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- (a) particulars of the business in relation to which the postal ballot is being conducted; and
  - (b) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
  - (c) notice of the closing date and closing time of the postal ballot;

and must be sent to members so that they arrive (assuming standard postal times) at least 21 days before the closing date of the postal ballot.

- (8) This rule does not apply in relation to special postal ballots.

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

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

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

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

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

- (3) The notice of special resolution must state:
  - (a) the intention to propose the special resolution; and
  - (b) the reasons for proposing the special resolution; and
  - (c) the effect of the special resolution being passed.

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

## **Part 4 Board of directors**

### **42 Board (CNL s172)**

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

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

- (2) The board must have a minimum of 3 and a maximum of 7 directors.
- (3) The board shall appoint a person to the position of Secretary in accordance with section 190 of the Law.

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

- (1) A person is not qualified to be a director of the co-operative unless the person is an individual over the age of 18 years and is:
  - (a) an active member of the co-operative or a representative of a corporation that is an active member of the co-operative.

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

- (1) The board may, if it considers appropriate, appoint a person to be responsible for the day to day management of the co-operative. The person may be a director or the secretary or a member of the co-operative or some other person.
- (2) The appointed person is the chief executive officer of the co-operative, and may be called the chief executive officer or (if a director of the board) the managing director.
- (3) The conditions and the period of appointment including termination must be decided by the board.
- (4) The chief executive officer is not entitled to be present or to vote at a meeting of



directors on a motion concerning the conditions of his or her own appointment, conditions of service or termination of service.

- (5) The chief executive officer cannot be required to be an active member of the co-operative.
- (6) In the event of any conflict between the terms of the appointment of a person as the chief executive officer and that person's obligations or privileges under the Law, the terms of the Law prevail over the terms of appointment.

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

- (1) The first directors are elected by poll at the formation meeting of the co-operative (except as provided by section 173(2)(b) of the Law).
- (2) The term of office of the first directors is to be not more than 3 years ending on the day of the third annual general meeting after the formation meeting.
- (3) The term of office of directors elected thereafter is one (1) year, to commence from the annual general meeting at which they are elected and to end on the day of the first annual general meeting thereafter.
- (4) The members of the board are to be elected in the manner specified in this rule.
- (5) At an annual general meeting at which a director retires, the vacated office may be filled in the following manner:
  - (a) At least 21 days before an annual general meeting, the board must:
    - (i) notify all members of the number of directors retiring at the annual general meeting and the number of directors planning on nominating for re-election; and
    - (ii) advise the members of:
      - (A) their eligibility to nominate as a director; and
      - (B) the duties and responsibilities of a director; and
      - (C) the anticipated remuneration (if any); and
      - (D) the nomination and election procedures.
  - (b) A notice must also be displayed at the place of business of the co-operative inviting nominations of nominees to serve as directors.
  - (c) A nomination must:
    - (i) be proposed by one (1) member at the annual general meeting and seconded by one (1) or more members at the annual general meeting. The nominee must consent to the nomination at the annual general meeting. This will be recorded in the



minutes.

Alternatively, a member may notify the secretary that a nomination will be made. This nomination will be valid if: the secretary has informally confirmed the nomination with the nominee prior to the annual general meeting; and a member provides the written nomination and notice of consent at the annual general meeting as well as the details in (c) ii)

(ii) Details to be provided to members and to be recorded in the minutes must include:

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

- (6) If the number of nominees equals the number of vacancies, the nominees must be declared elected at the annual general meeting.
- (7) If the number of nominees exceeds the number of vacancies, the election of directors must be conducted at the meeting by ballot as follows:
  - (a) A returning officer is elected at the meeting. The directors, the secretary and anyone who has an interest in the election are not eligible to be the returning officer.
  - (b) All nominees are to be listed on the ballot form in alphabetical order.
  - (c) The returning officer is responsible for determining the validity of and counting of the votes.
  - (d) If there is an equality of votes, the outcome must be determined by lot.
  - (e) The returning officer is to declare the election results.
- (8) If any vacancies remain at the end of the meeting, the vacancies are to be casual vacancies and must be filled in accordance with rule 48.

#### **46 Removal from office of director (CNL s180)**

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

#### **47 Vacation of office of director (CNL s179)**

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





director dies.

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

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

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

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

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

**Note 1.** Remuneration for directors is strictly controlled under the Law and requires the approval of the co-operative in general meeting. However, it is possible for a co-operative to specify in its rules that a director will receive particular remuneration if this is appropriate. It may still be necessary to obtain ratification or approval at a general meeting even in respect of specified remuneration under the rules.

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

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

- (1) Meetings of the board (including meetings conducted outside board meetings pursuant to section 176 of the Law) are to be held as often as may be necessary for properly conducting the business of the co-operative and must be held at least every 3 months.



- (2) A meeting may be held with one or more of the directors participating by using a form of communication that allows reasonably contemporaneous and continuous communication between the directors taking part in the meeting.
- (3) Questions arising at any meeting will be decided by consensus. If it is not possible to reach consensus, the decision will be deferred to the next meeting unless it is an urgent decision that cannot be deferred. If consensus cannot be reached at a second meeting, the decision in question shall be decided using a 2/3 majority vote. Urgent decisions that cannot be deferred from a first meeting shall be decided using a 2/3 majority vote.
- (4) If votes are equal, the chairperson, if a member director, has a second or casting vote.
- (5) Other than in special circumstances decided by the chairperson, at least 48 hours notice must be given to the directors of all meetings of the board, without which the meeting cannot be held.

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

- (1) The quorum for a meeting of the board shall be three (3) directors when there are five (5) or fewer currently elected directors; or 50% of the number of directors when there are more than five (5) currently elected directors.

#### **52 Chairperson of board**

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

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

- (2) If no chairperson is elected or the chairperson is not present within 15 minutes after the time fixed for holding the meeting or is unwilling to act as chairperson of the meeting, the directors present may choose one of their number to be chairperson of the meeting until the chairperson attends and is willing to act as chairperson.
- (3) The chairperson may be removed, and a new chairperson elected, by:
  - (a) ordinary resolution of the board, unless paragraph (b) applies; or
  - (b) ordinary resolution at a general meeting, if these rules provide that the chairperson is elected at a general meeting of the co-operative.

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

#### **53 Delegation and board committees (CNL s178)**

- (1) The board may by resolution delegate to:
  - (a) a director; or
  - (b) a committee of 2 or more directors; or



- (c) a committee of members of the co-operative; or
- (d) a committee of members of the co-operative and other persons if members form the majority of persons on the committee; or
- (e) a committee of directors and other persons;

the exercise of the board's powers (other than this power of delegation) specified in the resolution. The co-operative or the board may by resolution revoke all or part of the delegation.

- (2) A power delegated under this rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (3) A delegation under this rule may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (4) Despite any delegation under this rule, the board may continue to exercise the power delegated.
- (5) If a power is exercised by a director (alone or with another director) and the exercise of the power is evidenced in writing, signed by the director in the name of the board or in his or her own name on behalf of the board, the power is taken to have been exercised by the board. This is so whether or not a resolution delegating the exercise of the power to the director was in force when the power was exercised, and whether or not any conditions mentioned in subrule (3) were observed by the director exercising the powers.
- (6) A committee may elect a chairperson of their meetings. If no chairperson is elected, or, if at a meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- (7) A committee may meet and adjourn as it thinks appropriate. Questions arising at any meeting will be decided by consensus. If it is not possible to reach consensus, the decision will be deferred to the next meeting unless it is an urgent decision that cannot be deferred. If consensus cannot be reached at a second meeting, the decision in question shall be decided using a 2/3 majority vote or referred to directors. Urgent decisions that cannot be deferred from a first meeting shall be decided using a 2/3 majority vote or referred to directors.

#### **54 Other committees**

- (1) The board may by resolution appoint committees of members or other persons or both, to act in an advisory role to the board and to committees of directors.
- (2) Rule 55 (6) and (7) apply to committees appointed under this rule, with the changes approved by the board.
- (3) The quorum for a meeting of the committee is half the number of committee



members (or if half is not a whole number the whole number next higher than one half).

## 55 Minutes

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

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

- (2) Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate was held.
- (3) The minutes are to be endorsed at the meeting immediately following that to which they relate by either the chairperson of that meeting or the chairperson of the next meeting.

## Part 5 Rules

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

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

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

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

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

## Part 6 Administrative matters



## **57 Seal (CNL ss49 & 223)**

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

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

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

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

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

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

## **59 Safe keeping of securities**

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

## **60 Notices to members (CNL s611)**

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

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



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

## **Part 7      Accounting and financial matters**

### **61      Financial year**

The financial year of the co-operative ends on the 31<sup>st</sup> of January each year.

### **62      Accounts**

- (1) The board must have at least one financial institution account, electronic or otherwise, in the name of the co-operative, into which all amounts received by the co-operative must be paid as soon as possible after receipt.
- (2) All cheques drawn on the accounts, and all drafts, bills of exchange, promissory notes and other negotiable instruments, of the co-operative must be signed by 2 authorised persons.
- (3)
  - (a) The operation of any electronic accounts must be restricted so that there is a requirement for authorisation by 2 authorised persons subject to the exception in subrule (b).
  - (b) The co-operative may operate a transaction account with debit card. For use of this account, classes of transactions (including everyday re-stocking and other reasonable operating expenses) or direct-debit arrangements (including supplier payments) may be 'pre-approved' by two authorised persons. Transactions within a pre-approved class may be completed by one authorised



person operating the transaction account or debit card. Each individual pre-approved transaction must be below the transaction limit of \$2,000.

(4) For the purposes of this rule, an *authorised person* is:

- (a) a director; or
- (b) a person approved by the board.

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

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

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

- (1) The board may retain all or part of the surplus arising in any year from the business of the co-operative, to be applied for the benefit of the co-operative.
- (2) No part of the surplus may be paid or transferred directly or indirectly, by way of profit, to members of the co-operative.
- (3) A part of the surplus, but not more than 10% arising in any year from the business of the co-operative may be applied for charitable purposes that align with objectives similar to those of the co-operative as set out in Schedule 1.

**65 Provision for loss**

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

**66 Financial reports to members (CNL Part 3.3)**

- (1) The co-operative must prepare financial reports and statements in accordance with the Law, the National Regulations and these rules.
- (2) The board shall make available all documents required by the Law, the National Regulation and these rules to be submitted to each member at least 21 days before the annual general meeting of the co-operative, by:
  - (a) sending a copy to each member; or
  - (b) giving members notice that the documents are available for inspection at the registered office of the co-operative.



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

## **Part 8      Winding up**

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

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

- (1) The winding up of the co-operative must be in accordance with Part 4.5 of the Law.
- (2) If, on the winding up or dissolution, there remains any property after the satisfaction of all its debts and liabilities, this must not be paid to or distributed among the members of the co-operative but must be given or transferred to an institution or institutions:
  - (a) with objects similar to those of the co-operative as set out in Schedule 1; and
  - (b) whose constitution prohibits the distribution of its property among its members; and
  - (c) chosen by the members of the co-operative at or before the dissolution or, in default, by a judge of the court with jurisdiction in the matter.





## Schedule 1 - Objects of the Co-Operative

### 1 The objects of the Co-Operative are:

- a) to provide a retail source of wholefoods so that members may have some control over the sources of their food supply;
- b) to provide information on and promote the use of
  - i) low-cost, ethically-produced wholefoods
  - ii) bulk minimally packaged foods
  - iii) cruelty-free foods,
  - iv) vegetarian foods,
  - v) vegan foods,
  - vi) organic and biodynamic foods
  - vii) chemical free and insecticide free foods
  - viii) genetically-modified-free foods;
  - ix) local foods
  - x) Indigenous foods
  - xi) Fairtrade foods
  - xii) healthy and nutritious foods
  - xiii) farmer direct foods
  - xiv) nano free foods
  - xv) non irradiated foods
  - xvi) gluten free foods
  - xvii) heirloom varieties and biodiversly rich foods
  - xviii) foods produced by other co-operatives
  - xix) socially, environmentally and ethically just and responsible foods
- c) to play an active role in reshaping the food system and creating a socially and environmentally just food system as we believe in the principles of food democracy and food sovereignty.
- d) to run an ethical, not-for-profit sustainable business;
- e) to support waste minimisation and resource efficiency through avoidance, reduction, reuse and recycling
- f) to support other cooperatives whose objects are similar or related to the objects of the cooperative;  
and
- g) to stimulate community development, foster community spirit and promote sustainable living.

