

# RULE BREACHES, COMPLAINTS AND DISPUTES POLICY

## DRAFT

### References

**Goolawah Co-operative Rules** – Rule 9 By-Laws, Rule 21 Fines payable by members, Rule 22 Disputes and mediation.

**The Co-operative National Law (CNL)** - Ss 56, 126 Fines payable by members, Ss 129 -130 Disputes Involving Members, Ss 131 – 139 Oppressive Conduct of Affairs

**Fair Trading NSW** <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative/managing-co-operative-disputes>

**The Co-op Federation** <https://fed.coop/co-operatives-in-australia-a-manual/part-three-running-a-co-operative/>

### Overview

To provide members with a consolidated summary of the Law and the Co-operative Rules as it relates to disputes and alleged breaches of the Co-operative Rules.

Co-operative Rules have the effect of a contract between the co-operative and its members, and any alleged breach of the rules should be dealt with according to the dispute resolution procedure.

The Co-operative has a Code of Conduct that describes the behaviour expected of members.

### Definitions of technical terms

<i>Complaint (or grievance)</i>	An implied or expressed statement of dissatisfaction where a response is sought, reasonable to expect, or legally required.
<i>Dispute</i>	An unresolved complaint. Eg. If someone registers a complaint, but no satisfaction results, then there exists a <i>dispute</i> between parties (ie: between two Co-operative members, or a member and the Co-operative).
<i>Rule breach</i>	The Goolawah Co-operative membership has voted on a set of Rules (see <a href="https://goolawahmembers.files.wordpress.com/2021/07/goolawah-co-op-ltd-rules-july-2021.pdf">https://goolawahmembers.files.wordpress.com/2021/07/goolawah-co-op-ltd-rules-july-2021.pdf</a> ). All members, as part of their membership process, signed a form committing to abide by these rules. If a member contravenes one of these rules, that is known as a <i>rule breach</i> .
<i>Complainant</i>	A person making a complaint.
<i>Complaine</i>	A person complained about.
<i>Incident</i>	Notice of a rule breach or complaint. An incident may be reported via the complaint form or electronic means.
<i>Penalty</i>	Refer to Rule 21 fines payable by Members in Goolawah Rules

### 1. Complaints

Complaints may be raised within 14 days of the incident, when a member wishes to report an incident, or state their dissatisfaction with a situation, member or the Co-operative. If the period exceeds this timeframe the Board will consider it depending on the circumstances. Complainants should use the Complaints form attached to this policy. The following sections detail how the board will respond to the complaint, depending on whether it is a situation that requires remediation, a rule breach or deemed a dispute.

Note: Any conduct that unreasonably affects the community through misuse of the complaints process will be deemed a breach of the rules and will be treated as such.

## 2. The Board's management of *Rule Breaches*

- a. The Board is responsible for managing the affairs of the co-operative in accordance with the legislation and the co-operative's rules. The role of the Board includes implementing the policies, by-laws and rules established by the co-operative's membership.
- b. Where a *rule breach* raises a risk of significant harm, or there is risk to health or safety, the Board will act immediately, and will take measures to advise the matter to be directed to the police or other appropriate authority. In these circumstances, this policy provides the board or its delegate the authority to speak directly with members and to enter members' sites in order to do so.
- c. The Board is unable to intervene in alleged Rule breaches where there are no witnesses or other evidence. In such circumstances, the Board will direct a complainant to follow *Rule 22 Disputes and Mediation*.
- d. For alleged Rule breaches **where** there is significant evidence or has been witnessed, the board will respond proactively and, at its discretion, investigate, consider relevant evidence, seek written statements from any witnesses, and provide the **complainant** and **complainee** with an opportunity to provide their views, before making any determination. Where a rule breach is determined, the Board may implement *Rule 21 Fines payable by members*.
- e. If dissatisfied with the Board's decision, the party found to be in breach of a rule may choose to bring the matter to the next General Meeting, putting forward a proposal and a rationale to amend the Board's decision. If the member disagrees with the General Meeting's decision, the member may raise a dispute with the Co-operative, and *Rule 22 Disputes and Mediation* must be followed.

## 2 Fines for Rule Breaches

- a. **Rule 21** allows the Board to impose a fine to maximum of \$110 on a member for an infringement of the Rules, By-laws, Policies or General Meeting agreements. A fine is due at the time of the decision and becomes payable with the next quarterly levies invoice and must be paid to maintain active membership.
  - 1st infringement – **warning** or \$50, at the discretion of the board.
  - 2nd infringement \$80
  - 3rd infringement \$110
- b. The Board must: **a)** give notice to the member that it intends to impose a fine, **b)** give the reason for the fine, and **c)** give the member 14 days to appeal the decision. The member may appear before the Board in person (with or without a support person), or may send a written statement showing cause why the fine should not be imposed. If the member does not respond to the notice within the 14 days period, the fine will be imposed as initially directed.
- c. All Rule breaches resulting in a fine will be recorded in the Incident and Rule Breaches Register and may be viewed by members through the Secretary.

## 3 The Board's management of Disputes

- a. The Board may decide **that** a complaint constitutes a *dispute* between parties, rather than a rule breach.
- b. Where an incident raises any risk of significant harm, or there is risk to health or safety, the Board will act immediately, and will generally advise the matter to be directed to the police or other appropriate authority. In these circumstances, the board may contact the complainant and complainee directly by the most expeditious means. This policy also provides the **Board** or its delegates the right to enter a members site to ensure this is possible.
- c. For all other disputes, the Board will support members to follow *Rule 22 Disputes and Mediation* (see Dispute Resolution below).

#### 4 Dispute resolution

- a. The Dispute resolution process occurs when a complaint cannot be resolved. The sections below detail this process.
- b. The Law states the rules of the Co-operative must include a procedure for dealing with a dispute between:
  - i. a member and another member (including a person who was a member not more than 6 months before the dispute occurred)
  - ii. a member and the co-operative.
- c. The procedure must allow for natural justice to be applied, meaning that all parties involved in the dispute should understand all the facts of the situation, be heard by an unbiased party, and be allowed the right to reply to an accusation.
- d. A member may appoint any person to act on their behalf in the dispute procedure.
- e. Resolving a dispute directly with all parties involved at the earliest opportunity is usually the simplest and most cost-effective way for all involved.
- f. If this direct approach fails, the dispute resolution procedure described under Co-operative *Rule 22 Disputes and Mediation* should be followed.

**NOTE:** *NSW Fair Trading* does not:

- i. intervene in or conciliate disputes between members or between members and a co-operative.
- ii. provide legal advice (including an interpretation of a Co-operative's Rules).
- iii. intervene in or determine the validity of meetings or elections.

NSW Fair Trading can only intervene in matters relating to alleged breaches of the CNL (Co-operatives National Law) (see website <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/about-co-operatives/co-operatives-national-law>).

- g. A member or the Co-operative may consider obtaining legal advice from a suitably qualified practitioner if the dispute cannot be resolved directly with the Co-operative.

Information or legal assistance is available from:

- i. a legal practitioner of your choice
- ii. Law Access on 1300 888 529
- iii. Justice Connect on 02 8599 2100.

Information on alternative dispute resolution services is available from:

- i. The Law Society of NSW on 02 9926 0333
- ii. NSW Department of Justice on 02 8688 7777

- h. A member can apply to the Supreme Court for an order if they believe the affairs of the co-operative are being conducted in a way that is:
  - i. oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member, or,
  - ii. contrary to the interests of the members.

Complete the attached form and email to the Secretary.Goolawah@gmail.com or give to any Director.

If you require assistance completing the form or would like to discuss the matter, please contact any director.

### **Goolawah Co-operative Complaint form**

[Use this form to register a formal complaint about matters which might be either a breach of a rule, or a complaint with another party.]

<b>Complainant's Name:</b>	<b>Signature:</b>	<b>Date:</b>
Name of any complainee involved if this is a dispute or alleged rule breach:		
Please indicate whether this complaint involves: dissatisfaction with a situation an alleged breach of a Rule or By-Law an alleged breach of the Code of Conduct		
List the names of any witnesses or provide evidence (the Board will seek written statements).		
When did this happen? Date and time is required.		

Describe what happened. If insufficient space please provide an attachment.

In respect to a breach concerning Rules, Code of Conduct or By-Law please sign the declaration below:

I the undersigned solemnly declare that the above is true.

Signature of Complainant \_\_\_\_\_

Witness if available.

Witness name \_\_\_\_\_

Witness signature \_\_\_\_\_