperative, give to the trustee a copy of the notice filed with the registrar.

## **57 Cooperative funds**

- (1) The board may resolve to retain all or part of the surplus arising in any year from the business of the cooperative to be applied for the benefit of the cooperative. [s 264] No part of the surplus may be paid or transferred directly or indirectly by way of discount, rebate or otherwise by way of profit to members of the cooperative.

(2) A part of the surplus, of not more than ...%, arising in any year from the business of the cooperative may be applied for charitable purposes.

(3) For this section—

*surplus* means the excess of income over expenditure after making appropriate allowance for taxation expense, depreciation in value of the property of the cooperative and future contingencies.

## **58 Provision for loss**

The board must make provision for loss that may result from transactions of the cooperative.

## **59 Notices**

(1) A notice or other document required under this Act to be given to a member of a cooperative may be given—

(a) personally; or

(b) by post addressed to the member's registered address; or

(c) subject to section 464 of the Act, by publishing the notice in a newspaper circulating in Queensland or in the area served by the cooperative.

(2) A document may be served on a cooperative—

(a) by post addressed to the registered office; or

(b) by leaving it at the registered office of the cooperative with a person who appears to be 16 or older.

(3) If a notice is sent by post, service is taken to be effected by properly addressing, prepaying and posting a letter containing the notice. For a notice of a meeting service is taken to be effected at the end of 24 hours after the letter containing the notice is posted. Otherwise, service is taken to be effected when the letter would be delivered in the ordinary course of post and in proving service it is enough to prove that the envelope containing the notice was properly addressed and posted.

- (4) A notice or other document directed to a member and advertised in the newspaper is taken to be given to the member on the day the advertisement appears.
- (5) A notice given by fax is taken to have been served, unless the sender's fax indicates a malfunction in transmission, on the day the notice is faxed, if faxed on a business day, otherwise on the next business day.
- (6) A notice may be given by the cooperative to the person entitled to an interest because of the death, incapacity or bankruptcy of a member by sending it through the post in a prepaid letter addressed to the person by name. Alternatively it can be addressed to the person by the title of representative of the deceased, or incapacitated person, or trustee of the bankrupt, or by any similar description. The address should be the address given for the purpose by the person claiming to be entitled. Alternatively, if no address has been given, the notice can be given in the way it could have been given if the death, incapacity or bankruptcy had not happened.
- (7) Notice of every general meeting must be given in same way as authorised in this section to—
  - (a) every member of the cooperative other than members who have not supplied to the cooperative an address for giving notices to them; and
  - (b) every person entitled to an interest because of the death, incapacity or bankruptcy of a member, who, but for the member's death, incapacity or bankruptcy, would be entitled to receive notice of the meeting.
- (8) Except as provided in this section and in section 56(11) no other person is entitled to receive notices of general meetings.
- (9) For this section—

*registered address* means the address of the member as appearing in the register of members and shares.

## 60 Winding up

- (1) The winding up of the cooperative must be in accordance with part 12 of the Act.

- (2) If on the winding up or dissolution there remains after the satisfaction of all its debts and liabilities any property, this must not be paid to or distributed among the members of the cooperative but must be given or transferred to .....
- (3) If on the winding up or dissolution there remains after the satisfaction of all its debts and liabilities any property, this must not be paid to or distributed among the members of the cooperative but must be given or transferred to an institution or institutions—
  - (a) with objects similar to the cooperative’s; and
  - (b) whose constitution prohibits the distribution of its property among its members; and
  - (c) chosen by the members of the cooperative at or before the dissolution or if none have been chosen, by the chief judge of the court with jurisdiction in the matter; and
  - (d) which satisfies the relevant subsection of section 23 of the *Income Tax Assessment Act 1936* (Cwlth).

**61 Schedule of charges**

—

Copy book of rules.....	section 2(5)–(6)
Inspection of Register .....	section 53(2)
Maximum Fine.....	section 12(1)
Transfer/register of debenture .....	section 20(4)

**Certification**

We the undersigned, certify that this is a copy of the rules presented to the formation meeting on ..... (date) at ..... for forming a cooperative to be known as—

.....  
 (name of cooperative)

Attachment not forming part of regulation

---

..... Chairperson of formation meeting  
(signature)

..... Secretary of formation meeting  
(signature)

Note: This certification is signed at the formation meeting which is held after the rules have been approved by the registrar and returned to the sponsors of the proposed cooperative.



# Rules of a non-trading cooperative with share capital registered under the Cooperatives Act 1997 (Qld)

## 1 Interpretation

In these rules—

*Editor's note—*

This section only contains definitions required for the rules. Other defined terms may be found in the Act or the *Acts Interpretation Act 1954*, for example, section 36 (Meaning of commonly used words and expressions).

***active member*** means a member who is in active membership under section 5.

***auditor*** means the person who is the auditor or auditors for the time being of the cooperative appointed under the regulation.

***director*** includes deputy director.

***financial institution account*** includes an account at a financial institution into which the cooperative's money may be paid.

***financial year*** means the financial year of the cooperative specified in section 61.

***member*** means a member of the cooperative.

***special resolution*** means a resolution is passed in accordance with section 43.

***the regulation*** means the *Cooperatives Regulation 1997*.

## 2 Rules

- (1) The rules of the cooperative have the effect of a contract under seal—
  - (a) between the cooperative and each member; and
  - (b) between the cooperative and each director, the principal executive officer and the secretary of the cooperative; and

- (c) between a member and each other member.
- (2) Under the contract, each of those persons agrees to observe and perform the rules as in force for the time being so far as those provisions are applicable to that person. [s 100]
- (3) These rules may be altered by a special resolution [s 107], by a resolution of the board in accordance with section 108 of the Act or as otherwise permitted by the Act.
- (4) No alteration to these rules takes effect until it is registered by the registrar. [s 109]
- (5) Any member shall be entitled on demand to a copy of the rules on payment of \$ .. (not more than \$5 for the first page and \$1 for each additional page). [s 102(1)]
- (6) Any person may obtain a copy of these rules from the registrar on payment of the prescribed fee. [102(3)]

### **3 Powers**

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

### **4 Name**

- (1) The name of the cooperative shall be [s 245]  
.....
- (2) The cooperative may change its name under section 248 of the Act.
- (3) The cooperative may abbreviate its name under section 246 of the Act.

### **5 Active membership provisions**

- (1) Under part 6 of the Act—

#### **Primary activity**

.....  
.....

.....  
.....

is a primary activity of the cooperative; and

**Active membership requirements**

a member shall—

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

to establish active membership of the cooperative.

\*\*Payment of a regular subscription to be applied to the cooperative’s primary activity is enough to establish active membership.

- (2) All members of a cooperative must be active members.
- (3) A member who fails to be or stops being an active member must, under the Act, have their shareholding cancelled and, subject to section 132 of the Act, their shares forfeited.

**6 Qualifications for membership**

- (1) Every member must hold at least ... shares.
- (2) A person is not qualified to be admitted to membership of the cooperative unless there are reasonable grounds for believing the person will be an active member of the cooperative. [s 61]

**7 Membership, subscriptions, periodic fees and shares**

- (1) The cooperative must supply, with each application for membership, a written notice of any intending or prescribed entry or periodic fees that a person will be liable to pay on becoming a member of the cooperative. [s 72]
- (2) Applications for membership, shares or bonus shares or additional shares must be lodged at the registered office in the application form, approved by the board, together with the

amount required to pay the shares fully or, if the shares are to be issued partly paid, a deposit of \$... for each share applied for.

- (3) Every application must be considered by the board.
- (4) If the board approves an application, the board must allot the shares applied for.
- (5) The applicant's name, the number of shares allotted, date of allotment and any other information required under the Act must be entered in the register of members.
- (6) The applicant must be notified in writing of the allotment and entry in the register and is then entitled to the privileges attaching to membership, or to the holding of shares, bonus or additional shares.
- (7) The board may refuse an application for membership or shares (other than additional shares the subject of a compulsory issue under section 149 of the Act). The board need not give reasons for the refusal. On refusal the applicant's deposit must be refunded without interest.

## **8 Ceasing membership**

A person stops being a member in any of the following circumstances—

- (a) if the member's membership is cancelled under part 6 (Active membership requirements);
- (b) if the member is expelled under these rules;
- (c) if the member becomes bankrupt and the trustee of the members estate disclaims any debt, contract, duty or liability of the member with the cooperative;
- (d) on death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) if the members share is transferred to another person and the transferee is registered as the holder of the share;

- (g) if the members share is forfeited under the Act or these rules;
- (h) if the members share is purchased by the cooperative under these rules;
- (i) if a member's share is sold by the cooperative under any power in these rules and the purchaser is registered as holder in the member's place;
- (j) if the amount paid up on the member's share is repaid to the member under these rules;
- (k) on written notice by the member to the secretary of the member's resignation from membership;
- (l) for a member who is a corporation—if the corporation is dissolved. [ss 66, 67]

## **9 Expulsion of members**

- (1) Subject to part 6, division 4 of the Act, a member may be expelled from the cooperative by special resolution to the effect that the member has—
  - (a) failed to discharge the member's obligations to the cooperative, whether under these rules or a contract; or
  - (b) acted in a way that has—
    - (i) prevented or hindered the cooperative in carrying on its primary activity or 1 or more of its primary activities; or
    - (ii) brought the cooperative into disrepute; or
    - (iii) been contrary to 1 or more of the cooperative principles in section 7 of the Act and in so acting has caused the cooperative harm.
- (2) Written notice of the proposed resolution must be given to the member at least 28 days before the date of the meeting at which the special resolution is to be moved, and the member must be given a reasonable opportunity of being heard at the meeting.

- (3) If a general meeting is to be called under this section the following procedure applies—
  - (a) at the meeting, the member must be given a full opportunity to be heard and is entitled to call witnesses and to cross examine witnesses called against the member;
  - (b) if the member fails to attend at the time and place mentioned, without reasonable excuse, the act must be considered and the cooperative may decide on the evidence before it in the absence of the member;
  - (c) once the act is considered, the cooperative may decide to expel the member who committed the act;
  - (d) the cooperative must not make a decision on the act or on expulsion, other than by vote by secret ballot of the members present and entitled to vote. A motion for the decision is not taken to be passed, unless two-thirds of the members present and entitled to vote, vote in favour of the motion.
- (4) If a member is expelled from the cooperative all amounts owing by the member to the cooperative become immediately payable in full.
- (5) The shares of a member expelled must be cancelled on the date of the expulsion and the cancellation noted in the register of shares unless there are specific written terms to the contrary in relation to a class of share issued.
- (6) Subject to subsection (7) and the written terms of a class of share issued, the cooperative must however pay to the expelled member the amount of capital paid up on the members shares at the time of expulsion (less any amount owing by the member to the cooperative).
- (7) In this section—

*deficiency* means the amount of accumulated loss or deficiency disclosed in the last preceding balance sheet of the cooperative. If a deficiency exists an appropriate proportion of the loss or deficiency must be deducted from the amount of capital paid up on the shares of the expelled member. This is

done having regard to the number of shares in relation to the number of shares in the cooperative.

- (8) Payment to the expelled member must be made at the time decided by the board but within 1 year from the date of expulsion. [s 76]
- (9) An expelled member must not be re-admitted as a member unless the re-admission is approved by special resolution. A member re-admitted must not have restored to him or her any shares which were cancelled on his or her expulsion. [s 76]

## 10 Suspension of members

- (1) The cooperative may, in general meeting, suspend members, by special resolution, for not more than 1 year, who do any of the following—
  - (a) contravene these rules (excluding by-laws);
  - (b) fail to discharge obligations to the cooperative, whether under these rules or a contract;
  - (c) act detrimentally to the interests of the cooperative.
- (2) If in the opinion of the board, a member does an act mentioned in subsection (1), the board may call a special general meeting, if required, within 28 days of the occurrence of the act to consider it.
- (3) If a general meeting is to be called under this section the procedure in section 9(3) applies and all mention of expulsion in section 9(3) is taken to be mention of suspension.

## 11 Disputes

- (1) If there is a dispute or grievance existing between members, a member or members and the cooperative (the *parties involved*) then—
  - (a) all parties must meet to discuss and if possible, resolve the dispute or grievance within the earlier of 14 days after the dispute or grievance arises to the knowledge of all involved, or a party gives notice to the other party's involved of the dispute or grievance; and

- (b) if the dispute or grievance is not resolved under paragraph (a), then within 10 days of the meeting required under that paragraph taking place a further meeting must be held by all parties involved in the presence of a mutually agreed referee. In the absence of agreement about a referee the meeting must be held in the presence of a referee, whether a member of the cooperative or otherwise, appointed by the board of the cooperative.
- (2) The referee must not make a decision binding on the parties but shall conciliate and mediate.
- (3) If the dispute or grievance is not settled under subsection (1)(b), all parties must agree to seek resolution within 10 days by the assistance and with the mediation of the Alternative Dispute Resolution Division of the Department of Justice.
- (4) (If there is an entitlement to expel a member under the Act, rules, regulations or contract the grievance procedure does not apply unless the members, by special resolution vote for the procedure to apply, or vote for it to apply whilst reserving the right to vote on expulsion if the matter is not resolved by the grievance procedure).
- (5) In subsection 11(1)—  
*members* does not include independent directors or non-member employees or non-member officers. [s 82]

## **12 Fines payable by members**

- (1) The board may impose on a member a maximum fine of \$... (not more than \$100) for a contravention of the rules.
- (2) A fine must not be imposed on a member under subsection (1) unless—
  - (a) written notice of intention to impose the fine and the reason for it has been given to the member; and
  - (b) the member has been given a reasonable opportunity to appear before the board in person (with or without witnesses), or to send to the board a written statement, for showing cause why the fine should not be imposed.



**13 Capital and shares**

- (1) The capital of the cooperative must be raised by the issue of shares of a nominal value of \$... each. [s 144(2)]
- (2) No member must hold more than 20% of the nominal value of issued share capital of the cooperative other than under section 273 of the Act.
- (3) The capital varies in amount according to the nominal value of shares from time to time subscribed.
- (4) No share is to be allotted unless at least 10% of the nominal value of the share has been paid. A share must not be issued at a discount.
- (5) Shares of the cooperative must not be quoted for sale or purchase at a stock exchange or in another public way (within the meaning of the *Income Tax Assessment Act 1936* (Cwlth)).
- (6) Under section 260 of the Act, the cooperative is authorised to require members to lend money to the cooperative under a proposal approved by special resolution of the cooperative.

**14 Liability of members to cooperatives**

- (1) A member is, under section 70 of the Act, liable to the cooperative for the amount, if any, unpaid on the shares held by the member, and any charges, including entry and periodic fees, payable by the member to the cooperative under these rules.
- (2) On the death of a member, the member's estate is subject to the same liability as the member would have been until the member's personal representative or some other person is registered in the member's place. [s 66(2)]
- (3) The joint holders of a share are jointly and severally liable for any amount unpaid on shares and any charges mentioned in subsection (1).

**15 Calls on shares**

- (1) The board may from time to time make calls on the members for any amounts unpaid on the shares of the members

(whether on the nominal value of the shares or by way of premium) and not by the terms of issue of the shares made payable at fixed times, but no call can be for more than one-quarter of the nominal value of the share or be payable at less than 1 month after the day fixed for the payment of the last call.

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

- (10) The board may authorise payment by the cooperative of interest on all or part of an amount accepted under subsection (9) until the amount becomes payable, at a rate agreed between the board and the member paying the amount, not more than 8% or another rate fixed by the cooperative by special resolution.

## **16 Certificate of shares**

- (1) Every person whose name is entered as a member in the register of members must be given, on application by the member, and without payment, a certificate under the seal of the cooperative specifying the shares held by the member and the amount paid up on the shares.
- (2) However, if shares are held jointly by several persons, the cooperative is not to be bound to issue more than 1 certificate, and delivery of a certificate to 1 of the joint holders shall be enough delivery to all.
- (3) If a share certificate is defaced, lost or destroyed a duplicate may be issued by the cooperative on payment of a fee, not more than \$... and on the terms about evidence and indemnity the board considers appropriate.

## **17 Sale of members' shares**

A member's share may be sold by the cooperative at the request of the member if the share has not been forfeited by the member under the Act. [ss 67, 166, 170, 172]

## **18 Transfer and transmission of shares**

- (1) The instrument of transfer of a share must be signed by or for the transferor (*the giver*) and the transferee (*the receiver*).
- (2) The transferor is taken to remain the holder of the share until the name of the transferee is entered in the register of members. [s 169]
- (3) Shares must be transferred in the following form or another form approved by the board—

I, A.B. (the transferor) of ..... in the State of ..... in consideration of the sum of \$... paid to me by C.D. (the transferee), of ..... in the State of..... transfer to the transferee the share (or shares) numbered ..... in the .....  
(name of cooperative)

to hold for the transferee, the transferee's executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution.

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

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

Signed by ....., transferor.

In the presence of ....., witness.

Signed by ....., transferee.

In the presence of ....., witness.

- (4) A share may not be sold or transferred except—
  - (a) with the consent of the board, and to a person who is qualified to be admitted to membership of the cooperative under sections 5 and 6; or
  - (b) as otherwise provided by these rules or the Act. [s 166(1)(c)]
- (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 cooperative 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 2 weeks after the day the board declined to register the transfer.
- (6) The board of the cooperative must not consent to the sale or transfer of shares which would result in more than the nominal value of shares permitted under section 273 of the Act to be held by a member.

- (7) The board may decline to recognise an instrument of transfer unless—
  - (a) a fee of \$... (or the lesser sum decided by the board from time to time) is paid to the cooperative for the transfer; and
  - (b) the instrument of transfer is accompanied by the certificate (if any) of the shares to which it relates, and the other evidence the board may reasonably require to show the right of the transferor to make the transfer.
- (8) The board must maintain a record of all transfers made in the proper books of the cooperative.
- (9) The board may suspend the registration of transfers during the 14 days immediately preceding the annual general meeting in each year.

## **19 Effect of sale, transfer or disposal of shares**

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

## **20 Forfeiture and cancellations—inactive members**

- (1) The board must, after giving notice under section 130 of the Act, declare the membership of a member who was a member for the period stated cancelled if—[s 125]
  - (a) the whereabouts of the member are not presently known to the cooperative and have not been known to the cooperative for a continuous period of at least ... years (up to a maximum of 3 years, section 125 of the Act) before that date; or
  - (b) the member is not presently an active member and has not been an active member at any time in the past ... years (up to a maximum of 3 years, section 125 of the Act) immediately before that time.

- (2) The board is to declare the shares of a member forfeited at the same time as the membership is cancelled and the amounts due because of the cancellation and forfeiture must be dealt with and repaid under section 132 of the Act.
- (3) The cooperative must, in the approved form, keep a register of memberships cancelled under subsection (1), which must specify the particulars prescribed in schedule 2 of the regulation.
- (4) A member may stop his or her membership by service of written notice to the secretary, of the member's resignation from membership, and the amounts due in relation to the member's share are to be repaid to the member in a way adopted for repayment for forfeited shares under section 132 of the Act.

## **21 Forfeiture of shares**

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

**22 Forfeited shares**

- (1) A person whose shares have been forfeited under these rules stops being a member if membership is conditional on the holding of the shares or membership has otherwise been cancelled under the Act. The person nevertheless remains liable to pay to the cooperative all amounts which are (as at the date of forfeiture) payable by him or her to the cooperative for the shares. (this is apart from calls in default).
- (2) A statutory declaration in writing by a director of the cooperative stating that a share in the cooperative has been forfeited on a date stated in the declaration, is conclusive evidence of that fact as against all persons claiming to be entitled to the share. [s 75]
- (3) The cooperative must, under section 26, have a charge on the paid up amounts of the forfeited shares and may appropriate those amounts under section 26(2).

**23 Forfeiture for non-payment of subscription**

- (1) The shares of a member whose periodic fee (subscription) under section 7 has not been paid may be forfeited by resolution of the board.
- (2) Written notice of the proposed forfeiture must be given to the member at least 14 days before the date of the board meeting at which the resolution for forfeiture of the shares is to be moved and the member must be given an opportunity of being heard at the meeting.
- (3) Section 22 applies to the forfeiture.
- (4) Subject to section 132 of the Act and subsection (5) payment to the member of any amount due under this section must be made at the time to be decided by the board, but within 1 year from date of forfeiture.
- (5) Instead of payment of an amount due to a member whose membership is cancelled, subject to section 132 of the Act, the amount due may be applied as a deposit if the cooperative takes deposits, or the cooperative may allot or issue debentures in satisfaction of the amount, or if the member

consents in writing the amount may be appropriated as a donation.

## **24 Death of member**

- (1) Subject to section 167(1) of the Act the board must transfer the deceased member's share or interest in the cooperative to—
  - (a) the personal representative of the deceased, that is, an executor or administrator of the estate of a deceased member; or
  - (b) to the person the deceased's personal representative may specify, in an application made to the cooperative within 3 months after the death of the member.
- (2) The board may approve the transfer of a share to a person other than the executor or administrator and in considering whether to approve the transfer the board must consider whether—
  - (a) there are reasonable grounds for believing the proposed transferee will be an active member of the cooperative; and
  - (b) the proposed transferee is qualified to be a member of the cooperative under these rules; and
  - (c) the transfer would increase the proposed transferee's holding in the cooperative beyond that allowed by the Act or these rules. [s 78(b), 166 & 167]
- (3) If the total value of the deceased member's share in the cooperative is less than \$10000 or another amount prescribed under the regulation the board may transfer the share under section 79 of the Act if there has not been a grant of letters of administration or of probate of the deceased's will. [s 79]
- (4) In accordance with section 80 of the Act, the board must decide the value of the shares and interest of a deceased member as the amount paid up on the shares together with any other amounts due to the deceased member less any amounts owing to the cooperative by the deceased member. In the



event of the shares being forfeited the amounts due because of the forfeiture must be dealt with and repaid within 1 year.

## **25 Dealings of members with cooperatives**

- (1) The cooperative may, under section 73 of the Act, make a contract with a member requiring the member to have specified dealings with the cooperative for a fixed period.
- (2) The contract may require a member—
  - (a) to sell products through or to the cooperative; or
  - (b) to obtain supplies or services through or from the cooperative; or
  - (c) to pay to the cooperative specified sums as liquidated damages for any failure to comply with a requirement authorised by this section.
- (3) The sum, if any, specified as liquidated damages is to be considered as a debt due to the cooperative and in relation to the debt, the cooperative has, under section 75 of the Act, a charge on each of the following—
  - (a) the share or interest in the capital and the credit balance and deposits of the member or past member;
  - (b) any dividend, interest, bonus or rebate payable to the member or past member;
  - (c) any entry and periodic fees required to be repaid to a member when the member ceases to be a member.
- (4) The charge created under section 75 of the Act may be enforced under that section and section 26.

## **26 Charges on shares**

- (1) The cooperative, as provided in section 75 of the Act, has a charge on the share or interest in the capital, and on the credit balance and deposits of a member or past member, and on any dividend, interest, bonus or rebate payable to a member or past member, for a debt due from the member or past member to the cooperative. The cooperative may also set-off any

amount paid on account of that share or otherwise or an amount credited or payable to the member or past member in or towards payment of the debt.

- (2) The charge may be enforced at any time after 7 days notice to the member or past member, by appropriation by the cooperative of the capital, interest or deposit subject to the charge. Any share for which capital has been appropriated must be cancelled.
- (3) The cooperative may sell in the way the directors consider appropriate all or any shares on which the cooperative has a charge. However, no sale can be made unless some amount for which the charge exists is payable at the date of the sale. Also no sale can be made until the end of 14 days after a written notice (stating, and demanding payment of, the part of the amount for which the charge exists as is payable at the date when the notice is given) has been given to the registered holder of the share or the person entitled to it because of death or bankruptcy. The notice must indicate that on failure to make payment of the amount demanded within the time stipulated the shares will be sold by the board.
- (4) If the highest offer received by the board is less than the amount paid up on shares to be sold, the board must, before accepting the offer, notify the member of the receipt of the offer and the amount of the offer, and of the board's intention to accept the offer at the end of 14 days, if no payment is made before then to the cooperative of all amounts for which the charge exists.
- (5) From the proceeds of the sale the cooperative may deduct the expenses, if any, associated with the sale and may apply the balance to reduce the liability of the member. However, if a surplus remains after the deduction the surplus is payable to the member whose shares were sold.
- (6) For giving effect to a sale the board may authorise a person to transfer the shares sold to the purchaser of them.

**27 Registration of official trustee in bankruptcy**

- (1) If a member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the share held by the bankrupt member. [s 162(1)]
- (2) The board may register the Official Trustee in Bankruptcy as the holder of a share in which a bankrupt member has an entitlement in equity, with the consent of the holder of the share. [s 162(2)]

**28 Registration as administrator of estate on incapacity of member**

A person appointed under a law of a State to administer the estate of a member who, through mental or physical infirmity is incapable of managing his or her affairs, may be registered as the holder of the member's share. [ss 161, 166]

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

- (1) A person becoming entitled to be a shareholder because of the death, bankruptcy or the incapacity of the holder is entitled to the dividends and other advantages to which that person would be entitled if he or she were the registered holder of the share or shares. However, before being registered as a member, the person is not entitled to exercise any right conferred by membership in relation to meetings of the cooperative.
- (2) A person registered under section 24, 27 or 28 is, while registered, subject to the same liabilities in relation to the share or shares as those to which the dead person, incapable person or the bankrupt person would have been liable if he or she had remained a member with full legal capacity.
- (3) The board has the same right to decline or to suspend registration of a share as it would have had for a transfer of a share by the bankrupt or incapacitated person before the bankruptcy or incapacity.

### **30 Transfer and transmission of debentures**

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

I, A.B. (the transferor) of ..... in the State of ..... in consideration of the sum of \$... paid to me by C.D (the transferee), of ..... in the State of ..... transfer to the transferee the debenture (or debentures) 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 subject to any other conditions being terms of the transfer of the debenture/s.

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

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

Signed ....., transferor.

In the presence of ....., witness.

Signed by ....., transferee.

In the presence of ....., witness.

### **31 Annual general meetings**

- (1) An annual general meeting shall, as provided in section 198 of the Act, be held each year at a place and on a date and a time decided by the board within 5 months after the close of the financial year of the cooperative or within the further time allowed by the registrar or prescribed by regulation. [s 198]
- (2) All general meetings of the cooperative other than the annual general meeting are special general meetings.
- (3) If an annual general meeting is not held under subsection (1), the members may, under section 203 of the Act and section 32 of these rules, requisition a meeting.

### **32 Special general meetings**

- (1) The board may, whenever it considers appropriate, call a special general meeting of the cooperative.
- (2) The board must call a general meeting of the cooperative on the requisition in writing by any active members who together are able to cast at least (...% max 20%) of the total number of votes able to be cast at a meeting of the cooperative.
- (3) The requisition must—
  - (a) state the objects of the meeting; and
  - (b) be signed by the requisitioning members (and may consist of several documents in like form each signed by 1 or more of the requisitioning members); and

- (c) be served on the cooperative by being lodged at the registered office of the cooperative.
- (4) A meeting requisitioned by members under these rules must be called within 21 days with the meeting being fixed to be held as soon as practicable and held within 2 months after the requisition is served.
- (5) If the board does not call a meeting 21 days after the requisition is served, the following provisions apply—
  - (a) the requisitioning members (or any of them representing at least half their aggregate voting rights) may call the meeting in the same way as nearly as possible as meetings are called by the board;
  - (b) for that purpose they may ask the cooperative to supply a written statement of the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the cooperative;
  - (c) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made;
  - (d) the meeting called by the requisitioning members must be held within 3 months after the requisition is served;
  - (e) any reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting must be paid by the cooperative;
  - (f) any amount required to be paid by the cooperative is to be retained by the cooperative out of any money due from the cooperative by way of fees or other remuneration in respect of their services to such of the directors as were in default. [s 203]

### **33 Notice of general meetings**

- (1) At least 14 days notice (not including the day on which the notice is served or taken to be served, but including the day for which notice is given) must be given of a general meeting in the way stipulated in section 69 of these rules. Notice must be given to the persons who are, under these rules entitled to

receive notices from the cooperative, but the non-receipt of the notice by a member does not invalidate the proceedings at the general meeting. The notice must specify the place, the day, and the hour of the meeting and, for special business, the general nature of that business.

- (2) For a special resolution, notice must be given at least 21 days before the meeting. [s 186]
- (3) Any member who has a resolution to submit to a general meeting must give written notice of it to the cooperative at least 28 days before the date of the meeting.
- (4) The board must have inserted in a notice calling a general meeting any business which a member has notified, before the notice calling the meeting is issued, his or her intention to move at the meeting (and the notification has been made under these rules).

### **34 Business of general meetings**

- (1) The ordinary business of the annual general meeting shall be—
  - (a) to confirm minutes of the last general meeting (whether annual or special); and
  - (b) to receive from the board, auditors, or any officers of the cooperative reports on the transactions of the cooperative for the financial year, including balance sheet, profit and loss account and the state of affairs at the end of that year; and
  - (c) to elect and decide the remuneration of directors, as prescribed by the rules.
- (2) The annual general meeting may also transact special business of which notice has been given to members under these rules.
- (3) All business of a general meeting, other than business of the annual general meeting that is by this section termed ordinary business, is special business.

### **35 Quorum at general meetings**

- (1) No item of business may be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item. [s 201]
- (2) Unless these rules otherwise state ... active members present in person, each being entitled to exercise a vote, constitute a quorum. [s 201]
- (3) If within half an hour after the appointed time for the meeting a quorum is not present, the meeting, if called on the requisition of members, must be dissolved. In any other case it must be adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present constitute a quorum.

### **36 Chairperson at general meetings**

- (1) The chairperson, if any, of the board must preside as chairperson at every general meeting of the cooperative.
- (2) If there is no such chairperson, or if at any meeting he or she is either not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present must choose someone from their number to be chairperson (until the chairperson attends and is willing to act)
- (3) The chairperson may, with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place. However, the only business that can be transacted at any 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 any notice of an adjournment or of the business to be transacted at any adjourned meeting.



**37 Standing orders at general meetings**

The following standing orders must be observed at the cooperative's meetings, subject to any suspension of, or amendment of, or addition to, them adopted for the meeting by the members present at a meeting—

- (a) the mover of a proposition must not speak for more than 10 minutes. Subsequent speakers must be allowed 5 minutes, and the mover of the proposition 5 minutes to reply. The meeting may however by simple majority extend in a particular instance the time permitted by this section;
- (b) whenever an amendment to an original proposition is proposed, no second amendment can be considered until the first amendment is disposed of;
- (c) if an amendment is carried, the proposition as so amended displaces the original proposition and may itself be amended;
- (d) if an amendment is defeated, then a further amendment may be moved to the original proposition. However, only 1 amendment must be submitted to the meeting for discussion at one time;
- (e) the mover of every original proposition, but not of an amendment, has the right to reply. Immediately after this the question must be put from the chair. No other member may speak more than once on the same question, unless permission is given for an explanation, or if the attention of the chairperson is called to a point of order;
- (f) propositions and amendments must be submitted in writing, if asked by the chairperson;
- (g) any discussion may be closed by a resolution 'that the question be now put' being moved seconded and carried. Such resolution shall be put to the meeting without debate;
- (h) any member, or visitor invited to attend the meeting by the board, may speak on any issue at a meeting with the

permission of the chairperson provided that the permission may be conditional;

- (i) standing orders may be suspended for any period by ordinary resolution.

### **38 Attendance and voting at general meetings**

- (1) At any meeting of the cooperative a member who has been given notice that the members shares are required to be forfeited under the active membership provisions of the Act can not attend.
- (2) A member of the cooperative can not vote at a meeting of the cooperative unless that person is an active member of the cooperative.
- (3) At any general meeting a resolution put to the vote of the meeting must (as provided in section 202 of the Act) be decided on a show of hands. This is unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least 5 members. If no poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the cooperative is evidence of the fact. No proof is needed of the number or proportion of the votes recorded in favour of, or against, that resolution. [s 202]
- (4) On a show of hands or on a poll every representative of a corporation, under section 64 of the Act, or every member (not under the age of 18), who is present at a meeting in person or represented by proxy or attorney, has subject to subsection (5), 1 vote. However, no member may vote, or be entitled or eligible to vote, contrary to the Act.
- (5) If the votes are equal, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, is entitled to a second or casting vote.
- (6) All resolutions, except special resolutions, must be decided by a simple majority.

- (7) An active member of a cooperative has 1 vote only on a question or motion arising at a general meeting of the cooperative.
- (8) For joint membership, the joint members have 1 vote only between them.
- (9) In the event of a dispute between joint members as to which member may exercise the 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 the one to exercise the vote.
- (10) A member's right to vote is a personal right, it is a right to 1 vote (subject to subsection (5)) and is not attached to, or conferred by, any share held by the member in the cooperative. [s 174]

**39 Proxy votes**

- (1) The instrument appointing a proxy must be in writing signed by the appointee or the appointer's attorney duly authorised in writing.
- (2) An instrument appointing a proxy may state the way in which the proxy is to vote in relation to a particular resolution and, if an instrument of proxy so provides, the proxy can not vote on the resolution except as specified in the instrument.
- (3) No person can act as a proxy unless the person is an active member of the cooperative.
- (4) No person can act as proxy for more than 10 members, unless the proxy acts under an instrument of proxy mentioned in subsection (2).
- (5) An instrument appointing a proxy may be in the following form, or any other form the board approves—

..... (name of cooperative) .....

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

..... (address) being a member/s of the

cooperative appoint ..... (name) ..... of

..... (address) ..... as my/our

proxy, to vote for me/us and on my/our behalf at the \*annual

general/\*general meeting of the cooperative, to be held on the ..... day of ..... 20... and at any adjournment of that meeting.

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

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

\*Strike out whichever is not applicable.

#To be inserted if desired.

- (6) An instrument appointing a proxy must not be treated as 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 that power or authority, is or 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, or, for a poll, at least 24 hours before the time appointed for the taking of the poll, at the registered office of the cooperative or at such other place specified for the purpose in the notice calling the meeting.
- (7) A vote given under the terms of an instrument of proxy or of a power of attorney is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the cooperative at the registered office before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

#### **40 Restriction on voting entitlement under power of attorney**

A person can not exercise a member's right to vote under a power of attorney, if that person has a power of attorney to vote for another member.

#### **41 Postal ballot**

- (1) Voting must not be by fax or electronic means.
- (2) The way of postal voting must be under the regulation.

- (3) A postal ballot must be held when required by the Act, and in the following circumstances—
- (a) when the members by ordinary resolution approve one;
  - (b) when the members by ordinary resolution approve a special resolution being decided by postal ballot;
  - (c) A special postal ballot must be held when required by the Act, and in the following circumstances—
    - (i) when the members by ordinary resolution approve one;
    - (ii) when the members by ordinary resolution approve a special resolution being decided by postal ballot.  
[ss 186(2) & 193]
- (4) A special postal ballot must be held for passing a special resolution in relation to any of the following relating to a cooperative—
- (a) conversion of—
    - (i) a share capital cooperative to a non-share capital cooperative or vice versa; or
    - (ii) a trading cooperative to a non-trading cooperative or vice versa;
  - (b) transfer of incorporation;
  - (c) an acquisition or disposal of assets mentioned in section 268 of the Act;
  - (d) the maximum permissible level of share interest in the cooperative;
  - (e) takeover;
  - (f) merger;
  - (g) transfer of engagements;
  - (h) member's voluntary winding-up.
- (5) The cooperative may hold a postal ballot to decide any issue or proposal by the members in the following way.

- (6) The board must cause the details of the proposal on which the ballot is to be held to be set in a statement and fix the dates for the forwarding of ballots to members and closing the ballot.
- (7) Every ballot must be conducted by the returning officer who must be appointed by the board. In default of an appointment being made in enough time to allow the procedure in this section to be followed, the secretary, or in absence of the secretary the person acting in the capacity of secretary, must be the returning officer.
- (8) Any person, with the exception of a director of the cooperative, may be appointed by the board to act as returning officer.
- (9) The returning officer may be helped in the performance of duties or powers under this section by the persons (who would be eligible to be returning officers) the returning officer appoints.
- (10) The returning officer must prepare a roll of the full names and addresses of the members of the cooperative as disclosed by the register of members and shares together with particulars of the number of votes each member would be entitled to exercise on a poll.
- (11) A person whose name is on the roll, is entitled to vote in a postal ballot, and no person is otherwise eligible or entitled.
- (12) The returning officer must cause ballot papers to be prepared in or to the following effect—

Name of cooperative .....

Ballot of members to decide the following proposal—

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

The ballot will close at noon on .....

#### How to Vote

- 1 Read these directions and the ballot paper carefully.

- 2 Complete and sign the details on the reverse side of the middle envelope,
- 3 If you are in favour of the proposal insert 'YES' in the square in the ballot paper hereunder. If you are not in favour of the proposal insert the word 'NO'.
- 4 After marking the ballot paper fold it and place it in the small envelope provided and seal the envelope. Then place this envelope in the middle envelope and place the middle envelope in the envelope addressed to the returning officer. Forward this envelope either by post or personal delivery to reach the returning officer by noon on .....
- 5 Unless the ballot paper is marked as indicated in 3 above and the details mentioned in 2 above are completed in full and signed, your vote may be rejected as informal.

.....  
 Initials of Returning Officer

BALLOT PAPER

Are you in favour of the proposal mentioned above?

--

- (13) Each ballot paper must be initialled by the returning officer. The returning officer must, at least 21 days before the day fixed for closing the ballot, send by post or otherwise deliver to every member entitled to vote in a ballot, 1 set of the following material—
- (a) 1 ballot paper;
  - (b) an unsealed envelope (the *outer envelope*) addressed to the returning officer;
  - (c) a smaller envelope (the *middle envelope*) in which the voter must enclose the envelope containing the ballot paper, the reverse side of which must be printed in or to the following effect—

.....  
 (full name)

.....  
(address)  
.....

(signature)

- a Please use capital letters.
  - b If the vote is being cast on behalf of a cooperative or other corporate body also indicate the name of the cooperative or corporate body;
  - (d) a small envelope (the *inner envelope*) into which the ballot paper is enclosed;
  - (e) a copy of the statement (prepared by the board) of the details of the proposal on which the decision of the members is to be sought.
- (14) Every member desiring to vote in the ballot should complete the details on the reverse side of the middle envelope and after marking their vote on the ballot paper according to the instructions on the ballot paper, seal the ballot paper in the inner envelope. The inner envelope containing the ballot paper should then be placed in the middle envelope and the middle envelope placed in the outer envelope addressed to the returning officer. The outer envelope should then be posted or personally delivered to the returning officer by noon on the day fixed for closing the ballot.
- (15) The returning officer must provide a ballot box.
- (16) The ballot box must be locked immediately before the ballot papers are delivered under subsection (13) and remain locked until the close of the ballot.
- (17) The returning officer must place the outer envelopes containing the ballot papers in the ballot box by noon on the day fixed for closing the ballot.
- (18) On a member making and transmitting to the returning officer a declaration that the member has not received the ballot paper, or the ballot papers received by the member have been lost, spoilt or destroyed, and the member has not already voted, the returning officer may issue a duplicate set of the



material required under subsection (13), having endorsed any duplicate outer envelope with the word 'duplicate'.

- (19) A member who makes a declaration under this subsection, which is false, in any particular material, contravenes these rules.
- (20) Ballot papers received after noon on the day fixed for closing the ballot must not be taken into account at the ballot.
- (21) As soon as practicable after noon on that date, the returning officer in the presence of the scrutineers the board appoints must open the ballot box and deal with the contents under subsections (22) and (23).
- (22) The returning officer must—
  - (a) remove the middle envelope from the outer envelope; and
  - (b) if a duplicate outer envelope has been issued and the original outer envelope is received, reject the original envelope and mark it 'rejected'; and
  - (c) according to the information on the middle envelope, mark for each set of voting papers returned, the voter's name on the roll by drawing a line through the name; and
  - (d) if a member's name has already been crossed out on the roll, reject the postal vote and mark it 'rejected'; and
  - (e) if the middle envelope has not been signed, or if the details shown on the envelope are not enough to disclose by whom the vote is being exercised, reject the envelope and mark it 'rejected'; and
  - (f) extract or cause to be extracted the inner envelopes containing the ballot papers from all unrejected middle envelopes, separating the contents from the middle envelopes in such a way that no inner envelope could subsequently be identified with a particular voter; and
  - (g) when all the middle envelopes have been dealt with, in the above way, cause all the inner envelopes not rejected to be opened and the ballot papers to be taken from them.

- (23) The ballot papers must be scrutinised under the returning officer who should supervise and reject as informal any ballot paper that—
- (a) is not duly initialled by the returning officer; or
  - (b) is so imperfectly marked that the intention of the voter cannot be ascertained by the returning officer; or
  - (c) has any mark or writing not authorised by this section which, in the opinion of the returning officer will enable any persons to identify the voter; or
  - (d) has not been marked as prescribed on the ballot paper itself.
- (24) The decision of the returning officer as to the formality of any ballot paper is final and not open to appeal.
- (25) The returning officer must count votes cast and make out and sign a statement of—
- (a) the number of formal votes cast in favour of the proposal; and
  - (b) the number of formal votes cast against the proposal; and
  - (c) the number of informal votes cast; and
  - (d) the number of inner envelopes marked ‘rejected’; and
  - (e) the proportion of the formal votes polled which were in the affirmative.
- (26) On the declaration of the returning officer of the result of the postal ballot the secretary of the cooperative must make an entry in the minute book showing the particulars mentioned in subsection (25)(a) to (c).
- (27) The returning officer must forward the statement to the chairperson of the cooperative who must announce the result of the ballot at the next general meeting.
- (28) The proposal which received the required majority of votes must be declared won.
- (29) The returning officer must retain all ballot papers (whether formal or otherwise) and rejected outer envelopes and rolls

used for the conduct of the ballot, locked in the ballot box until the returning officer has been directed by the board, in writing that they may be destroyed.

- (30) Notification of the result of the ballot (other than a ballot conducted to alter these rules) must be displayed on the notice board at the registered office of the cooperative.
- (31) In case of a postal ballot altering the rules, the cooperative must cause the alteration to be notified in writing to its members as soon as practicable after the alteration takes effect and, in any event, not later than the date on which notice is given to the members of the next annual general meeting of the cooperative, following the taking effect of the alteration.

## **42 Poll at general meetings**

- (1) If a poll is duly demanded it must be taken in a way the chairperson directs. Unless the meeting is adjourned the result of the poll is taken to be the resolution of the meeting at which the poll was demanded.
- (2) A poll demanded on the election of a chairperson, or on a question of adjournment, must be taken immediately.

## **43 Special and ordinary resolutions**

- (1) A special resolution means a resolution of which notice has been given of the intention to propose the resolution as a special resolution and which is passed either by two-thirds of the members who vote in person or by proxy or attorney, at a general meeting, or by a two-thirds majority in a postal ballot, or by three-quarters of the members who cast formal votes in a special postal ballot of members.
- (2) A special resolution has effect from the date it is passed, however a special resolution by special postal ballot shall have no effect until registered by the registrar. [s 190]
- (3) An ordinary resolution is one passed by a simple majority and has effect from the date it is passed

#### **44 Board of directors**

- (1) The business and operations of the cooperative are to be managed and controlled by the board of directors, and for that purpose the board has and may exercise the powers of the cooperative as if they had been expressly conferred on the board by a general meeting of the cooperative.
- (2) The board must have..... elected directors all of whom must be an individual, whether as a member of the cooperative, or as a representative of a corporation member, and at least 18 years old.
- (3) The powers of the board are subject to any restrictions imposed by the Act or by these rules.

#### **45 Qualifications of directors**

- (1) A person is not qualified to be a director of a cooperative unless the person is—
  - (a) a member of the cooperative or a representative of a corporation that is a member of the cooperative; or
  - (b) an employee of the cooperative or a person qualified under section 46 of these rules to be an independent director.
- (2) The qualifications of a member director are the holding of at least ... shares in the cooperative (not being shares required to be forfeited under the active membership provisions of the Act).

#### **46 Independent directors**

- (1) The elected directors may appoint any persons with special skills to be independent directors of the cooperative on the terms and conditions and for the period the directors decide and, set the remuneration and allowances to be paid to independent directors for services as a director as approved at a general meeting of the cooperative under section 222 of the Act.

- (2) Independent directors are, subject to this section, directors of the cooperative for the term of their appointment.
- (3) The ratio of the number of independent directors to member directors must not be more than 1 to 3 in accordance with the Act.
- (4) Independent directors must not be counted for section 44.
- (5) Other than as provided in this section, an independent director is subject to all other rules relating to directors.
- (6) On the termination of his or her appointment as independent director by death, retirement, resignation or in another way an independent director stops being a director of the cooperative.
- (7) An independent director is not entitled to vote at a meeting of directors on a motion about the terms and conditions of his or her own appointment, conditions of service or termination of service but may be permitted by the chairperson of the board to speak in relation to the matters.
- (8) Despite any other provisions of these rules no vote may be taken at a meeting of the board of directors unless, at the time of taking the vote, the number of independent directors present is less than the number of other member directors present.
- (9) An independent director can not be appointed as chairperson of the board of directors however an independent director may be appointed to chair any subcommittee of the board which the board in its discretion might appoint.
- (10) Despite the term of appointment fixed under subsection (1), the appointment of an independent director must be ratified by the members of the cooperative at the next general meeting after the appointment of the independent director. Ratification must be by a simple majority of members of the cooperative present and entitled to vote at the meeting.
- (11) If the appointment of an independent director is not ratified by the members of the cooperative any acts performed by the independent director since the date of appointment are taken to have been validly performed despite the appointment not being ratified by the members of the cooperative.

- (12) Despite the term of appointment which may be fixed under subsection (1), the members of the cooperative may, by special resolution at a general meeting of members, terminate the appointment of an independent director.
- (13) An independent director is not required to be an active member of the cooperative.

#### **47 Managing director**

- (1) The elected directors may, if they consider appropriate, appoint a person to be managing director of the cooperative and may from time to time remove him or her from office.
- (2) The terms and conditions and the period of appointment must be decided by the directors.
- (3) The managing director must not be counted for section 44.
- (4) In all other respects the managing director is entitled to all the privileges of a director and is subject to all other rules relating to directors.
- (5) On the termination of his or her appointment as managing director either by death, retirement, resignation or termination by the board, the managing director stops being a director of the cooperative.
- (6) The managing director is not entitled to be present or to vote at a meeting of directors on a motion about the terms and conditions of his or her own appointment, conditions of service or termination of service.
- (7) A managing director can not be required to be an active member of the cooperative.
- (8) A managing director must be classified as an independent director under this Act.

#### **48 First and subsequent directors**

- (1) The first directors must be elected at the meeting for the formation of the cooperative.

- (2) At the first annual general meeting of the cooperative ... of the directors must retire.
- (3) At the annual general meeting in each subsequent year the directors must retire in rotation of ... and ... . Member directors are to be elected by ... (members by postal ballot in the way outlined in section 41) / (members by ballot at the annual general meeting of the cooperative).
- (4) If 2 or more candidates receive equal number of votes the candidate to be appointed must be decided by lot.
- (5) The directors to retire in any year must (subject to the provision as to filling casual vacancies) be those who have been longest in office since their last election.
- (6) As between persons who became directors on the same day those to retire must (unless they otherwise agree among themselves) be decided by lot. The order for retirement must be the order in which the names are withdrawn.
- (7) A retiring director is eligible for re-election.
- (8) At an annual general meeting at which a director retires or a casual vacancy occurs the vacated office must be filled by electing a person to it.
- (9) Nominations for candidates to fill the vacant positions must be sought in the way the board decides.
- (10) The election of directors must be conducted at the meeting in the usual and appropriate way the board directs.

*Optional, select either (11) and (12) or (13)*

- (11) If at an annual general meeting at which an election of directors ought to take place the places of the retiring directors or any of them are not filled, the meeting stands adjourned till the same day in the next week at the same time and (unless another place is specified by a director or officer at the time of the adjournment or by written notice to members given before the day to which the meeting is adjourned) at the same place, and the adjourned meeting may receive nominations and elect directors to the vacancies in the usual and appropriate way the facilitator directs.

- (12) If at the adjourned meeting the places of the retiring directors are not filled the retiring directors or such of them as have not had their places filled is taken to have been re-elected at the adjourned meeting.
- (13) If at the general meeting the places of the retiring directors are not filled the retiring directors or such of them as have not had their places filled, and who are in agreement, is taken to have been re-elected at the meeting.

#### **49 Removal from office of director**

The cooperative may by special resolution remove a director before the end of the directors term of office, and may by a simple majority appoint another person in place of the director. The person appointed must retire at the time the removed director would have done if not removed. [s 213(2)]

#### **50 Vacation of office of director**

A director vacates office if—

- (a) disqualified or otherwise unable to be a director under section 208 of the Act; or
- (b) the director absents himself from 3 consecutive ordinary meetings of the board without its leave; or
- (c) the director resign the office of director by written notice given by the director to the cooperative; or
- (d) the director is removed from office by special resolution of the cooperative; or
- (e) the person ceases to hold the qualification of which the person was qualified to be a director; or
- (f) an administrator of the cooperative's affairs is appointed under division 5 of part 12 of the Act.



**51 Filling of casual vacancies**

- (1) The board may appoint a qualified person to fill a casual vacancy in the office of director until the next annual general meeting.
- (2) For this section, a casual vacancy arises if the office of director is vacated under section 50. [s 206(3)]

**52 Remuneration**

- (1) Under section 222 of the Act, a director must not receive remuneration for services as a director other than fees, concessions and other benefits approved at a general meeting of the cooperative.
- (2) All necessary expenses incurred by the board members in the business of the cooperative must be refunded to them.

**53 Deputy directors**

- (1) In the absence of a director from a meeting of the board, the board may appoint a qualified person to act as a deputy for the director and to accordingly act in the director's place on the board. [s 211(1)]
- (2) A deputy director appointed by the board is entitled to notice of meetings of the directors and to attend and vote at those meetings and to sign resolutions and to exercise the powers, authorities and discretions vested in or otherwise exercisable by the director he or she is deputy for.
- (3) A deputy director must vacate office if the director he or she acts in place of as a deputy ceases to be a director or on a majority of the other directors removing him or her from office.
- (4) An appointment or removal under this section must be in writing and notice of it must be served on the deputy director and the appointment or removal takes effect immediately on the service of it. Service of a notice may be affected under section 68.

- (5) The remuneration of a deputy director is payable out of the remuneration payable to the director he or she acts in place of as a deputy and must consist of the part of the director's remuneration agreed between the deputy director and the director. The attendance of the deputy director at a meeting of the board is taken to be attendance by the nominating director.
- (6) For this section, a meeting of the directors includes a meeting conducted under section 55.

#### **54 Proceedings of the board**

- (1) Meetings of the board (including meetings conducted under section 55) are to be held as often as may be necessary for properly conducting the business and operations of the cooperative and must be held at least quarterly.
- (2) Questions arising at a meeting must be decided by a majority of votes.
- (3) If votes are equal, the chairperson has a second or casting vote.
- (4) The chairperson or a director may, and the secretary must, if asked by the chairperson or a director at any time, call a meeting of the board. [s 209(2)]
- (5) Other than in special circumstances decided by the chairperson, at least 48 hours notice must be given to the directors of all meetings of the board.

#### **55 Transaction of business outside board meetings**

- (1) The board may under section 210 of the Act transact any of its business—
  - (a) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of those members is to be taken to be a decision of the board; or
  - (b) at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a

matter before the meeting, can be heard by the other members.

- (2) For this section the chairperson of the board and each member of the board have the same voting rights as they have at an ordinary meeting of the board.
- (3) A resolution approved under subsection (1)(a) is to be recorded in the minutes of the meetings of the board.
- (4) The secretary may circulate papers among members of the board for the purposes of subsection (1)(a) by fax or other transmission of the information in the papers concerned.

## **56 Quorum for board meetings**

- (1) The quorum for a meeting of the board shall be one-half of the number of directors (or if one-half is not a whole number the whole number next higher than one-half) provided that independent directors shall not constitute more than one-half the directors present at a meeting (or if one-half is not a whole number the whole number immediately lesser than one-half).
- (2) If at any time the number of directors is the same or less than the number of directors required to constitute a quorum of the board—
  - (a) the board may appoint enough directors so the number of directors is 1 more than a quorum; and
  - (b) for the purpose only of enabling the board to make such an appointment, the number of directors required to constitute a quorum is the number of directors at that time.

## **57 Chairperson of board**

- (1) The chairperson of the board may be elected by the board or at a general meeting of the cooperative.
- (2) If no chairperson is elected, or if at a meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting, 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 in that capacity.

- (3) The chairperson may be removed, and a new chairperson elected—
  - (a) if the chairperson was elected by the board—by ordinary resolution of the board; or
  - (b) if the chairperson was elected at a general meeting of the cooperative—by ordinary resolution at a general meeting of the cooperative.

## **58 Delegation and board committees**

- (1) The board may, under section 212 of the Act, by resolution delegate to a director or committee of 2 or more directors the exercise of the board's powers (other than this power of delegation) specified in the resolution. The cooperative or the board may by resolution revoke all or part of a delegation.
- (2) A power, the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time under the terms of the delegation.
- (3) A delegation under this section may be made subject to conditions or limitations as to the exercise of any of the powers delegated, or as to time or circumstances.
- (4) Despite any delegation under this section, the board may continue to exercise all or any of the powers delegated.
- (5) If a power is exercised by a director (either alone or with other directors) 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 or limitations mentioned in subsection (3) were observed by the director exercising the powers.
- (6) An instrument purporting to be signed by a director under a delegation as mentioned in section 212 of the Act is to be

received in evidence in all courts and before all persons acting judicially as if it were an instrument executed by the cooperative under seal. Furthermore, until the contrary is proved, it is taken to be an instrument signed by a delegate of the board under section 212 of the Act.

- (7) A committee may elect a chairperson of their meetings. If no chairperson is elected, or, if at a meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- (8) A committee may meet and adjourn as it considers appropriate. Questions arising at any meeting must be decided by a majority of votes of the members present and voting and if the votes are equal the chairperson has a second or casting vote.

## **59 Other committees**

- (1) The board may by resolution appoint committees consisting of members or other persons or both, to act in an advisory role to the board and to any committees of directors.
- (2) Section 58(7) and (8) apply to committees appointed under this section, with any changes approved of by the board.
- (3) The quorum for any meeting of the committee is half (or if half is not a whole number the whole number next higher than half) the number of members in the committee.

## **60 Minutes**

- (1) The board must have minutes of meetings made in books provided for the purpose, and, in particular—
  - (a) of all appointments of officers and employees made by the directors; and
  - (b) of the names of the directors present at each meeting of the board and of any committee of the board; and

- (c) of all resolutions and proceedings at all meetings of the cooperative and of directors and of committees of directors.
- (2) Minutes must be recorded in the minute book within 14 days of the date of the meeting to which they relate.

## **61 Financial year**

The financial year of the cooperative ends on ... .

## **62 Seal**

- (1) The cooperative must, as required by section 247(1)(a) of the Act, have the name of the cooperative appear in legible characters on its common seal and on any official seal. The common seal must be kept at the registered office in the custody the board directs.
- (2) The cooperative may, under section 48 of the Act, have for use in place of its common seal outside the State, one or more official seals. Each of the additional seals must be a facsimile of the common seal with the addition on its face of the name of the place where it is to be used.
- (3) The seal of the cooperative must not be attached to an instrument other than by resolution of the board. Two directors and the secretary must be present and must sign all instruments sealed while they are present. (The board may appoint some person other than the secretary for this).
- (4) The person attaching the official seal must certify in writing on the instrument to which it is attached, the date and place at which it is attached.

## **63 Custody and inspection of records and registers**

- (1) The cooperative must have at its registered office and available during normal office hours for inspection by any member free of charge [s 239(1)] the following—
  - (a) a copy of the Act and the regulation;

- (b) a copy of the rules of the cooperative and any attachments under section 337;
  - (c) a copy of the last annual report of the cooperative under section 242;
  - (d) the register of directors, members and shares;
  - (e) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the cooperative;
  - (f) the register of memberships cancelled under part 6 of the Act, required to be kept under section 237(1)(e) of the Act;
  - (g) the register of notifiable interests required to be kept under section 278 of the Act;
  - (h) a copy of the minutes of each general meeting;
  - (i) such other registers as are required by the Act or the regulation to be open for inspection.
- (2) A member may make a copy of the entries in a register mentioned in subsection (1) during normal office hours, [free of charge/ for the fee of \$... (maximum \$5 for the first page and \$1 for each additional page)]

## **64 Accounts**

- (1) The board must have a financial institution account or accounts electronic or otherwise in the name of the cooperative, into which all amounts received must be paid as soon as possible after receipt.
- (2) All cheques drawn on the accounts and all drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the cooperative, must be signed by 2 directors or by 2 persons authorised by the board.

## **65 Safe keeping of securities**

Shares, debentures, charges and any other certificate of or document or duplicates of them pertaining to securities must

be safely kept by the cooperative in the way and with the provision for their security the board directs.

## **66 Audit**

- (1) One or more auditors must be appointed, hold office, be remunerated, be removed and have qualifications, duties and responsibilities as provided by the regulation, or a gazette notice made by the registrar under section 233 of the Act. Audits must be carried out annually or, if the cooperative is a disclosing entity, every 6 months.
- (2) Within 1 month after the day the cooperative is registered, the directors must appoint an auditor of the cooperative, unless the cooperative at a general meeting has already appointed an auditor.
- (3) An auditor appointed under this section holds office until the first annual general meeting of the cooperative.
- (4) The cooperative must at its first annual general meeting appoint an auditor of the cooperative and at each subsequent annual general meeting, if there is a vacancy in the office of auditor, the cooperative must appoint an auditor to fill the vacancy.
- (5) An auditor appointed under subsection (3) holds office until death or removal or resignation from office or until ceasing to be capable of acting as auditor under the *Cooperatives Regulation 1997*.
- (6) The board must fill any vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office, within 1 month of the vacancy occurring, unless the cooperative at a general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as auditor of a cooperative under this subsection holds office, subject to the regulation until the next annual general meeting of the cooperative.
- (7) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.



- (8) The cooperative or the board must not appoint as auditor a person who has not consented in writing to the appointment or who has withdrawn consent, or a person of whose nomination notice has not been given under the *Cooperatives Regulation 1997*.
- (9) A person is not qualified to be appointed auditor of the cooperative if—
- (a) the person is not a registered company auditor, an existing auditor of the cooperative or a person exempt under section 233 of the Act; or
  - (b) the person or corporation in which the person is a substantial shareholder, is indebted to the cooperative (or to a subsidiary corporation of the cooperative) for an amount of more than \$5000; or
  - (c) the person is—
    - (i) an officer of the cooperative; or
    - (ii) a partner, employer or employee of an officer of the cooperative; or
    - (iii) a partner of an employee of an officer of the cooperative; or
    - (iv) an employee of an employee of an officer of the cooperative.
- (10) All reasonable fees and expenses of the auditor are payable by the cooperative.
- (11) The board must enable the auditor to have access to all books, accounts, vouchers, securities and documents of the cooperative, and to be given the information and explanation by the board members or any other officers necessary for the performance of the duties of the auditor.
- (12) The auditor may attend any general meeting of the cooperative and is entitled to receive all notices of and other communications relating to a general meeting which any member of the cooperative is entitled to receive. The auditor is also entitled to be heard, at any general meeting which the auditor attends, on any part of the business of the meeting of concerns to the auditor.

- (13) The auditor may be removed from office by resolution at a general meeting.
- (14) Notice of intention to move the resolution must be given to the cooperative at least 28 days before the meeting at which the resolution is moved, but if, after notice has been given, a meeting is called for a date 28 days or less after notice has been given, notice is taken to have been properly given.
- (15) If special notice of a resolution to remove an auditor is received by the cooperative, it must immediately send a copy of the notice to the auditor and file a copy of the notice with the registrar.
- (16) The cooperative must give notice of a resolution to remove the auditor to persons entitled to be given notice of a meeting of the cooperative at the same time and in the same way as it gives notice of the meeting or, if that is not practicable, must give notice of the resolution to them in any way allowed by these rules at least 14 days before the meeting.
- (17) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not more than a reasonable length, to the cooperative and ask that before the meeting at which the resolution is to be considered, a copy of the representations be sent by the cooperative at its expense to every member of the cooperative to whom notice of the meeting is sent.
- (18) Unless the registrar on the application of the cooperative otherwise orders, the cooperative must send a copy of the representations in accordance with the auditor's request. The auditor may require that the representations be read out at the meeting and may also speak at the meeting.
- (19) The auditor may, by written notice given to the cooperative, resign as auditor of the cooperative if—
  - (a) the auditor has, by written notice given to the registrar, applied for consent to resign and stated the reasons and, at or about the same time, notified the cooperative in writing of the application; and
  - (b) the auditor has received the consent of the registrar.
- (20) The resignation of the auditor takes effect—

- (a) on the date (if any) specified for the purpose in the notice of resignation; or
  - (b) on the date on which the registrar consents to the resignation; or
  - (c) on the date (if any) fixed by the registrar for the purpose, whichever last occurs.
- (21) Within 14 days after the removal from office of the auditor or after the receipt of a notice of a resignation from an auditor, the cooperative must file with the registrar a notice of the removal or resignation in the approved form and, if there is a trustee for the holders of debentures of the cooperative, give to the trustee a copy of the notice filed with the registrar.

## **67 Cooperative funds**

- (1) The board may resolve to retain all or any part of the surplus arising in any year from the business of the cooperative to be applied for the benefit of the cooperative. [s 264]
- (2) No part of it must be paid or transferred directly or indirectly by way of discount, rebate or otherwise by way of profit to members of the cooperative.
- (3) A part of the surplus, not more than ...%, arising in any year from the business of the cooperative may be applied for charitable purposes
- (4) For this section—

*surplus* means the excess of income over expenditure after making appropriate allowance for taxation expense, depreciation in value of the property of the cooperative and for future contingencies.

## **68 Provision for loss**

The board must make provision for loss that may result from transactions of the cooperative.

## **69 Notices**

- (1) A notice or other document required under this Act to be given to a member of a cooperative may be given—
  - (a) personally; or
  - (b) by post addressed to the member's registered address; or
  - (c) subject to section 464 of the Act, by publishing the notice in a newspaper circulating in Queensland or in the area served by the cooperative.
- (2) A document may be served on a cooperative—
  - (a) by post addressed to the registered office; or
  - (b) by leaving it at the registered office of the cooperative with a person who appears to be aged 16 years or more.
- (3) If a notice is sent by post, service is taken to be effected by properly addressing, prepaying and posting a letter containing the notice. For a notice of a meeting service is taken to be effected at the end of 24 hours after the letter containing the notice is posted. Otherwise, service is taken to be effected at the time the letter would be delivered in the ordinary course of post and in proving service it is enough to prove the envelope containing the notice was properly addressed and posted.
- (4) A notice or other document directed to a member and advertised in the newspaper is taken to be duly given to the member on the day the advertisement appears.
- (5) A notice given by fax is taken to have been served, unless the sender's fax indicates a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.
- (6) A notice may be given by the cooperative to the joint holders of a share by giving the notice to the joint holder named first in the register of members and shares for the share.
- (7) A notice may be given by the cooperative to the person entitled to a share because of the death, incapacity or bankruptcy of a member by sending it through the post in a prepaid letter addressed to the person by name. Alternatively it can be addressed to the person by the title of representative

of the deceased, incapacitated person, trustee of the bankrupt, or by a similar description. The address should be the address supplied for the purpose by the person claiming to be entitled. Alternatively, if no address has been supplied, the notice can be given in the way it could have been given if the death, incapacity or bankruptcy had not happened.

- (8) Notice of every general meeting must be given in same way as authorised above, to—
- (a) every member of the cooperative other than a member who has not supplied to the cooperative an address for the giving of notices to them; and
  - (b) every person entitled to a share because of the death, incapacity or bankruptcy of a member, who, but for the member's death, incapacity or bankruptcy, would be entitled to receive notice of the meeting.
- (9) Other than as provided in this section and section 65(11) no other person is entitled to receive notices of general meetings.
- (10) For this section—
- registered address* means the address of the member as appearing in the register of members and shares.

## 70 Winding up

- (1) The winding up of the cooperative must be under part 12 of the Act.
- (2) If on the winding up or dissolution there remains after the satisfaction of all its debts and liabilities (including the refund of the amounts paid up on the shares) any property, this must not be paid to or distributed among the members of the cooperative but must be given or transferred to .....
- (3) Subject to subsection (2), if on the winding up or dissolution there remains after the satisfaction of all its debts and liabilities (including the refund of the amounts paid up on the shares) any property, this must not be paid to or distributed among the members of the cooperative but must be given or transferred to an institution or institutions—

- (a) which has objects similar to those of the cooperative; and
- (b) whose constitution prohibits the distribution of its property among its members; and
- (c) which has been chosen by the members of the cooperative at or before the time of dissolution or in default the Chief Judge of the court with jurisdiction in the matter; and
- (d) which satisfies the relevant subsection of section 23 of the *Income Tax Assessment Act 1936* (Cwlth).

## 71 Schedule of charges

—

Copy book of rules.....	section 2(5)–(6)
Inspection of register.....	section 62(2)
Nominal value of shares.....	section 13(1)
Duplicate share certificate.....	section 16(3)
Transfer of shares.....	section 18(7)
Maximum fine.....	section 12(1)
Transfer/register of debenture.....	section 30(4)

### **Certification**

We the undersigned, certify that this is a copy of the rules which was presented to the formation meeting on ..... (date) at ..... for forming a cooperative to be known as—

.....

(name of cooperative)

..... Chairperson of Formation Meeting

(signature)

..... Secretary of Formation Meeting

(signature)

Note: This certification is signed at the formation meeting which is held after the rules have been approved by the registrar and returned to the sponsors of the proposed cooperative.

## Rules of a trading cooperative with share capital registered under the Cooperatives Act 1997 (Qld)

### 1 Interpretation

In these rules—

*Editor's note—*

This section only contains definitions required for the rules. Other defined terms may be found in the Act or the *Acts Interpretation Act 1954*, for example, section 36 (Meaning of commonly used words and expressions).

***active member*** means a member who is in active membership under section 5.

***auditor*** means auditor or auditors for the time being of the cooperative appointed under the regulation.

***director*** includes deputy director.

***financial institution account*** means an account with a financial institution into which the cooperative's money may be paid.

***financial year*** means the financial year of the cooperative specified in section 61.

***member*** means a member of the cooperative.

***special resolution*** means a resolution which is passed under section 43.

***the regulation*** means *Cooperatives Regulation 1997*.

## **2 Rules**

- (1) The rules of the cooperative have the effect of a contract under seal—
  - (a) between the cooperative and each member; and
  - (b) between the cooperative and each director, the principal executive officer and the secretary of the cooperative; and
  - (c) between a member and each other member.
- (2) Under the contract, each of those persons agrees to observe and perform the rules as in force for the time being so far as those provisions are applicable to that person. [s 100]
- (3) These rules may be altered by a special resolution [s 107], by a resolution of the board in accordance with section 108 of the Act or as otherwise permitted by the Act.
- (4) No alteration to these rules takes effect until it is registered by the registrar. [s 109]
- (5) Any member is entitled on demand to a copy of the rules on payment of a sum of not more than \$... (maximum \$5 for the first page and \$1 for each additional page). [s 102(1)]
- (6) Any person may obtain a copy of these rules from the registrar on payment of the prescribed fee. [102(3)]

## **3 Powers**

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

## **4 Name**

- (1) The name of the cooperative shall be [s 245]  
.....
- (2) The cooperative may change its name under section 248 of the Act.
- (3) The cooperative may abbreviate its name under section 246 of the Act.



**5 Active membership provisions**

(1) Under part 6 of the Act—

**Primary activity**

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

is a primary activity of the cooperative; and

**Active membership requirements**

a member shall—

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

to establish active membership of the cooperative.

- (2) All members of a cooperative must be active members.
- (3) A member who fails to be or stops being an active member must, under the Act, have their shareholding cancelled and, subject to section 132 of the Act, their shares forfeited.

**6 Qualifications for membership**

- (1) Every member must hold at least ... shares.
- (2) A person is not qualified to be admitted to membership of the cooperative unless there are reasonable grounds for believing the person will be an active member of the cooperative. [s 61]

**7 Membership, subscriptions, periodic fees and shares**

- (1) The cooperative must supply, with each application for membership, a written notice of any intending or prescribed entry or periodic fees a person will be liable to pay on becoming a member of the cooperative. [s 72]

- (2) Applications for membership, shares or bonus shares or additional shares must be lodged at the registered office in the application form, approved by the board, together with the amount required to pay the shares fully or, if the shares are to be issued partly paid, a deposit of \$... for each share applied for.
- (3) Every application must be considered by the board.
- (4) If the board approves of the application, the board must allot the shares applied for.
- (5) The applicant's name together with the number of shares allotted, date of allotment and any other information required by or under the Act must be entered in the register of members.
- (6) The applicant must be notified in writing of the allotment and of the entry in the register and the applicant is then entitled to the privileges attaching to membership, or to the holding of shares, or bonus or additional shares, as is appropriate.
- (7) The board may, at its discretion, refuse an application for membership or shares (other than additional shares the subject of a compulsory issue under section 149 of the Act).
- (8) The board need not assign reasons for such refusal.
- (9) Upon refusal the applicant's deposit must be refunded without interest.

## **8 Ceasing membership**

A person stops being a member in any of the following circumstances—

- (a) if the member's membership is cancelled under part 6 (Active membership requirements);
- (b) if the member is expelled under these rules;
- (c) if the member becomes bankrupt and the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the cooperative;
- (d) on death of the member;

- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) if the member's share is transferred to another person and the transferee is registered as the holder of the share;
- (g) if the member's share is forfeited under the Act or these rules;
- (h) if the member's share is purchased by the cooperative under these rules;
- (i) if a member's share is sold by the cooperative under any power in these rules and the purchaser is registered as holder in the member's place;
- (j) if the amount paid up on the member's share is repaid to the member under these rules;
- (k) on written notice by the member to the secretary, of the member's resignation from membership;
- (l) for a member who is a corporation—if the body is dissolved. [ss 66, 67]

## **9 Expulsion of members**

- (1) Subject to division 4 of part 6 of the Act, a member may be expelled from the cooperative by special resolution to the effect—
  - (a) that the member has failed to discharge the member's obligations to the cooperative, whether under these rules or a contract; or
  - (b) that the member has acted in a way that has—
    - (i) prevented or hindered the cooperative in carrying out its primary activity or one or more of its primary activities; or
    - (ii) brought the cooperative into disrepute; or
    - (iii) been contrary to one or more cooperative principles, as described in section 7 of the Act, and in so acting has caused the cooperative harm.

- (2) Written notice of the proposed resolution must be given to the member at least 28 days before the date of the meeting at which the special resolution is to be moved, and the member must be given a reasonable opportunity of being heard at the meeting.
- (3) If a general meeting is to be called under this section the following procedures apply—
  - (a) at the meeting, the member must be afforded a full opportunity to be heard, to call witnesses and to cross examine witnesses called against the member;
  - (b) if the member fails to attend at the time and place mentioned, without reasonable excuse, the act must be considered and the cooperative may decide on the evidence before it, in spite of the absence of the member;
  - (c) once the act is considered, the cooperative may decide to expel the member who committed the act;
  - (d) the cooperative must not make a decision on the act or on expulsion other than by vote by secret ballot of the members present and entitled to vote. A motion for the decision is not taken to be passed, unless two-thirds of the members present and entitled to vote, vote in favour of the motion.
- (4) If a member is expelled from the cooperative all moneys owing by the member to the cooperative are immediately payable in full.
- (5) The shares of a member expelled must be cancelled as at the day of expulsion and the cancellation must be noted in the register of shares unless there are specific written terms to the contrary for a class of share issued.
- (6) Subject to subsection (7) and the written terms of a class of share issued, the cooperative must, however, pay to the expelled member the amount of capital paid up on the member's shares at the time of expulsion (less any amount owing by the member to the cooperative).
- (7) For this section—

*deficiency* means the amount of accumulated loss or deficiency disclosed in the last balance sheet of the cooperative. If a deficiency exists an appropriate proportion of the loss or deficiency must be deducted from the amount of capital paid up on the shares of the expelled member. This is done having regard to the number of shares in relation to the number of shares in the cooperative.

- (8) Payment to the expelled member must be made at the time decided by the board but within 1 year from the day of expulsion. [s 76]
- (9) An expelled member must not be re-admitted as a member unless the re-admission is approved by special resolution. A member re-admitted must not have restored to him or her any shares on his or her expulsion. [s 76]

## **10 Suspension of members**

- (1) The cooperative may, in general meeting, suspend members, by special resolution, for not more than 1 year, who do any of the following acts—
  - (a) contravene any of these rules (other than by-laws);
  - (b) fail to discharge obligations to the cooperative, whether under these rules or a contract; or
  - (c) act detrimentally to the interests of the cooperative.
- (2) If in the opinion of the board, a member does an act mentioned in subsection (1), the board may call a special general meeting, if required, within 28 days of the occurrence of the act to consider it.
- (3) If a general meeting is to be called under this section the procedure in section 9(3) applies and all references to expulsion in section 9(3) are taken to be references to suspension.

## 11 Disputes

- (1) If there is a dispute or grievance existing between members, a member or members and the cooperative (the *parties involved*)—
  - (a) all parties must meet to discuss and if possible, resolve the dispute or grievance within 14 days of the dispute or grievance arising to the knowledge of all involved, or a party giving notice to the other party's involved of the dispute or grievance, whichever is the earlier; and
  - (b) if the matter is not resolved under the procedure in paragraph (a) then, within 10 days of the meeting required in that paragraph taking place, a further meeting must be held by all parties involved in the presence of a mutually agreed referee. In the absence of agreement as to a referee, the meeting must be held in the presence of a referee, whether a member of the cooperative or otherwise, appointed by the board of the cooperative.
- (2) The referee can not make a decision binding on the parties but must conciliate and mediate.
- (3) If the matter is not settled under subsection (1)(b) then all parties must agree to seek resolution within 10 days by the assistance and with the mediation of the Alternative Dispute Resolution Division of Queensland, Department of Justice.
- (4) If there is an entitlement to expel a member under the Act, rules, regulations or contract the grievance procedure shall not apply unless the members, by special resolution vote for that procedure to apply, or vote for it to apply whilst reserving the right to vote on expulsion if the matter is not resolved by the grievance procedure.
- (5) For subsection (1)—

*members* does not include independent directors, non-member employees or non-member officers. [s 82]

**12 Fines payable by members**

- (1) The board may impose on a member a maximum fine of \$... (not more than \$1000) for a contravention of the rules.
- (2) A fine must not be imposed on a member under subsection (1) unless—
  - (a) written notice of intention to impose the fine and the reason for it has been given to the member; and
  - (b) the member has been given a reasonable opportunity to appear before the board in person (with or without witnesses), or to send to the board a written statement, for showing cause why the fine should not be imposed.

**13 Capital and shares**

- (1) The capital of the cooperative must be raised by the issue of shares of nominal value of \$... each. [s 144(2)]
- (2) No member may hold more than 20% of the nominal value of issued share capital of the cooperative other than under section 273 of the Act.
- (3) The capital must vary in amount according to the nominal value of shares from time to time subscribed.
- (4) No share is to be allotted (other than a bonus share) unless at least 10% of the nominal value of the share has been paid. A share can not be issued at a discount.
- (5) The board may require a member to take up or subscribe for additional shares under a proposal approved of by the members by special resolution under section 149 of the Act.
- (6) Bonus shares may be issued by the cooperative under sections 150 and 266 of the Act.
- (7) Shares of the cooperative must not be quoted for sale or purchase at any stock exchange or in any other public way (within the meaning of the *Income Tax Assessment Act 1936* (Cwlth)).
- (8) Under section 260 of the Act, the cooperative is authorised to require members to lend money to the cooperative, under a proposal approved by special resolution of the cooperative.

## **14 Liability of members to cooperatives**

- (1) A member is, under section 70 of the Act, liable to the cooperative for the amount, if any, unpaid on the shares held by the member, together with any charges, including entry and periodic fees, payable by the member to the cooperative as required by these rules.
- (2) On the death of a member, the member's estate is subject to the same liability as the member would have been until the member's personal representative or some other person is registered in the member's place. [s 66(2)]
- (3) The joint holders of a share are jointly and severally liable for any amount unpaid on shares and to any such charges mentioned in subsection (1).

## **15 Calls on shares**

- (1) The board may from time to time make calls on the members for amounts unpaid on the shares of the members (whether on the nominal value of the shares or by way of premium) and not by the terms of issue of those shares made payable at fixed times, but no call must be more than one-quarter of the nominal value of the share or be payable at less than 1 month after the day fixed for the payment of the last call.
- (2) Each member must, on receiving at least 14 days' notice of the time and place of payment, pay to the cooperative at the time or times and place fixed the amount called on the shares.
- (3) The directors may revoke or postpone a call.
- (4) A call is taken to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalment.
- (5) The joint holders of a share are jointly and severally liable to pay all calls for the share.
- (6) If an amount called for a share is not paid before or on the day appointed for payment of the amount, the person from whom the amount is due must pay interest on the amount from the day appointed for the payment of the amount to the time of actual payment at the rate not more than 8% per annum the



directors decide, but the directors may waive payment of all or part of the interest.

- (7) An amount that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal value of the share or by way of premium, is for these rules taken to be a call made and payable on the day that under the terms of issue the amount becomes payable, and, on non-payment, all the relevant provisions of these rules as to payment of interest and expenses, forfeiture or otherwise apply as if the amount had become payable because of a call duly made and notified.
- (8) The board may, with respect to the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
- (9) The board may accept from a member all or part of the money uncalled and unpaid on any shares held by that member.
- (10) The board may authorise payment by the cooperative of interest on all or part of an amount so accepted, until the amount becomes payable at a rate agreed as between the board and the member paying the sum, with the rate not more than 8%, or a rate not more than any amount fixed by the cooperative by special resolution.

## **16 Certificate of shares**

- (1) Every person whose name is entered as a member in the register of members must be given, after application by the member, and without payment, a certificate under the seal of the cooperative specifying the shares held by him or her and the amount paid up on those shares.
- (2) However, if shares are held jointly by several persons the cooperative is not bound to issue more than 1 certificate, and delivery of a certificate to one of the joint holders is enough delivery to all.
- (3) If a share certificate or certificate of shares is defaced, lost or destroyed a duplicate may be issued by the cooperative on payment of a fee, not more than \$... and on the terms as to evidence and indemnity as the board considers appropriate.

## **17 Sale of members' shares**

- (1) A member's share may be sold by the cooperative at the request of the member if the share has not been purchased by the cooperative or forfeited by the member under the Act. [ss 67, 166, 170, 172]
- (2) Subject to section 170 of the Act the cooperative may—
  - (a) purchase any share of a member at the request of the member; and
  - (b) repay to a member, with the member's consent, all or part of the amount paid up on a share held by the member when the sum repaid is not required for the activities of the cooperative.
- (3) The cooperative must cancel a share purchased or repaid in full by the cooperative.
- (4) If, in the opinion of the board, payment of the repurchase price would adversely affect the financial position of the cooperative, the board may exercise any of the following options instead of paying the sum to the member—[s 171]
  - (a) for a deposit-taking cooperative apply the amount as an interest bearing deposit by the member with the cooperative;
  - (b) allot or issue debentures or subordinated debt of the cooperative to the member in satisfaction of the amount.
- (5) A deposit or debenture issued under subsection (4)—
  - (a) bears interest during any period as decided under section 171 of the Act; and
  - (b) must be repaid to the member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the cooperative, and in any case, within 10 years.

## **18 Transfer and transmission of shares**

- (1) The instrument of transfer of any share must be executed by or on behalf of the transferor (the giver) and the transferee (the receiver).

(2) The transferor is taken to remain the holder of the share until the name of the transferee is entered in the register of members. [s 169]

(3) Shares must be transferred in the following form or in a form approved by the board—

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

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

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

Signed by ....., transferor.

In the presence of ....., witness.

Signed by ....., transferee.

In the presence of ....., witness.

(4) A share may not be sold or transferred except—

(a) with the consent of the board, and to a person who is qualified to be admitted to membership of the cooperative under sections 5 and 6; or

(b) as otherwise provided by these rules or the Act. [s 166(1)(c)]

(5) The board may decline to register any 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 any transfer of shares on which the cooperative has a lien or charge. If the board refuses to register a transfer of shares it shall send notice of the refusal to the transferee within 2 weeks after the date on which the board declined to register the transfer.

- (6) The board of the cooperative shall not consent to the sale or transfer of shares which would result in excess of the nominal value of shares permitted under section 273 to be held by a member.
- (7) The board may decline to recognise any instrument of transfer unless—
  - (a) a fee of \$... (or such lesser sum as may be decided by the board from time to time) is paid to the cooperative for the transfer; and
  - (b) the instrument of transfer is accompanied by the certificate (if any) of the shares to which it relates, and such other evidence as the board may reasonably require to show the right of the transferor to make the transfer.
- (8) The board shall maintain a record of all transfers made in the proper books of the cooperative.
- (9) The board may suspend the registration of transfers during the 14 days immediately preceding the annual general meeting in each year.

## **19 Effect of sale, transfer or disposal of shares**

A member who has sold or transferred, or disposed of the beneficial interest in, that member's shares, or has agreed to do any of those things, can not vote at any meeting of the cooperative.

## **20 Forfeiture and cancellations—inactive members**

- (1) The board shall, after giving notice under section 130 of the Act, declare the membership of a member who was a member for the period stated cancelled if—[s 125]
  - (a) the whereabouts of the member are not presently known to the cooperative and have not been known to the cooperative for a continuous period of at least ... years (up to a maximum of 3 years, section 125 of the Act) before that date; or

- (b) the member is not presently an active member and has not been an active member at any time during the past ... years (up to a maximum of 3 years, section 125 of the Act) immediately before that time.
- (2) The board is to declare the shares of a member forfeited at the same time as the membership is cancelled and the amounts payable for the cancellation and forfeiture must be dealt with and repaid under section 132 of the Act.
- (3) The cooperative must, in the approved form, keep a register of memberships cancelled under subsection (1), which shall specify the particulars in schedule 2 of the regulation.
- (4) A member may cease his or her membership by service of written notice to the secretary of the member's resignation from membership and the amounts due in respect of member's share are to be repaid to the member in a way adopted for repayment for forfeited shares under section 132 of the Act.

## **21 Forfeiture of shares**

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

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

## **22 Forfeited shares**

- (1) A person whose shares have been forfeited under these rules stops being a member if membership is conditional on the holding of the shares or membership has otherwise been cancelled under the Act. The person remains liable to pay to the cooperative all amounts which (as at the date of forfeiture) were payable by him or her to the cooperative for the shares. (This is apart from calls in default.)
- (2) A statutory declaration in writing by a director of the cooperative stating that a share in the cooperative has been forfeited on a date stated in the declaration, is conclusive evidence of that fact as against all persons claiming to be entitled to the share. [s 75]
- (3) The cooperative, under section 26, has a charge on the paid up amounts of the forfeited shares and may appropriate those amounts under section 26(2).

## **23 Forfeiture for non-payment of subscription**

- (1) The shares of a member whose periodic fee (subscription) under section 7 has not been paid may be forfeited by resolution of the board.
- (2) Written notice of the proposed forfeiture must be given to the member at least 14 days before the date of the board meeting at which the resolution for forfeiture of the shares is to be moved and the member must be given an opportunity of being heard at the meeting.
- (3) Section 22 applies to the forfeiture.
- (4) Subject to section 132 of the Act and subsection (5) payment to the member of any amount due under this section must be made at the time decided by the board, but within 1 year from the date of forfeiture.
- (5) Instead of payment of an amount due to a member whose membership is cancelled, subject to section 132 of the Act, the

amount due may be applied as a deposit if the cooperative takes deposits, or the cooperative may allot or issue debentures in satisfaction of the amount, or if the member consents in writing the amount may be appropriated as a donation.

## **24 Death of member**

- (1) Subject to section 167(1) of the Act the board must transfer the deceased member's share or interest in the cooperative to—
  - (a) the personal representative of the deceased, that is, an executor or administrator of the estate of a deceased member; or
  - (b) to such person the deceased's personal representative may specify, in an application made to the cooperative within 3 months after the death of the member.
- (2) The board may approve the transfer of a share to a person other than the executor or administrator and in considering whether to approve the transfer the board must consider whether—
  - (a) there are reasonable grounds for believing the proposed transferee will be an active member of the cooperative; and
  - (b) the proposed transferee is qualified to be a member of the cooperative under these rules; and
  - (c) the transfer would increase the proposed transferee's holding in the cooperative beyond that allowed by the Act or these rules. [ss 78(b), 166 & 167]
- (3) If the total value of the deceased member's share in the cooperative is less than \$10000 or such other amount prescribed in the regulation the board may transfer the share under section 79 of the Act if there has not been a grant of letter of administration or of probate of the deceased's will. [s 79]
- (4) In accordance with section 80 of the Act, the board must decide the value of the shares and interest of a deceased

member as the amount paid up on the shares together with any other amounts due to the deceased member less any amounts owing to the cooperative by the deceased member. If the shares are forfeited the amounts due for the forfeiture must be dealt with and repaid within 1 year.

## **25 Dealings of members with cooperatives**

- (1) The cooperative may, under section 73 of the Act, make a contract with a member requiring the member to have specified dealings with the cooperative for a fixed period.
- (2) The contract may require a member—
  - (a) to sell products through or to the cooperative; or
  - (b) to obtain supplies or services through or from the cooperative; or
  - (c) to pay to the cooperative specified amounts as liquidated damages for a failure to comply with a requirement authorised by this section.
- (3) The sum, if any, specified as liquidated damages is to be considered as a debt due to the cooperative and in respect of such debt, the cooperative has, under section 75 of the Act, a charge on each of the following—
  - (a) the share or interest in the capital and the credit balance and deposits of the member or past member;
  - (b) any dividend, interest, bonus or rebate payable to the member or past member;
  - (c) any entry and periodic fees required to be repaid to a member when the member ceases to be a member.
- (4) The charge created under section 75 of the Act shall be enforced under that section and section 26.

## **26 Charges on shares**

- (1) The cooperative must, as provided in section 75 of the Act, have a charge on the share or interest in the capital, and on the credit balance and deposits of a member or past member, and



on any dividend, interest, bonus or rebate payable to a member or past member, in respect of any debt due from the member or past member to the cooperative. The cooperative may also set off any amount paid on account of that share or otherwise or any amount credited or payable to such member or past member in or towards payment of the debt.

- (2) The charge may be enforced at any time after 7 days notice to the member or past member, via the appropriation by the cooperative of the capital, interest or deposit subject to the charge. Any share for which capital has been appropriated must be cancelled.
- (3) The cooperative may sell in the way the directors consider appropriate all or any shares on which the cooperative has a charge. However, no sale can be made unless an amount for which the charge exists is payable at the date of the sale. Also no sale can be made until the end of 14 days after a written notice (stating, and demanding payment of, the part of the amount for which the charge exists as is payable at the day the notice is given) has been given to the registered holder of the share or the person entitled to it because of death or bankruptcy. The notice must indicate that on failure to make payment of the sum demanded within the time stipulated the shares will be sold by the board.
- (4) If the highest offer received by the board is less than the amount paid up on shares to be sold, the board must, before accepting the offer, notify the member of the receipt of the offer and the amount of the offer, and of the board's intention to accept the offer at the end of 14 days, if no payment is made before then to the cooperative of all amounts for which the charge exists.
- (5) From the proceeds of any such sale the cooperative may deduct the expenses, if any, associated with the sale and may apply the balance to reduce the liability of the member.
- (6) However, if a surplus remains after such deduction the surplus is payable to the member whose shares were sold.
- (7) For giving effect to a sale the board may authorise a person to transfer the share sold to the purchaser of them.

**27 Registration of official trustee in bankruptcy**

- (1) If a member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the share held by the bankrupt member. [s 162(1)]
- (2) The board may register the Official Trustee in Bankruptcy as the holder of a share in which a bankrupt member has an entitlement in equity, with the consent of the holder of the share. [s 162(2)]

**28 Registration as administrator of estate on incapacity of member**

A person appointed under a law of a State 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 that member's share. [ss 161 and 166]

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

- (1) A person becoming entitled to be a shareholder because of the death, bankruptcy or the 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.
- (2) However, before being registered as a member, the person is not entitled to exercise a right conferred by membership in relation to meetings of the cooperative.
- (3) A person registered under section 24, 27 or 28 is, while so registered, subject to the same liabilities in relation to the share or shares as those to which the dead person, incapable person or the bankrupt person would have been liable if he or she had remained a member with full legal capacity.
- (4) 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.

### 30 Transfer and transmission of debentures

- (1) On the written request of the transferor (the *giver*) of a debenture, the cooperative must enter in the appropriate register the name of the transferee (the *receiver*) in the same way and subject to the same conditions as if the application for entry were made by the transferee.
- (2) If the cooperative refuses to register a transfer of debentures it must, within 28 days after the day the transfer was lodged with it, send to the transferee notice of the refusal.
- (3) An instrument of transfer of a debenture must be executed by or on behalf of the transferor and the transferee.
- (4) 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.
- (5) The board may decline to recognise any instrument of debenture and may decline to register any debenture unless—
  - (a) a fee of \$... (or such lesser sum as may be decided by the board from time to time) is paid to the cooperative for the transfer registration; and
  - (b) the instrument of transfer is accompanied by the relevant debenture/s and other evidence as the board may reasonably require, in particular evidence that shows the right of the transferor to make the transfer; and
  - (c) any government stamp duty payable is paid.
- (6) Debentures must be transferred in the following form or in a form approved by the board—
 

I, A.B. (the transferor) of ..... in the State of ..... in consideration of the sum of \$... paid to me by C.D. (the transferee), of ..... in the State of ..... transfer to the transferee the debenture (or debentures) 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 subject to any other conditions being terms of the transfer of the debenture/s.

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

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

Signed by ....., transferor.

In the presence of ....., witness.

Signed by ....., transferee.

In the presence of ....., witness.

### **31 Annual general meetings**

- (1) An annual general meeting must, under section 198 of the Act, be held each year at a place and on a date and a time decided by the board, within 5 months after the close of the financial year of the cooperative or the further time allowed by the registrar or prescribed by regulation. [s 198]
- (2) All general meetings of the cooperative other than the annual general meeting are special general meetings.
- (3) If an annual general meeting is not held under subsection (1), the members may, under section 203 of the Act and section 32 of these rules, requisition such a meeting.

### **32 Special general meetings**

- (1) The board may, whenever it considers appropriate, call a special general meeting of the cooperative.
- (2) The board must call a general meeting of the cooperative on the requisition in writing by any active members who together are able to cast at least (...%, maximum 20%) of the total number of votes able to be cast at a meeting of the cooperative.
- (3) The requisition must—
  - (a) state the objects of the meeting; and
  - (b) be signed by the requisitioning members (and may consist of several documents in like form each signed by 1 or more of the requisitioning members); and

- (c) be served on the cooperative by being lodged at the registered office of the cooperative.
- (4) A meeting requisitioned by members under these rules must be called within 21 days with the meeting being fixed to be held as soon as practicable and held within 2 months after the requisition is served.
- (5) If the board does not call a meeting 21 days after the requisition is served, the following provisions apply—
  - (a) the requisitioning members (or any of them representing at least half their aggregate voting rights) may call the meeting in the same way as nearly as possible as meetings are called by the board;
  - (b) for that purpose they may require the cooperative to supply a written statement of the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the cooperative;
  - (c) the board must send the statement to the requisitioning members within 7 days after the request for the statement is made;
  - (d) the meeting called by the requisitioning members must be held within 3 months after the requisition is served;
  - (e) any reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting must be paid by the cooperative;
  - (f) any amount required to be paid by the cooperative is to be retained by the cooperative out of any money due from the cooperative by way of fees or other remuneration for their services to such of the directors as were in default. [s 203]

### **33 Notice of general meetings**

- (1) At least 14 days notice (not including the day on which the notice is served or taken to be served, but including the day for which notice is given) must be given of a general meeting in the way stipulated in section 69.

- (2) Notice must be given to the persons who are, under these rules entitled to receive notices from the cooperative, but the non-receipt of the notice by any member does not invalidate proceedings at a general meeting.
- (3) The notice must specify the place, the day, and the hour of the meeting and, for special business, the general nature of that business.
- (4) For a special resolution, notice must be given at least 21 days before the meeting. [s 186]
- (5) Any member who has a resolution to submit to a general meeting must give written notice of it to the cooperative at least 28 days before the date of the meeting.
- (6) The board must have inserted in any notice calling a general meeting any business a member has notified, before the notice calling the meeting is issued, his or her intention to move at the meeting (and the notification has been made under these rules).

### **34 Business of general meetings**

- (1) The ordinary business of the annual general meeting is—
  - (a) to confirm minutes of the last general meeting (whether annual or special); and
  - (b) to receive from the board, auditors, or any officers of the cooperative reports on the transactions of the cooperative during the financial year, including balance sheet, profit and loss account and the state of affairs at the end of that year; and
  - (c) to decide the rates of dividend, bonus and rebate; and
  - (d) to elect and decide the remuneration of directors.
- (2) The annual general meeting may also transact special business of which notice has been given to members under these rules.
- (3) All business of a general meeting, other than business of the annual general meeting that is by this section termed ordinary business, is special business.

**35 Quorum at general meetings**

- (1) No item of business may be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item. [s 201]
- (2) Unless these rules otherwise provide... active members present in person, each being entitled to exercise a vote, constitute a quorum. [s 201]
- (3) If within half an hour after the appointed time for the meeting a quorum is not present, the meeting, if called on the requisition of members, must be dissolved. In any other case it must be adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present constitute a quorum.

**36 Chairperson at general meetings**

- (1) The chairperson, if any, of the board shall preside as chairperson at every general meeting of the cooperative.
- (2) If there is no chairperson, or if at a meeting he or she is either not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, then the members present shall choose someone from their number to be chairperson (until the chairperson attends and is willing to act).
- (3) The chairperson may, with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place.
- (4) 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.
- (5) When a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given just as for the original meeting. Apart from this it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **37 Standing orders at general meetings**

The following standing orders must be observed at the cooperative's meetings, subject to any suspension of, amendment of, or addition to, these orders adopted for the meeting by the members present at a meeting—

- (a) the mover of a proposition must not speak for more than 10 minutes, subsequent speakers are allowed 5 minutes, and the mover of the proposition 5 minutes to reply. The meeting may however by simple majority extend in a particular instance the time permitted by this section;
- (b) whenever an amendment to an original proposition is proposed, no second amendment may be considered until the first amendment is disposed of;
- (c) if an amendment is carried, the proposition as amended displaces the original proposition and may itself be amended;
- (d) if an amendment is defeated, a further amendment may be moved to the original proposition. However, only 1 amendment may be submitted to the meeting for discussion at a time;
- (e) the mover of every original proposition, but not of an amendment, has the right to reply. Immediately after this the question must be put from the chair. No other member may speak more than once on the same question, unless permission is given for an explanation, or if the attention of the chairperson is called to a point of order;
- (f) propositions and amendments must be submitted in writing, if asked by the chairperson;
- (g) any discussion may be closed by a resolution 'that the question be now put' being moved seconded and carried. The resolution must be put to the meeting without debate;
- (h) any member, or visitor invited to attend the meeting by the board, may speak on any issue at a meeting with the permission of the chairperson provided that the permission may be conditional;



- (i) standing orders may be suspended for any period by ordinary resolution.

### **38 Attendance and voting at general meetings**

- (1) At any meeting of the cooperative a member who has been given notice that the members shares are required to be forfeited under the active membership provisions of the Act can not attend.
- (2) A member of the cooperative can not vote at a meeting of the cooperative unless the person is an active member of the cooperative.
- (3) At any general meeting a resolution put to the vote of the meeting must (as provided in section 202 of the Act) be decided on a show of hands. This is unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least 5 members. If no poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the cooperative is evidence of the fact. No proof is needed of the number or proportion of the votes recorded in favour of, or against, that resolution. [s 202]
- (4) On a show of hands or on a poll, every representative of a corporation, under section 64 of the Act, or every member (not under the age of 18), who is present at a meeting in person or represented by proxy or attorney, subject to subsection (5), has 1 vote. However, no member may vote, or be entitled or eligible to vote, contrary to the Act.
- (5) If the votes are equal, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, has a second or casting vote.
- (6) All resolutions, except special resolutions, shall be decided by a simple majority.
- (7) For joint membership, the joint members have 1 vote only between them.

- (8) In the event of a dispute between joint members as to which member may exercise the vote (subject to any proxy or power of attorney), the joint member whose name appears first in the register of members must be the one to exercise the vote.
- (9) A member's right to vote is a personal right, it is a right to 1 vote (subject to subsection (5)) and is not attached to, or conferred by, any share held by the member in the cooperative. [s 174]

### **39 Proxy votes**

- (1) The instrument appointing a proxy must be by signed writing of the appointee or of the appointee's attorney duly authorised in writing.
- (2) An instrument appointing a proxy may state the way in which the proxy is to vote in relation to a particular resolution and, if an instrument of proxy so provides, the proxy can not vote on the resolution other than as stated in the instrument.
- (3) No person can act as a proxy unless the person is an active member of the cooperative.
- (4) No person can act as proxy for more than 10 members, unless the proxy acts under an instrument of proxy mentioned in subsection (2).
- (5) An instrument appointing a proxy may be in the following form, or any other form which the board approves—

..... (name of cooperative) ..... I/we  
..... (name) ..... of .....  
(address) ..... being a member/s of the cooperative  
appoint ..... (name) ..... of  
..... (address)..... as my/our  
proxy, to vote for me/us and on my/our behalf at the \*annual  
general/\*general meeting of the cooperative, to be held on the  
..... day of ..... 20... and at any  
adjournment of that meeting.

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

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

\*Strike out whichever is not applicable.

#To be inserted if desired

- (6) An instrument appointing a proxy must not be treated as 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, is or 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, or, for a poll, at least 24 hours before the time appointed for the taking of the poll, at the registered office of the cooperative or at such other place as is specified for the purpose in the notice calling the meeting.
- (7) A vote given under the terms of an instrument of proxy or of a power of attorney is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the cooperative at the registered office before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

#### **40      Restriction on voting entitlement under power of attorney**

A person can not exercise a member's right to vote under a power of attorney, if that person has a power of attorney to vote in respect of another member.

#### **41      Postal ballot**

- (1) Voting must not be by fax or electronic means.
- (2) A postal ballot must be held when required by the Act, and in the following circumstances—
  - (a) when the members by ordinary resolution approve one;
  - (b) when the members by ordinary resolution approve a special resolution being decided by postal ballot.

- (3) A special postal ballot must be held when required by the Act, and in the following circumstances—
  - (a) when the members by ordinary resolution approve one;
  - (b) when the members by ordinary resolution approve a special resolution being decided by postal ballot. [ss 186(2) & 193]
- (4) A special postal ballot must be held for passing a special resolution in relation to any of the following matters relating to a cooperative—
  - (a) conversion of—
    - (i) a share capital cooperative to a non-share capital cooperative or vice versa; or
    - (ii) a trading cooperative to a non-trading cooperative or vice versa;
  - (b) transfer of incorporation;
  - (c) an acquisition or disposal of assets mentioned in section 268 of the Act;
  - (d) the maximum permissible level of share interest in the cooperative;
  - (e) takeover;
  - (f) merger;
  - (g) transfer of engagements;
  - (h) member's voluntary winding-up.
- (5) The cooperative may hold a postal ballot to decide any of the above by the members in the following way.
- (6) The board must cause the details of the proposal on which the ballot is to be held to be set in a statement and fix the dates for the forwarding of ballots to members and closing the ballot.
- (7) Every ballot must be conducted by the returning officer who must be appointed by the board. In default of an appointment being made in enough time to allow the procedure in this section to be followed, the secretary, or in absence of the

secretary the person acting in the capacity of secretary, is the returning officer.

- (8) Any person, with the exception of a director of the cooperative, may be appointed by the board to act as returning officer.
- (9) The returning officer may be helped in the performance of a duty or power under this section by the persons (who would be eligible to be returning officers) the returning officer appoints.
- (10) The returning officer must prepare a roll of the full names and addresses of the members of the cooperative as disclosed by the register of members and shares together with particulars of the number of votes each member would be entitled to exercise on a poll.
- (11) A person whose name is on the roll, is entitled to vote in a postal ballot, and no person is otherwise eligible or entitled.
- (12) The returning officer must cause ballot papers to be prepared in or to the following effect—

Name of cooperative .....

Ballot of members to decide the following proposal—

.....

.....

.....

The ballot will close at noon on .....

How to Vote

- 1 Read these directions and the ballot paper carefully.
- 2 Complete and sign the details on the reverse side of the middle envelope.
- 3 If you are in favour of the proposal insert 'YES' in the square in the ballot paper. If you are not in favour of the proposal insert 'NO'.
- 4 After marking the ballot paper fold it and place it in the small envelope provided and seal the envelope. Then

place this envelope in the middle envelope and place the middle envelope in the envelope addressed to the returning officer. Forward this envelope either by post or personal delivery to reach the returning officer by noon on .....

- 5 Unless the ballot paper is marked as indicated in 3 above and the details mentioned in 2 above are completed in full and signed, your vote may be rejected as informal.

.....  
Initials of Returning Officer

**BALLOT PAPER**

Are you in favour of the proposal as mentioned above?

- (13) Each ballot paper must be initialled by the returning officer. The returning officer must, at least 21 days before the day fixed for closing the ballot, transmit by post or otherwise deliver to every member entitled to vote in a ballot, 1 set of the following material—

- (a) 1 ballot paper;
- (b) an unsealed envelope (the *outer envelope*) addressed to the returning officer;
- (c) a smaller envelope (the *middle envelope*) into which the voter must enclose the envelope containing the ballot paper, the reverse side of which must be printed in or to the following effect—

.....  
(full name)

.....  
.....

(address)

.....  
(signature)

- a Please use capital letters.
  - b If the vote is being cast on behalf of a cooperative or other corporate body also indicate the name of such cooperative or corporate body;
  - (d) a small envelope (the *inner envelope*) into which the ballot paper is enclosed;
  - (e) a copy of the statement (prepared by the board) setting out the details of the proposal on which the decision of the members is to be sought.
- (14) Every member desiring to vote in the ballot should complete the details on the reverse side of the middle envelope and after marking their vote on the ballot paper according to the instructions on the ballot paper, seal the ballot paper in the inner envelope. The inner envelope containing the ballot paper should then be placed in the middle envelope and the middle envelope placed in the outer envelope addressed to the returning officer. The outer envelope should then be posted or personally delivered to the returning officer by noon on the day fixed for closing the ballot.
- (15) The returning officer must provide a ballot box.
- (16) The ballot box must be locked immediately before the ballot papers are delivered under subsection (13) and remain locked until the close of the ballot.
- (17) The returning officer must place the outer envelopes containing the ballot papers in the ballot box by noon on the day fixed for closing the ballot.
- (18) Upon a member making and transmitting to the returning officer a declaration that the member has not received the ballot paper, or that the ballot papers received by the member have been lost, spoiled or destroyed, and that the member has not already voted, the returning officer may issue a duplicate set of the material required under subsection (13), having endorsed any duplicate outer envelope with the word 'duplicate'.
- (19) Any member who makes a declaration under this subsection, which is false, in any particular material, contravenes these rules.

- (20) Ballot papers received after noon on the day fixed for closing the ballot must not be taken into account at the ballot.
- (21) As soon as practicable after noon on that day, the returning officer in the presence of such scrutineers as may be appointed by the board may open the ballot box and deal with the contents under subsections (22) and (23).
- (22) The returning officer must—
- (a) remove the middle envelope from the outer envelope; and
  - (b) if a duplicate outer envelope has been issued and the original outer envelope is received, reject the original envelope and mark it ‘rejected’; and
  - (c) according to the information on the middle envelope, mark for each set of voting papers returned, the voter’s name on the roll by drawing a line through the name; and
  - (d) if a member’s name has already been crossed out on the roll, reject the postal vote and mark it ‘rejected’; and
  - (e) if the middle envelope has not been signed, or if the details shown on the envelope are not enough to disclose by whom the vote is being exercised, reject the envelope and mark it ‘rejected’; and
  - (f) extract or cause to be extracted the inner envelopes containing the ballot papers from all unrejected middle envelopes, separating the contents from the middle envelopes in such a way that no inner envelope could subsequently be identified with a particular voter; and
  - (g) when all the middle envelopes have been dealt with, in the above way, cause all the inner envelopes not rejected to be opened and the ballot papers to be taken from them.
- (23) The ballot papers must be scrutinised by the returning officer who should supervise and reject as informal a ballot paper that—
- (a) is not duly initialled by the returning officer; or



- (b) is so imperfectly marked that the intention of the voter cannot be ascertained by the returning officer; or
  - (c) has any mark or writing not authorised by this section which, in the opinion of the returning officer will enable any persons to identify the voter; or
  - (d) has not been marked as prescribed on the ballot paper itself.
- (24) The decision of the returning officer as to the formality of any ballot paper is final and is not open to appeal.
- (25) The returning officer must count votes cast and make out and sign a statement of—
- (a) the number of formal votes cast in favour of the proposal; and
  - (b) the number of formal votes cast against the proposal; and
  - (c) the number of informal votes cast; and
  - (d) the number of inner envelopes marked ‘rejected’; and
  - (e) the proportion of the formal votes polled which were in the affirmative.
- (26) On the declaration of the returning officer of the result of the postal ballot the secretary of the cooperative is to make an entry in the minute book showing the particulars mentioned in subsection (25)(a), (b) and (c).
- (27) The returning officer must forward the statement to the chairperson of the cooperative who must announce the result of the ballot at the next general meeting.
- (28) The proposal which received the required majority of votes must be declared won.
- (29) The returning officer must keep all ballot papers (whether formal or otherwise) and rejected outer envelopes and rolls used for the conduct of the ballot, locked in the ballot box until the returning officer has been directed by the board, in writing that they may be destroyed.

- (30) Notification of the result of the ballot (other than a ballot conducted to alter these rules) must be displayed on the notice board at the registered office of the cooperative.
- (31) For a postal ballot altering the rules, the cooperative must cause the alteration to be notified in writing to its members as soon as practicable after the alteration takes effect and, in any event, not later than the day notice is given to the members of the next annual general meeting of the cooperative, following the taking effect of the alteration.

## **42 Poll at general meetings**

- (1) If a poll is duly demanded it must be taken in the way the chairperson directs. Unless the meeting is adjourned the result of the poll is taken to be the resolution of the meeting at which the poll was demanded.
- (2) A poll demanded on the election of a chairperson, or on a question of adjournment, must be taken immediately.

## **43 Special and ordinary resolutions**

- (1) A special resolution means a resolution of which notice has been given of the intention to propose the resolution as a special resolution and which is passed either by two-thirds of the members who vote in person or by proxy or attorney, at a general meeting, or by a two-thirds majority in a postal ballot, or by three-quarters of the members who cast formal votes in a special postal ballot of members.
- (2) A special resolution has effect from the date it is passed, however a special resolution by special postal ballot has no effect until registered by the registrar. [s 190]
- (3) An ordinary resolution is one passed by a simple majority and has effect from the date it is passed.

## **44 Board of directors**

- (1) The business and operations of the cooperative are to be managed and controlled by the board of directors, and for that

purpose the board has and may exercise the powers of the cooperative as if they had been expressly conferred on the board by a general meeting of the cooperative.

- (2) The board must have ... elected directors all of whom must be an individual, whether as a member of the cooperative, or as a representative of a corporation member, or otherwise, and at least 18 years old.
- (3) The powers of the board are subject to any restrictions imposed by the Act or by these rules.

#### **45 Qualifications of directors**

- (1) A person is not qualified to be a director of a cooperative unless the person is—
  - (a) a member of the cooperative or a representative of a corporation that is a member of a cooperative; or
  - (b) an employee of the cooperative or a person qualified under section 46 of these rules to be an independent director.
- (2) The qualifications of a member director are the holding of at least ... shares in the cooperative (other than shares required to be forfeited under the active membership provisions of the Act).

#### **46 Independent directors**

- (1) The elected directors may appoint any persons with special skills to be independent directors of the cooperative on the terms and conditions and for the period the directors may decide and set the remuneration and allowances to be paid to the independent directors for services as a director as approved at a general meeting of the cooperative under section 222 of the Act.
- (2) Such persons are, subject to this section, directors of the cooperative for the period of their appointment.

- (3) The ratio of the number of independent directors to member directors must not be more than 1 to 3 in accordance with the Act.
- (4) Independent directors appointed under this section must not be counted for section 44.
- (5) Other than as provided in this section, an independent director is subject to all other rules relating to directors.
- (6) On the termination of his or her appointment as independent director by death, retirement, resignation or in any other way an independent director stops being a director of the cooperative.
- (7) An independent director is not entitled to vote at a meeting of directors on a motion about the terms and conditions of his or her own appointment, conditions of service or termination of service but may be permitted by the chairperson of the board to speak in relation to the matters.
- (8) Despite any other provisions of these rules no vote may be taken at a meeting of the board of directors unless, at the time of taking the vote, the number of independent directors present is less than the number of other member directors present.
- (9) An independent director is not capable of being appointed as chairperson of the board of directors, however, an independent director may be appointed to chair any subcommittee of the board which the board in its discretion might appoint.
- (10) Despite the term of appointment which may be fixed under subsection (1), the appointment of an independent director must be ratified by the members of the cooperative at the next general meeting after the appointment of each independent director. Ratification must be by a simple majority of members of the cooperative present and entitled to vote at the meeting.
- (11) If the appointment of an independent director is not ratified by the members of the cooperative, any acts performed by the independent director since the date of their appointment is taken to have been validly performed even though the

appointment has not been ratified by the members of the cooperative.

- (12) Despite the term of appointment which may be fixed under subsection (9), the members of the cooperative may, by special resolution at a general meeting of members, terminate the appointment of an independent director.
- (13) An independent director is not required to be an active member of the cooperative.

#### **47 Managing director**

- (1) The elected directors may, if they consider it appropriate, appoint a person to be managing director of the cooperative and may from time to time remove him or her from office.
- (2) The terms and conditions and the period of appointment must be decided by the directors.
- (3) The managing director must not be counted for section 44.
- (4) In all other respects the managing director is entitled to all the privileges of a director and is subject to all other rules relating to directors.
- (5) On the termination of his or her appointment as managing director either by death, retirement, resignation or termination by the board, the managing director stops being a director of the cooperative.
- (6) The managing director is not entitled to be present or vote at a meeting of directors on a motion about the terms and conditions of his or her own appointment, conditions of service or termination of service.
- (7) A managing director can not be required to be an active member of the cooperative.
- (8) A managing director must be classified as an independent director under the Act.

#### **48 First and subsequent directors**

- (1) The first directors must be elected at the meeting for the formation of the cooperative.
- (2) At the first annual general meeting of the cooperative ... of the directors must retire.
- (3) At the annual general meeting in each subsequent year the directors retire in rotation of ... and ... . Member directors are to be elected by ... (members by means of a postal ballot in the way outlined in section 41) / (members by ballot at the annual general meeting of the cooperative).
- (4) If 2 or more candidates receive an equal number of votes, the candidate to be appointed must be decided by lot.
- (5) The directors to retire in any year shall (subject to provision as to filling casual vacancies) be those who have been longest in office since their last election. As between persons who became directors on the same day those to retire must (unless they otherwise agree among themselves) be decided by lot. The order for retirement is the order in which the names are withdrawn.
- (6) A retiring director is eligible for re-election.
- (7) At an annual general meeting at which a director retires or a casual vacancy occurs the vacated office must be filled by electing a person to it. Nominations for candidates to fill the vacant positions must be sought in the way the board decides. The election of directors must be conducted at the meeting in the usual and appropriate way the board directs.

*Optional, select either (8) and (9) or (10)*

- (8) If at an annual general meeting at which an election of directors ought to take place the places of the retiring directors or any of them are not filled, the meeting must be adjourned till the same day in the next week at the same time and (unless another place is specified by a director or officer at the time of the adjournment or by written notice to members given before the day to which the meeting is adjourned) at the same place, and the adjourned meeting may receive nominations and elect directors to the vacancies in the usual and appropriate way as the facilitator directs.

- (9) If, at the adjourned meeting, the places of the retiring directors are not filled a retiring director whose place has not been filled is taken to have been re-elected at the adjourned meeting.
- (10) If, at the general meeting, the places of the retiring directors are not filled the retiring directors or such of them as have not had their places filled, and who are in agreement, are taken to have been re-elected at the meeting.

#### **49 Removal from office of director**

The cooperative may by special resolution remove a director before the end of the director's term of office, and may by a simple majority appoint another person in place of the director. The person appointed must retire when the removed director would have done if not removed. [s 213(2)]

#### **50 Vacation of office of director**

A director vacates office—

- (a) if disqualified or otherwise unable to be a director under section 208 of the Act; or
- (b) if the director absents himself from 3 consecutive ordinary meetings of the board without its leave; or
- (c) if the director resigns the office of director by written notice given by the director to the cooperative; or
- (d) if the director is removed from office by special resolution of the cooperative; or
- (e) if the person ceases to hold the qualification because of which the person was qualified to be a director; or
- (f) if an administrator of the cooperative's affairs is appointed under division 5 of part 12 of the Act.

## **51 Filling of casual vacancies**

- (1) The board may appoint a qualified person to fill a casual vacancy in the office of director until the next annual general meeting.
- (2) For this section, a casual vacancy arises if the office of director is vacated under section 50. [s 206(3)]

## **52 Remuneration**

- (1) Under section 222 of the Act, a director must not receive remuneration for services as a director other than fees, concessions and other benefits approved at a general meeting of the cooperative.
- (2) All necessary expenses incurred by the board members in the business of the cooperative must be refunded to them.

## **53 Deputy directors**

- (1) In the absence of a director from a meeting of the board, the board may appoint a qualified person to act as a deputy for the director and to accordingly act in the director's place on the board. [s 211(1)]
- (2) A deputy director appointed by the board is entitled to notice of meetings of the directors and to attend and vote at those meetings and to sign resolutions and to exercise the powers, authorities and discretions vested in or otherwise exercisable by the director he or she is deputy for.
- (3) A deputy director shall vacate office if the director he or she acts in place of as a deputy ceases to be a director or on a majority of the other directors removing him or her from office.
- (4) An appointment or removal under this section must be in writing and notice of it must be served on the deputy director and the appointment or removal takes effect immediately on its service. Service of the notice may be effected under section 69.



- (5) The remuneration of a deputy director is payable out of the remuneration payable to the director he or she acts in place of as a deputy and consists of the portion of the director's remuneration agreed between the deputy director and the director. The attendance of the deputy director at a meeting of the board is taken to be attendance by the nominating director.
- (6) For this section, a meeting of the directors includes a meeting conducted under section 55.

#### **54 Proceedings of the board**

- (1) Meetings of the board (including those conducted under section 55) are to be held as often as may be necessary for properly conducting the business and operations of the cooperative and must be held at least quarterly.
- (2) Questions arising at any meeting must be decided by a majority of votes.
- (3) If the votes are equal, the chairperson has a second or casting vote.
- (4) The chairperson or a director may, and the secretary must, if required by the chairperson or a director at any time, call a meeting of the board. [s 209(2)]
- (5) Except in special circumstances decided by the chairperson, at least 48 hours notice must be given to the directors of all meetings of the board.

#### **55 Transaction of business outside board meetings**

- (1) The board may under section 210 of the Act transact any of its business—
  - (a) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of those members is to be taken to be a decision of the board; or
  - (b) at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a

matter before the meeting, can be heard by the other members.

- (2) For this section the chairperson of the board and each member of the board have the same voting rights as they have at an ordinary meeting of the board.
- (3) A resolution approved under subsection (1)(a) is to be recorded in the minutes of the meetings of the board.
- (4) The secretary may circulate papers among members of the board for subsection (1)(a) by fax or other transmission of the information in the papers concerned.

## **56 Quorum for board meetings**

- (1) The quorum for a meeting of the board is half the number of directors (or if half is not a whole number the whole number next higher than half) but independent directors must not constitute more than half the directors present at a meeting (or if half is not a whole number the whole number immediately lower than half).
- (2) If at any time the number of directors is the same or less than the number of directors required to constitute a quorum of the board—
  - (a) the board may appoint enough directors so the number of directors is 1 more than a quorum; and
  - (b) for the purpose only of enabling the board to make such an appointment, the number of directors required to constitute a quorum is the number of directors at the time.

## **57 Chairperson of board**

- (1) The chairperson of the board may be elected by the board or at a general meeting of the cooperative.
- (2) If no chairperson is elected, or if at any meeting the chairperson is not present within 5 minutes after the time appointed 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.

- (3) The chairperson may be removed, and a new chairperson elected—
  - (a) if the chairperson was elected by the board—by ordinary resolution of the board; or
  - (b) if the chairperson was elected at a general meeting of the cooperative—by ordinary resolution at a general meeting of the cooperative.

## **58 Delegation and board committees**

- (1) The board may (under section 212 of the Act) by resolution delegate to a director or committee of 2 or more directors the exercise of the powers specified in the resolution. The cooperative or the board may by resolution revoke all or part of a delegation.
- (2) A power, the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time under the terms of the delegation.
- (3) A delegation under this section may be made subject to conditions or limitations as to the exercise of any of the powers delegated, or as to time or circumstances.
- (4) The board may continue to exercise the powers delegated.
- (5) If a power is exercised by a director (alone or with other directors) 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, then 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 a condition or limitation mentioned in subsection (3) was observed by the director exercising the powers.
- (6) An instrument purporting to be signed by a director under a delegation as mentioned in section 212 of the Act is in all courts and before all persons acting judicially to be received

in evidence as if it were an instrument executed by the cooperative under seal. Furthermore, until the contrary is proved, it is taken to be an instrument signed by a delegate of the board under section 212 of the Act.

- (7) A committee may elect a chairperson of its meetings. If no chairperson is elected, or, if at a meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting, then the members present may choose one of their number to be chairperson of the meeting.
- (8) A committee may meet and adjourn as it considers appropriate. Questions arising at a meeting must be decided by a majority of votes of the members present and voting and if the votes are equal the chairperson has a second or casting vote.

## **59 Other committees**

- (1) The board may by resolution appoint committees consisting of members or other persons or both, to act in an advisory role to the board and any committees of directors.
- (2) Section 58(7) and (8) apply to committees appointed under this section, with any changes approved by the board.
- (3) The quorum for a meeting of the committee is half (or if half is not a whole number the whole number next higher than half) the number of members in the committee.

## **60 Minutes**

- (1) The board shall have minutes of meetings made in books kept for the purpose, and, in particular—
  - (a) of all appointments of officers and employees made by the directors; and
  - (b) of the names of the directors present at each meeting of the board and of any committee of the board; and
  - (c) of all resolutions and proceedings at all meetings of the cooperative and of directors and of committees of directors.

- (2) Minutes must be recorded in the minute book within 14 days after the day of the meeting to which they relate.

## **61 Financial year**

The financial year of the cooperative ends on ... .

## **62 Seal**

- (1) The cooperative must, as required by section 247(1)(a) of the Act, have the name of the cooperative appear in legible characters on its common seal and any official seal. The common seal must be kept at the registered office in the custody the board directs.
- (2) The cooperative may, under section 48 of the Act, have for use in place of its common seal outside the State, 1 or more official seals. Each of the additional seals must be a facsimile of the common seal with the addition on its face of the name of the place where it is to be used.
- (3) The seal of the cooperative must not be attached to an instrument other than by resolution of the board. Two directors and the secretary must be present and must sign all instruments sealed while they are present. (The board may appoint some person other than the secretary for this).
- (4) The person attaching the official seal must certify in writing on the instrument to which it is attached the date and place it is attached.

## **63 Custody and inspection of records and registers**

- (1) The cooperative must have at its registered office and available during normal office hours for inspection by any member free of charge [s 239(1)] the following—
  - (a) a copy of the Act and the regulation;
  - (b) a copy of the rules of the cooperative and any attachments under section 337 of the Act;

- (c) a copy of the last annual report of the cooperative under section 242 of the Act;
  - (d) the register of directors, members and shares;
  - (e) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the cooperative;
  - (f) the register of memberships cancelled under part 6 of the Act, required to be kept under section 237(1)(e) of the Act;
  - (g) the register of notifiable interests required to be kept under section 278 of the Act;
  - (h) a copy of the minutes of each general meeting;
  - (i) the other registers required under the Act to be open for inspection.
- (2) A member may make a copy of the entries in a register mentioned in subsection (1) during normal office hours, free of charge, for the fee of \$... (maximum \$5 for the first page and \$1 for each additional page).

## **64 Accounts**

- (1) The board must have a financial institution account, electronic or otherwise, in the name of the cooperative, into which all amounts received must be paid as soon as possible after receipt.
- (2) All cheques drawn on the accounts and all drafts, bills of exchange, promissory notes, and other negotiable instruments for the cooperative, must be signed by 2 directors or by 2 persons authorised by the board.

## **65 Safe keeping of securities**

Shares, debentures, charges and any other certificate of or document or duplicates of them pertaining to securities must be safely kept by the cooperative in the way and with the provision for their security the board directs.

**66 Audit**

- (1) One or more auditors must be appointed, hold office, be remunerated, removed and have qualifications, duties and responsibilities as provided by the regulation, or a gazette notice made by the registrar under section 233 of the Act. Audits must be carried out annually or, if the cooperative is a disclosing entity, every 6 months.
- (2) Within 1 month after the cooperative is registered, the directors must appoint an auditor of the cooperative, unless the cooperative at a general meeting has already appointed an auditor. An auditor appointed under this section holds office until the first annual general meeting of the cooperative.
- (3) The cooperative must at its first annual general meeting appoint an auditor of the cooperative and at each subsequent annual general meeting, if there is a vacancy in the office of auditor, the cooperative must appoint an auditor to fill the vacancy.
- (4) An auditor appointed under subsection (3) holds office until death or resignation from office or until ceasing to be capable of acting as auditor under the regulation.
- (5) The board must fill a vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office, within 1 month of the vacancy occurring, unless the cooperative at a general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as auditor of a cooperative under this subsection holds office, subject to the regulation until the next annual general meeting of the cooperative.
- (6) While a vacancy in the office of auditor continues, any surviving or continuing auditor or auditors may act.
- (7) The cooperative or the board must not appoint as auditor a person who has not consented in writing to the appointment or who has withdrawn consent, or a person of whose nomination notice has not been given under the regulation.
- (8) A person is not qualified to be appointed auditor of the cooperative if—

- (a) the person is not a registered company auditor, an existing auditor of the cooperative or exempt under section 233 of the Act; or
  - (b) the person or corporation in which the person is a substantial shareholder, is indebted to the cooperative (or to a subsidiary corporation of the cooperative) for more than \$5000; or
  - (c) the person is—
    - (i) an officer of the cooperative; or
    - (ii) a partner, employer or employee of an officer of the cooperative; or
    - (iii) a partner of an employee of an officer of the cooperative; or
    - (iv) an employee of an employee of an officer of the cooperative.
- (9) All reasonable fees and expenses of the auditor are payable by the cooperative.
- (10) The board must enable the auditor to have access to all books, accounts, vouchers, securities and documents of the cooperative, and to be given the information and explanation by the board members or any other officers necessary for the performance of the duties of the auditor.
- (11) The auditor is entitled to attend any general meeting of the cooperative and to receive all notices of and other communications relating to any general meeting which any member of the cooperative is entitled to receive. The auditor is also entitled to be heard, at a general meeting which the auditor attends, on any part of the business of the meeting of concern to the auditor.
- (12) The auditor may be removed from office by resolution at a general meeting.
- (13) Notice of intention to move the resolution must be given to the cooperative at least 28 days before the meeting at which the resolution is moved, but if, after notice has been given, a meeting is called for a date 28 days or less after notice has been given, notice is taken to have been properly given.



- (14) If special notice of a resolution to remove an auditor is received by the cooperative, it must immediately send a copy of the notice to the auditor and file a copy of the notice with the registrar.
- (15) The cooperative must give notice of a resolution to remove the auditor to persons entitled to be given notice of a meeting of the cooperative at the same time and in the same way as it gives notice of the meeting or, if that is not practicable, in any way allowed under these rules at least 14 days before the meeting.
- (16) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not more than a reasonable length, to the cooperative and ask that before the meeting at which the resolution is to be considered, a copy of the representations be sent by the cooperative at its expense to every member of the cooperative to whom notice of the meeting is sent.
- (17) Unless the registrar on the application of the cooperative otherwise orders, the cooperative must send a copy of the representations in accordance with the auditor's request. The auditor may require that the representations be read out at the meeting and may also speak at the meeting.
- (18) The auditor may, by written notice given to the cooperative, resign as auditor of the cooperative if—
  - (a) the auditor has, by written notice given to the registrar, applied for consent to resign and stated the reasons and, at or about the same time, notified the cooperative in writing of the application; and
  - (b) the auditor has received the consent of the registrar.
- (19) The resignation of the auditor takes effect—
  - (a) on the day (if any) fixed for the purpose in the notice of resignation; or
  - (b) on the date on which the registrar consents to the resignation; or
  - (c) on the date (if any) fixed by the registrar for the purpose; whichever last happens.

- (20) Within 14 days after the removal from office of the auditor or after the receipt of a notice of a resignation from an auditor, the cooperative must file with the registrar a notice of the removal or resignation in the approved form and, if there is a trustee for the holders of debentures of the cooperative, give to the trustee a copy of the notice filed with the registrar.

## 67 Cooperative funds

- (1) The board may resolve to retain all or part of the surplus arising in a year from the business of the cooperative to be applied for the benefit of the cooperative. [s 264]
- (2) The part of the surplus arising in a year from the business of the cooperative or any part of the reserves may—
- (a) be paid to a member by way of bonus or rebate based on the business done by the member with the cooperative; or
  - (b) be applied by the issue of bonus shares to a member; or
  - (c) be paid to a member by way of a dividend of not more than the prescribed amount for the shares held (a *limited dividend*); or
- (3) A rebate, bonus or limited dividend, must be declared at a general meeting of the cooperative but must not be more than the amount recommended by the board or, for dividends, the percentage permitted under the Act.
- (4) The amount of a rebate or dividend payable to a member under subsection (2)(a) and (c) may, with the consent of the member, be applied—
- (a) in payment for the issue to the member of bonus shares; or
  - (b) as a loan to the cooperative.
- (5) Any part of the surplus arising in any year from the business of the cooperative may be credited to any person who is not a member, but is qualified to be a member, by way of bonus or rebate in proportion to the business done by him or her with the cooperative, if—

- (a) the person was a member at the time the business was done and the membership has lapsed; or
  - (b) the person has applied for membership after the business was done. [s 267(1)]
- (6) Nothing in this section precludes the payment of a bonus to an employee under the terms of the employee's employment. [s 267(1)]
- (7) A part of the surplus, not more than ...%, arising in any year from the business of the cooperative may be applied for—
- (a) charitable purposes; or
  - (b) supporting any activity approved by the cooperative. [s 265(1)]
- (8) For this section—
- surplus* means the excess of income over expenditure after making appropriate allowance for taxation expense, depreciation in value of the property of the cooperative and for future contingencies.
- (9) A dividend, rebate or share bonus that accrues to the holder of shares on which all calls payable have been paid must be paid to the holder. However, a dividend, share bonus or rebate that accrues to the holder of partially paid up shares must be applied to paying off any subscriptions or calls on shares that may (when the dividend or bonus becomes payable) be payable and unpaid by the holder.
- (10) If several persons are registered as joint holders of a share any 1 of them may be given a valid receipt for any dividend or other money payable on or for the share.
- (11) Notice of a dividend, bonus share or rebate that may have been declared must be given by displaying it at the registered office of the cooperative and in any other way the board decides.
- (12) Unless the Act or rules otherwise provide, interest does not accrue to a member on a dividend or bonus share held by a cooperative for a member.

## **68 Provision for loss**

The board must make provision for loss that may result from transactions of the cooperative.

## **69 Notices**

- (1) A notice or other document required under this Act to be given to a member of a cooperative may be given—
  - (a) personally; or
  - (b) by post addressed to the member's registered address; or
  - (c) subject to section 464 of the Act, by publishing the notice in a newspaper circulating in Queensland or in the area served by the cooperative.
- (2) A document may be served on a cooperative—
  - (a) by post addressed to the registered office; or
  - (b) by leaving it at the registered office of the cooperative with a person who appears to be aged 16 years or more.
- (3) If a notice is sent by post, service is taken to be effected by properly addressing, prepaying and posting a letter containing the notice. For a notice of a meeting service is taken to be effected at the end of 24 hours after the letter containing the notice is posted. In every other case service is taken to be effected at the time the letter would be delivered in the ordinary course of post and in proving service by post it is enough to prove the envelope containing the notice was properly addressed and posted.
- (4) A notice or other document directed to a member and advertised in the newspaper is taken to be properly given to the member on the date the advertisement appears.
- (5) A notice given by fax is taken to have been served, unless the sender's fax indicates a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.
- (6) A notice may be given by the cooperative to the joint holders of a share by giving the notice to the joint holder named first in the register of members and shares in relation to the share.

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- (7) A notice may be given by the cooperative to the person entitled to a share because of the death, incapacity or bankruptcy of a member by sending it by post in a prepaid letter addressed to the person by name. Alternatively it can be addressed to the person by the title of the representative of the deceased, incapacitated person or trustee of the bankrupt or another similar description. The address must be the address given for the purpose by the person claiming to be entitled. Alternatively, if no address has been given to the cooperative, the notice can be given in the way it could have been given if the death, incapacity or bankruptcy had not happened.
- (8) Notice of every general meeting must be given in the way authorised above, to—
- (a) every member of the cooperative other than members who have not supplied to the cooperative an address for the giving of notices to them; and
  - (b) every person entitled to a share because of the death, incapacity or bankruptcy of a member, who, but for the member's death, incapacity or bankruptcy, would be entitled to receive notice of the meeting.
- (9) Other than as provided in this section and section 65(11) no other persons are entitled to receive notices of general meetings.
- (10) For this section—
- registered address* means the address of the member as appearing in the register of members and shares.

## 70 Winding up

- (1) The cooperative must be wound up under part 12 of the Act.
- (2) If on the winding up or dissolution there remains after the satisfaction of all its debts and liabilities (including the refund of the amounts paid up on the shares) any property, this shall be paid to or distributed among the members of the cooperative ..... (in proportion to the amount of business conducted with the cooperative over the past ... years) (in proportion to the member's shareholdings).

**71 Schedule of charges**

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Copy book of rules..... section 2(5)–(6)

Inspection of register..... section 63(2)

Nominal value of shares..... section 13(1)

Duplicate share certificate..... section 16(3)

Transfer of shares..... section 18(7)

Maximum fine..... section 12(1)

Transfer/register of debenture..... section 30(5)

**Certificate**

..... (date) at ..... for forming a cooperative to be known as—

.....

(name of cooperative)

..... chairperson of formation meeting

(signature)

..... secretary of formation meeting

(signature)

Note: This certificate is signed at the formation meeting which is held after the rules have been approved by the registrar and returned to the sponsors of the proposed cooperative.

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## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 July 2011. Future amendments of the Cooperatives Regulation 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	1 September 1997	5 September 1997
1A	1999 SL No. 186	13 August 1999	12 November 1999
1B	2000 SL No. 81	5 May 2000	12 May 2000
1C	2000 SL No. 161	1 July 2000	14 July 2000
1D	2001 SL No. 210	3 December 2001	3 December 2001
1E	2001 SL No. 252	10 December 2001	20 December 2001
1F	2001 SL No. 264	1 January 2002	11 January 2002
1G	2001 SL No. 269	1 February 2002	1 February 2002
1H	2002 SL No. 31	1 March 2002	8 March 2002
1I	2002 SL No. 82	1 May 2002	9 May 2002
1J	2002 SL No. 98	12 May 2002	24 May 2002



Reprint No.	Amendments included	Effective	Notes
1K	2002 SL No. 167	1 July 2002	
2	2003 SL No. 83	9 May 2003	
2A	2003 SL No. 143	1 July 2003	
2B	2004 SL No. 103	1 July 2004	
2C	2005 SL No. 135	1 July 2005	
2D	2006 SL No. 162	1 July 2006	
2E	2007 SL No. 149	1 July 2007	R2E withdrawn, see R3
3	—	1 July 2007	
3A	2008 SL No. 266	1 September 2008	
3B	2009 SL No. 120	1 July 2009	
3C	2010 Act No. 18	21 April 2010	
3D	2010 SL No. 108	1 July 2010	
	2010 SL No. 128		
3E	2011 SL No. 115	1 July 2011	

## 5 List of legislation

### **Cooperatives Regulation 1997 SL No. 287**

made by the Governor in Council on 28 August 1997

notfd gaz 29 August 1997 pp 1987–9

ss 1–2 commenced on date of notification

remaining provisions commenced 1 September 1997 (see s 2)

exp 31 August 2012 (see SIA s 56(1) and SIR s 5 sch 3)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

### **Cooperatives Amendment Regulation (No. 1) 1999 SL No. 186**

notfd gaz 13 August 1999 pp 2052–3

commenced on date of notification

### **Cooperatives Amendment Regulation (No. 1) 2000 SL No. 81**

notfd gaz 5 May 2000 pp 65–6

commenced on date of notification

### **Equity and Fair Trading Legislation Amendment Regulation (No. 1) 2000 SL No. 161**

ss 1–2(1), 3 sch

notfd gaz 30 June 2000 pp 736–48

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2000 (see s 2(1))

### **Tourism, Racing and Fair Trading (Fees) Amendment Regulation (No. 1) 2001 SL No. 210 ss 1–3 sch**

notfd gaz 16 November 2001 pp 982–5

ss 1–2 commenced on date of notification

remaining provisions commenced 3 December 2001 (see s 2)

**Tourism, Racing and Fair Trading (Fees) Amendment Regulation (No. 2) 2001 SL No. 252 ss 1, 2(2), 5 sch**

notfd gaz 7 December 2001 pp 1270–1  
ss 1–2 commenced on date of notification  
remaining provisions commenced 10 December 2001 (see s 2(2))

**Dental Practitioners Registration Regulation 2001 SL No. 264 ss 1–2, 17 sch 5**

notfd gaz 14 December 2001 pp 1351–4  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 January 2002 (see s 2)

**Occupational Therapists Registration Regulation 2001 SL No. 265 ss 1–2, 10 sch 3**

notfd gaz 14 December 2001 pp 1351–4  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 February 2002 (see s 2)

**Optometrists Registration Regulation 2001 SL No. 266 ss 1–2, 10 sch 3**

notfd gaz 14 December 2001 pp 1351–4  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 February 2002 (see s 2)

**Pharmacists Registration Regulation 2001 SL No. 267 ss 1–2, 14 sch 4**

notfd gaz 14 December 2001 pp 1351–4  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 February 2002 (see s 2)

**Physiotherapists Registration Regulation 2001 SL No. 268 ss 1–2, 10 sch 3**

notfd gaz 14 December 2001 pp 1351–4  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 February 2002 (see s 2)

**Speech Pathologists Registration Regulation 2001 SL No. 269 ss 1–2, 10 sch 3**

notfd gaz 14 December 2001 pp 1351–4  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 February 2002 (see s 2)

**Medical Practitioners Registration Regulation 2002 SL No. 31 ss 1–2, 16 sch 4**

notfd gaz 1 March 2002 pp 850–2  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 March 2002 (see s 2)

**Chiropractors Registration Regulation 2002 SL No. 79 ss 1–2, 11 sch 4**

notfd gaz 26 April 2002 pp 1540–3  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 May 2002 (see s 2)

**Podiatrists Registration Regulation 2002 SL No. 80 ss 1–2, 10 sch 3**

notfd gaz 26 April 2002 pp 1540–3  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 May 2002 (see s 2)

**Osteopaths Registration Regulation 2002 SL No. 81 ss 1–2, 14 sch 4**

notfd gaz 26 April 2002 pp 1540–3  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 May 2002 (see s 2)

**Psychologists Registration Regulation 2002 SL No. 82 ss 1–2, 60 sch 2**

notfd gaz 26 April 2002 pp 1540–3  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 May 2002 (see s 2)

**Medical Radiation Technologists Registration Regulation 2002 SL No. 98 ss 1–2, 59 sch 3**

notfd gaz 10 May 2002 pp 157–8  
ss 1–2 commenced on date of notification  
remaining provisions commenced 12 May 2002 (see s 2)  
Note—A regulatory impact statement and explanatory note were prepared.

**Tourism, Racing and Fair Trading (Fees) Amendment Regulation (No. 1) 2002 SL No. 167 ss 1, 2(1), 3 sch 1**

notfd gaz 28 June 2002 pp 876–83  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 July 2002 (see s 2(1))

**Cooperatives Amendment Regulation (No. 1) 2003 SL No. 83**

notfd gaz 9 May 2003 pp 125–6  
commenced on date of notification

**Tourism, Racing and Fair Trading (Fees) Amendment Regulation (No. 1) 2003 SL No. 143 ss 1–3 sch**

notfd gaz 27 June 2003 pp 749–56  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 July 2003 (see s 2)

**Tourism, Fair Trading and Wine Industry Development (Fees) Amendment Regulation (No. 1) 2004 SL No. 103**

notfd gaz 25 June 2004 pp 573–81  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 July 2004 (see s 2)

**Tourism, Fair Trading and Wine Industry Development (Fees) Amendment Regulation (No. 1) 2005 SL No. 135**

notfd gaz 24 June 2005 pp 639–45  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 July 2005 (see s 2)

**Tourism, Fair Trading and Wine Industry Development (Fees) Amendment Regulation (No. 1) 2006 SL No. 162**

notfd gaz 30 June 2006 pp 1060–7  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 July 2006 (see s 2)

**Tourism, Fair Trading and Wine Industry Development (Fees) Amendment Regulation (No. 1) 2007 SL No. 149 ss 1, 2(2), 3 sch**

notfd gaz 29 June 2007 pp 1157–65

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2007 (see s 2(2))

**Justice and Other Legislation (Fees) Amendment Regulation (No. 1) 2008 SL No. 266**

notfd gaz 22 August 2008 pp 2651–6

ss 1–2 commenced on date of notification

remaining provisions commenced 1 September 2008 (see s 2)

**Fair Trading (Fees) Amendment Regulation (No. 1) 2009 SL No. 120**

notfd gaz 26 June 2009 pp 831–7

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2009 (see s 2)

**Architects Amendment Act 2010 No. 18 ss 1, 45 sch**

date of assent 21 April 2010

commenced on date of assent

**Health and Other Legislation Amendment Regulation (No. 1) 2010 SL No. 108 pts 1, 6**

notfd gaz 11 June 2010 pp 459–61

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2010 (see s 2)

**Fair Trading and Other Legislation Amendment Regulation (No. 1) 2010 SL No. 128 pts 1, 9**

notfd gaz 18 June 2010 pp 529–35

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2010 (see s 2)

**Personal Property Securities (Ancillary Provisions) Act 2010 No. 44 ss 1–2, ch 4 pt 16**

date of assent 14 October 2010

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

**Justice (Fees) Amendment Regulation (No. 1) 2011 SL No. 115**

notfd gaz 1 July 2011 pp 589–96

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2011 (see s 2)

Note—An explanatory note was prepared.

## 6 List of annotations

**Documents that are not debentures**

s 3 amd 2003 SL No. 83 s 3

**Changes for Act, s 11**

s 4 om 2003 SL No. 83 s 4

**Adoption of Corporations Law provisions about officers of cooperatives**

s 11 om 2003 SL No. 83 s 4

**Requirements for financial records and financial reports**

s 12 sub 2003 SL No. 83 s 5

**Charges required to be registered**

s 23 amd 2003 SL No. 83 s 6

**Application for transfer**

s 32 amd 2003 SL No. 83 s 7

**Application of Corporations Act to winding-up**

s 34 sub 2003 SL No. 83 s 8

**Effect of out-of-jurisdiction compromise or arrangement**

s 39 amd 1999 SL No. 186 s 3

**Cooperatives law**

s 40 amd 1999 SL No. 186 s 4

**Inspection of register**

s 47 amd 2003 SL No. 83 s 9

**SCHEDULE 1—CHANGES TO CORPORATIONS ACT PROVISIONS**

amd 2000 SL No. 81 s 3

sub 2003 SL No. 83 s 10

**SCHEDULE 4—CORPORATIONS LAW PROVISIONS APPLYING TO ACCOUNTS AND AUDIT**

om 2003 SL No. 83 s 11

**SCHEDULE 5—UNDESIRABLE MATTER FOR NAMES**

amd 2001 SL No. 264 s 17 sch 5; 2001 SL No. 265 s 10 sch 3; 2001 SL No. 266 s 10 sch 3; 2001 SL No. 267 s 14 sch 4; 2001 SL No. 268 s 10 sch 3; 2001 SL No. 269 s 10 sch 3; 2002 SL No. 31 s 16 sch 4; 2002 SL No. 79 s 11 sch 4; 2002 SL No. 80 s 10 sch 3; 2002 SL No. 81 s 14 sch 4; 2002 SL No. 82 s 60 sch 2; 2002 SL No. 98 s 59 sch 3; 2003 SL No. 83 s 12; 2010 Act No. 18 s 45 sch; 2010 SL No. 108 s 12

**SCHEDULE 7—PROVISIONS OF ACT AND REGULATION APPLYING TO PARTICIPATING AND NON-PARTICIPATING COOPERATIVES**

amd 2003 SL No. 83 s 13

**SCHEDULE 8—HOLDERS OF PRESCRIBED OFFICES**

amd 2003 SL No. 83 s 14

**SCHEDULE 9—FEES**

amd 2000 SL No. 81 s 4

sub 2000 SL No. 161 s 3 sch; 2001 SL No. 210 s 3 sch

amd 2001 SL No. 252 s 5 sch

sub 2002 SL No. 167 s 3 sch 1

amd 2003 SL No. 83 s 15

Endnotes

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sub 2003 SL No. 143 s 3 sch; 2004 SL No. 103 s 3 sch; 2005 SL No. 135 s 3 sch; 2006 SL No. 162 s 3 sch; 2007 SL No. 149 s 3 sch; 2008 SL No. 266 s 3 sch; 2009 SL No. 120 s 3 sch; 2010 SL No. 128 s 18; 2011 SL No. 115 s 3 sch

**ATTACHMENT NOT FORMING PART OF REGULATION  
RULES OF A NON-TRADING COOPERATIVE WITHOUT SHARE CAPITAL  
REGISTERED UNDER THE COOPERATIVES ACT 1997 (QLD)**

**Transfer and transmission of debentures**

**s 20** amd 2003 SL No. 83 s 16(1)

**Proxy votes**

**s 29** amd 2003 SL No. 83 s 16(1)

**RULES OF A NON-TRADING COOPERATIVE WITH SHARE CAPITAL  
REGISTERED UNDER THE COOPERATIVES ACT 1997 (QLD)**

**Transfer and transmission of shares**

**s 18** amd 2003 SL No. 83 s 16(2)

**Transfer and transmission of debentures**

**s 30** amd 2003 SL No. 83 s 16(2)

**Proxy votes**

**s 39** amd 2003 SL No. 83 s 16(2)

**RULES OF A TRADING COOPERATIVE WITH SHARE CAPITAL  
REGISTERED UNDER THE COOPERATIVES ACT 1997 (QLD)**

**Transfer and transmission of shares**

**s 18** amd 2003 SL No. 83 s 16(3)

**Transfer and transmission of debentures**

**s 30** amd 2003 SL No. 83 s 16(3)

**Proxy votes**

**s 39** amd 2003 SL No. 83 s 16(3)