

# RULE BREACHES AND DISPUTES

## POLICY and PROCEDURES

### Draft for Goolawah Community consultation 2023

#### Overview

This policy provides 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.

Goolawah community has 3 documents relevant to this policy:

1. The Code of Conduct outlines the rights and responsibilities of members, guests and visitors.
2. Goolawah Co-operative Rules are largely drawn from National Co-operative Law rulings that define co-operative structures.
3. Goolawah By-laws, technically part of the Co-operative Rules, contain important Goolawah-specific principles such as: how to behave, how to best protect the environment, how to plan ongoing community development, and how to govern our community.

Co-operative Rules have the effect of a contract between the co-operative and its members, and any alleged breaches or disputes should be dealt with according to this policy. 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 policies, by-laws and rules established and agreed to by the Co-operative's membership.

#### Definitions of technical terms relevant to this policy

<i>Issue</i>	An issue is something that arises creating a dissatisfaction where a response is sought, reasonable to expect, or legally required.
<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>Dispute</i>	An unresolved issue that is not a rule breach. Eg. If someone raises an issue, 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).

#### 1 Notifying the Board about an Issue

When a member needs to report an issue, or state their dissatisfaction with some situation, they should contact the Board within 14 days of the incident. If the period exceeds this timeframe, the Board may still consider it, depending on the circumstances. It is sufficient to speak with any director, in the first instance, but most helpful to complete and lodge the form (see below) with any current director or the Secretary.

#### 2 Is the Issue a rule breach or a dispute?

The first task for the Board is to decide whether there has been a rule breach or whether there is a dispute between parties. The Board will make this decision by speaking with all relevant parties, then explaining to them which kind of issue it is.

### 3 The Board's management of *Rule Breaches*

For alleged rule breaches where there is significant evidence or the breach has been witnessed, the board will investigate, consider relevant evidence, seek written statements from any witnesses, and provide all parties with an opportunity to provide their views, before making any determination. Ideally, issues can be resolved through warnings, apologies, or other low intervention means. Rule 21 does allow the Board to impose fines (see 4 below), but fines will only be used only as a last resort.

If an effected party is dissatisfied with the Board's decision, they may choose to bring the matter to a 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.

#### NOTES:

1. Where a rule breach or dispute raises a risk of significant harm, or there is risk to health or safety, the Board will act immediately, and will advise the matter to be directed to the police or other appropriate authority.
2. The Board is unable to intervene in alleged Rule breaches where there are no witnesses or other evidence. In such circumstances, the Board will suggest the affected members follow *Rule 22 Disputes and Mediation*.

### 4 Fines for Rule Breaches

*Rule 21 Fines payable by Members* allows the Board to impose a fine to maximum of \$110 on a member for an infringement of the Rules, By-laws, or General Meeting agreements. A fine becomes payable with the next quarterly levies invoice and must be paid to maintain active membership.

A fine shall not be imposed unless:

1. written notice of intention to impose the fine and the reason for it has been given to the member; and
2. 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.

If the member does not respond to the notice within 14 days, the fine will be imposed.

1st infringement – \$50                      2nd infringement \$80                      3rd infringement \$110

If the member continues to breach the rule after the breach is determined and the member notified, the continuing breach will be regarded as another infringement.

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.

### 5 The Board's management of *Disputes*

Co-operative Law requires Goolawah to have in place a procedure for dealing with a dispute, either between members, or between a member and the co-operative itself.

That 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.

Resolving a dispute at the earliest opportunity is usually the simplest and most cost-effective way for all involved. Whenever a dispute arises, the Board's first step will be to try to resolve the dispute directly with the parties involved.

If this direct approach fails, then the Board will encourage affected parties to follow the dispute resolution procedure in the co-operative's rules (see Rule 22), which may involve mediation.

If the matter remains unresolved after mediation, a member or the co-operative can also apply to the Supreme Court of NSW for an order that declares or enforces the rights or obligations of the member or the co-operative.

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.

## **6 Contacts and Information about legal assistance**

Information or legal assistance is available from:

- a. a legal practitioner of your choice
- b. Law Access on 1300 888 529
- c. Justice Connect on 02 8599 2100.

Information on alternative dispute resolution services is available from:

- a. The Law Society of NSW on 02 9926 0333
- b. NSW Department of Justice on 02 8688 7777

**NOTE:** NSW Fair Trading does not intervene in disputes, or provide legal advice, or determine the validity of meetings or elections. They can only intervene in matters relating to alleged breaches of the Cooperatives National Law.

## **7. Relevant References**

- a. Goolawah Co-operative Rules:
  - Rule 9 By-Laws
  - Rule 21 Fines payable by Members
  - Rule 22 Disputes and mediation.
- b. 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
- c. Fair Trading NSW <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/co-operatives/running-a-co-operative/managing-co-operative-disputes>
- d. The Co-op Federation <https://fed.coop/co-operatives-in-australia-a-manual/part-three-running-a-cooperative/>

## Form for Notifying the Goolawah Board about an Issue

Please use this form to bring any important Issue to the Board's attention. While verbal reports are possible, ultimately details need to be carefully recorded, so it is most helpful to complete and lodge this form with any director or the Secretary [secretary.goolawah@gmail.com].

Name:
Name of others involved in the alleged rule breach or dispute:
Name of any witnesses:
When did this happen? Date and time.
Describe what has happened:
Signature: _____ Date: _____

[This form is available as a Word document from the Secretary. If you cannot access it, the Board will accept any personal document or email, formatted with same text, and respecting the same length guide].