

## **Draft Rule Changes**

### **Consultation period 15.10.21 to 12.11.21**

#### **Background**

On the 19.1.19 members voted to adopt the full revision of the Co-operative Rules.

Regular revision of rules and policies is good practice, assisting the Co-op to keep its rules up to date with current practice and compliant with Co-operative National Law (CNL) and Co-operative National Regulations (CNR).

Advice from Justice Connect on the 16.4.21 and the Governance Training on the 24.4.21 has been considered.

All members should take the time to consider the rule changes. Comments and feedback may be emailed to [secretary.goolawah@gmail.com](mailto:secretary.goolawah@gmail.com) or call a director during the consultation period from 15.10.21 to 12.11.21.

The aim is to have one single Special Resolution adopting the rule changes at the 11<sup>th</sup> December General Meeting. The Special Resolution will be posted 21 days before the GM.

#### **4. Non-distributing co-operative (CNLs19)**

##### **Change from:**

The co-operative is a non-distributing co-operative within the meaning of Section 19 of the Law.

##### **Amend to:**

- a. The co-operative is a non-distributing co-operative within the meaning of Section 19 of the Law.
- b. Non-profit clause. The assets and income of the co-operative shall be applied solely in furtherance of its objectives and no portion shall be distributed directly or indirectly to the members of the organisation except as bon fide compensation for services rendered or expenses incurred on behalf of the co-operative.

**Rationale:** ATO requirement.

#### **5. Objects**

##### **Change from:**

The objects of the co-operative shall be:

- a. To acquire and share rural land for the purpose of low-cost residential housing.
- b. To provide a setting where rural re-settlement in hamlets and village clusters can evolve.
- c. To preserve and protect flora and fauna on land acquired.

##### **Amend to:**

- a. To acquire and share rural land for the purpose of low-cost residential housing.
- b. To provide a setting where rural re-settlement in hamlets and village clusters can evolve.
- c. To preserve and protect flora and fauna on land acquired.
- d. To promote the development of a community of artists, musicians, artisans, and craftspeople.
- e. To promote the principles and methods of permaculture and self-sufficiency.

## 19. Fees and levies

### Change from:

#### 19.c Road levy

Members are required to pay a road levy per share which shall;

- a. be in addition to any other charges payable under the rules
- b. be determined by a general meeting resolution from time to time
- c. be payable within the period set by the members
- d. not exceed \$1200 in any financial year or such lesser amount as members may determine.

### Amend to:

#### 19 c. Infrastructure levy

Members are required to pay an infrastructure levy per share which shall;

- a. be in addition to any other charges payable under the rules
- b. be determined by a general meeting resolution from time to time
- c. be payable within the period set by the members
- d. not exceed \$1200 in any financial year or such lesser amount as members may determine.

**Rationale:** For the past two years the budget has referred to Infrastructure Levy, not Road Levy.

## 21. Fines payable by members (CNL ss56,126)

### Change from:

- a. The board may impose on a member a maximum fine of \$110 for an infringement of the rules, by-laws or general meeting agreements.
- b. A **fine exceeding \$20** shall not be imposed on a member pursuant to paragraph a. of this rule unless:
  - (i) written notice of intention to impose the fine and the reason for it has been given to the member; and
  - (ii) 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 the purpose of showing cause why the fine should not be imposed.

### Amend to:

- a. The board may impose on a member a maximum fine of \$110 for an infringement of the rules, by-laws or general meeting agreements.
- b. A fine shall not be imposed unless:
  - (i) written notice of intention to impose the fine and the reason for it has been given to the member; and
  - (ii) 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 the purpose of showing cause why the fine should not be imposed.

**Rationale:** CNL 126 3. does not allow a \$20 fine to be imposed without providing intention and giving reasonable opportunity to show cause why the fine should not be imposed.

## 22. Disputes and mediation (CNL 129)

### Change from:

- e. The mediator is, where possible, to be a person chosen by agreement between the parties, but in the absence of agreement between the parties:
  - (i) for a dispute between a member and another member, a person appointed by the board; or
  - (ii) for a dispute between a member (including a former member) and the co-operative, **a person appointed by the Australian Mediation Association.**

### Amend to:

- e. The mediator is, where possible, to be a person chosen by agreement between the parties, but in the absence of agreement between the parties:

- (i) for a dispute between a member and another member, a person appointed by the board; or
- (ii) for a dispute between a member (including a former member) and the co-operative, **a person trained in Alternate Dispute Resolution (ADR).**
- (iii)

**Rationale:**

By changing from “Australian Mediation Association” to “a person trained in Alternate Dispute Resolution (ADR)” the co-op is broadening the choice.

**25. Cancellations of membership of inactive members (CNL ss156-163)**

**Change from:**

- a. The board shall, after giving notice in accordance with Section 161 of the Law, declare a membership cancelled if:
  - (i) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for a continuous period of at least 2 years before the date of cancellation; or
  - (ii) the member is not presently an active member and has not been an active member at any time during the past 2 years immediately before the date of cancellation.
- b. The board is to declare the shares of a member forfeited at the same time as the membership is cancelled and the amounts due in respect of that cancellation and forfeiture shall be dealt with and repaid in accordance with Sections 163-165 of the Law.
- c. The co-operative shall, in a form approved of by the Registrar, keep a register of memberships cancelled pursuant to paragraph (a) of this rule, which shall specify the particulars prescribed in Clause 7 of Schedule 2 of the Regulation.
- d. The board shall not be required to give notice, under this rule, if the member’s whereabouts are unknown to the co-operative and the amount required to be repaid to the member in respect of the cancelled membership (whether by reason of the cancellation of share or otherwise) does not exceed \$100.

**Amend to:**

**25. Cancellation of inactive memberships and cancellation of members’ shares (CNL ss156-165)**

- a. The board must give the inactive member at least 28 days’ notice of their intention to cancel the membership.
- b. The board must declare a membership cancelled if:
  - i. the whereabouts of a member is not known and has not been known for at least two years.
  - ii. the member is not presently active and has not been active within the meaning of rule 10 b in the past 2 years.
- c. The board must declare the shares of the member to be forfeited at the same time the membership is cancelled.
- d. A co-operative’s board may defer cancellation of membership for a period of up to 12 months in limited circumstances (including if there are grounds to believe that unusual circumstances prevented the member fulfilling the active membership obligations).
- e. The CNL sets out circumstances in which the membership of an inactive member cannot be cancelled including if the co-operative is insolvent, under administration, if a receiver has been appointed or if the co-operative is being wound up.
- f. A maximum penalty of \$2000 may be imposed for failure to cancel the membership of inactive members.
- g. The board shall, in a form approved of by the Registrar, keep a register of memberships cancelled pursuant to paragraph (b) of this rule, which shall specify the particulars prescribed in Clause 7 of Schedule 2 of the Regulation.
- h. The board shall not be required to give notice, under this rule, if the member’s whereabouts are unknown to the co-operative and the amount required to be repaid to the member in respect of the cancelled membership) does not exceed \$100.

**Rationale:** Further clarification of this rule was requested by members. Reviewed CNL ss156-165 to write the amendment. Finance Policy amended accordingly.

### 34. Appointment of secretary (CNLs190)

#### Change from:

- a. The **co-operative** shall elect a secretary at the annual general meeting who shall perform all the functions and duties required by the Law, the Regulations, and the rules.
- b. A secretary shall:
  - i. be elected to the office on such terms and conditions as the **co-operative** may determine; and
  - ii. hold office until the next annual general meeting, or removed by the board, or resignation from office.

#### Amend to:

- a. The **board** shall elect a secretary who shall perform all the functions and duties required by the Law, the Regulations, and the rules.
- b. A secretary shall:
  - i. be elected to the office on such terms and conditions as the **board** may determine; and
  - ii. hold office until the next annual general meeting, or removed by the board, or resignation from office.

**Rationale:** CNL 190 states 'the Board of the co-operative is to appoint a secretary'. CNL overrides the co-operative rules.

### 42. Decisions at General meetings (CNL 256)

#### Change from:

42 a. All ordinary or special resolutions must be decided by a two thirds majority.

#### Amend to:

42. Decisions at General meetings (CNL ss237-241, 256)

- a.
  - i) All ordinary resolutions must be decided by a simple majority, and all special resolutions must be decided by a two thirds majority.
  - ii) A special resolution is required for altering the rules of the co-operative, any other matter that the co-operative may determine in a general meeting or is required by the Law or regulations.
  - iii) All resolutions related to By-Laws, Code of Conduct, Policy, and Annual Budgets shall require a special resolution.

#### Rationale:

On 16 April 2021 the Co-operative received advice from Justice Connect Not-for-profit law, regarding majority voting at General Meetings. All directors were invited to participate in the teleconference. Denise, Peter O and Wayne S participated.

#### Complying with the Law

For the Co-operative to comply with the Law, Justice Connect recommended the co-operative make some amendments. From a risk management perspective, it is unwise for the co-operative to state all 'ordinary resolutions must be decided by a two thirds majority', when the Law states 'all ordinary resolutions must be decided by a simple majority'.

This amendment ensures the co-operative is complying with the Law whilst maintaining two thirds majority voting for all important decisions.

The Justice Connect lawyer, Bohdi Dun made reference to the following section of **Co-operative National Law (CNL)**;

#### Division 2 Resolutions

##### 237 Decisions to be by ordinary resolution

Unless this Law or the rules of the co-operative otherwise provide, every question for decision by a co-operative must be decided by ordinary resolution.

### **238 Ordinary resolutions**

An ordinary resolution is a resolution of a co-operative that is passed by a simple majority at a general meeting of the co-operative or in a postal ballot of members.

### **239 Special resolutions**

1. A special resolution is a resolution of a co-operative that is passed:

- a. a two-thirds majority at a general meeting of the co-operative;
- 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.

### **43. Proxy votes**

#### **43. c Change from:**

An instrument appointing a proxy MAY direct the way the proxy is to vote in relation to a particular resolution.

#### **Amend to:**

An instrument appointing a proxy MUST direct the way the proxy is to vote in relation to a particular resolution i.e. closed proxy

**Rationale:** This rule change would mean no open proxies, only closed proxies. All resolutions would be published prior to the general meeting. Should an amendment be accepted, and the members present decide the vote would be influenced due to proxies becoming invalid, then the resolution would go the next GM or a Special General Meeting.

### **52. Proceedings of the board**

#### **52 (b) Change from:**

Questions, including resolutions arising at a meeting, must be decided by a two-thirds majority of votes, i.e. five.

#### **Amend to:**

Remove the Rule.

**Rationale:** The rule does not make sense when considering rule 52 (d) in conjunction with 52(b). A quorum is the number of directors required to enable the board to make a decision. It is impossible under the current rule to have a quorum of 4 and expect 5 directors to vote. Therefore, the rule is invalid. In addition, there is no allowance in the Law to change board decisions from a simple majority to a 2/3 majority.

#### **52 (d) Change from:**

The quorum for a meeting of the board shall be four directors, being fifty per cent or more of the number of directors.

#### **Amend to:**

The quorum for a meeting of the board shall be 5 directors.

#### **Rationale:**

It is important to have 5 out of 7 directors present for a board meeting. A director may request an alternate director attend in their place.