

**RULES OF Alfalfa House Community Food Cooperative Ltd (NSWC 00932)**

**A non-distributing co-operative without shares registered in New South Wales**

**As amended at the Alfalfa House Annual General Meeting, 13 December 2020**

**Registered by the New South Wales Registrar of Co-operatives, 1 July 2021**

# CATEGORY ONE –

## Co-operative name, primary activities and active membership

### 1.1 CO-OPERATIVE NAME

The name of the co-operative is Alfalfa House Community Food Cooperative Ltd.

### 1.2 DEFINITIONS

In these rules:

- Either of the words **Law** or **Act** means the co-operatives legislation applying in the State or Territory where the co-operative is registered.
  - **co-operatives legislation** means:
    - for co-operatives registered in Western Australia, the Co-operatives Act 2009 (WA)
    - for co-operatives registered in Queensland, the Cooperatives Act 1997 (QLD)
    - for co-operatives registered in all other States and Territories, the Co-operatives National Law (CNL).
- **co-operative principles** means the co-operative principles adopted under the co-operatives legislation applying in the State or Territory where the co-operative is registered.
- **legal personal representative** comprises a solicitor, attorney, trustee, executor or any other person lawfully appointed to represent the interests of a natural person, who is unable to manage their affairs through mental or physical incapacity or because the person is deceased.
- **Members' Council** means the board of the co-operative
- **Working Group** means a committee and may also be referred to as a Volunteer Team
- **year** means the co-operative's financial year as defined in these rules.

Unless specifically defined, words and expressions have the same meaning as they have in the applicable co-operatives legislation.

## 1.3 PURPOSE

The co-operative will:

- a) provide a retail source of wholefoods so that members may have some control over the sources of their food supply;
- b) provide information on, and promote the use of:
  - i) low-cost, ethically-produced and minimally-packaged wholefoods,
  - ii) cruelty-free foods,
  - iii) vegetarian foods,
  - iv) vegan foods,
  - v) organic foods and
  - vi) genetically-modified-free foods;
- c) run an ethical, not-for-profit business;
- d) minimise resource wastage and, hence, encourage reuse and recycling;
- e) support other co-operatives whose objects are similar or related to the objects of the co-operative; and
- f) stimulate community development, foster community spirit and promote sustainable living.

### 1.3A PRIMARY ACTIVITIES

A primary activity of the co-operative is to provide members with access to sources of wholefoods.

### 1.3B ACTIVE MEMBERSHIP

In order to establish and maintain active membership of the co-operative, a member must:

- (a) Pay any annual subscription set out in rule 3.1; and
- (b) Make at least one purchase of products or services from the co-operative in a given calendar year.

## 1.4 CANCELLATION OF MEMBERSHIP FOR INACTIVITY

1. The Members' Council must cancel a person's membership if:
  - a. the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for the required period; or
  - b. the member is not active and has not been active within the meaning of rule 1.3B for the required period.
2. In this rule the required period is 2 years.
3. The Members' Council may defer cancellation of a person's membership for up to one year in accordance with the Law.

**Note:** Cancellation of a person's membership requires a procedure set out in the relevant co-operatives legislation. Cancellation leads to a loss of rights and so requires notice to the member, where possible. Cancellation will trigger an obligation to repay share capital to the member. The board of the co-operative has a responsibility to cancel inactive members. Section 159 of the Law sets out when a board may defer cancellation of a person's membership.

# CATEGORY TWO – Membership and member rights and obligations

## 2.1 MEMBER QUALIFICATIONS

Only natural persons qualify for membership of the co-operative.

## 2.2 MEMBER APPLICATIONS, FEES AND ANNUAL SUBSCRIPTIONS

1. Applications for membership must be lodged at the registered office or on the website of the co-operative using the application form approved by the Members' Council, and should be accompanied by payment of:
  - a. any application fee, as determined by the Members' Council from time to time and published at the registered office; and
  - b. payment of the annual subscription under rule 3.1.

**Note:** *The application fee is designed to cover the administrative costs of dealing with an application for membership. As well as being published at the registered office of the co-operative it should also appear as part of the application for membership. Any annual subscription requirements should also be disclosed on the application for membership.*

2. Every application for membership must be considered by the Members' Council.
3. If the Members' Council approves the application, the applicant's name and any other information required under the Law must be entered in the register of members within 28 days of the board's approval.
4. 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.
5. The Members' Council may, at its discretion, refuse an application for membership.
6. The Members' Council need not provide reasons for the refusal. On refusal, any amounts accompanying the application for membership, other than the application fee referred to in paragraph 1a of this rule, must be refunded within 28 days without interest.

## 2.3 WHEN MEMBERSHIP CEASES

1. A person will cease to be a member of the co-operative in each of the following circumstances and as otherwise provided by the Law if:
  - a. the person's membership is cancelled in accordance with these rules or the Law;
  - b. the member is expelled or resigns under these rules;
  - c. the contract of membership is rescinded on the ground of misrepresentation or mistake;
  - d. for a member who is not a joint member with other persons, the member dies.
2. Except as otherwise provided by the Law, a person will not cease to be a member of a co-operative if the person becomes bankrupt and their property is subject to control under laws relating to bankruptcy.

## 2.4 MEMBER RESIGNATION

A member may resign from a co-operative by giving one month's notice in writing or such lesser period of time approved by the Members' Council in a particular case.

## 2.5 EXPELLING A MEMBER

1. A member may be expelled from the co-operative by special resolution on the grounds:
  - a. that the member has seriously or repeatedly failed to discharge their obligations to the co-operative under these rules, or any contract or memorandum of understanding entered into by the member with the co-operative; or
  - b. that the member has acted in a way that has:
    - i. prevented or hindered the co-operative in carrying out its primary activity or one or more of its primary activities; or
    - ii. brought the co-operative into disrepute; or
    - iii. been contrary to one or more of the co-operative principles and has caused the co-operative harm.
2. Written notice of the proposed special 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. At the general meeting, when the special resolution for expulsion is proposed, each of 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 member's alleged conduct must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
  - c. once the alleged conduct is considered, the co-operative may decide to expel the member concerned;
  - d. the co-operative must make a decision on expulsion by secret ballot of those members who are entitled to vote and who are either present or represented by a legal personal representative or a proxy; and
  - e. the special resolution is passed if at least two-thirds of the members voting in the secret ballot vote in favour of the expulsion.
4. Expulsion of one joint member means expulsion of all members holding membership jointly with the expelled member.
5. An expelled member must not be re-admitted as a member unless the re-admission is approved by special resolution.
6. A member re-admitted must not have restored to them any shares that were cancelled on their expulsion.

## 2.6 FINANCIAL CONSEQUENCES OF RESIGNATION OR EXPULSION

1. If a member is expelled or resigns from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.
2. If a member has prepaid an annual subscription, and
  - a. the amount of the annual subscription is less than or equal to \$100, the co-operative may retain the whole of the prepaid annual subscription; or
  - b. the amount of the annual subscription is greater than \$100, the co-operative must refund a pro-rated amount for the remainder of the subscription period less any reasonable costs incurred in administering a refund.

## 2.7 SUSPENDING A MEMBER

1. The Members' Council of the co-operative may suspend a member for not more than one year on the grounds that the member has:
  - a. contravened any of these rules;
  - b. failed to discharge obligations to the co-operative, whether under these rules, a contract or memorandum of understanding; or
  - c. acted detrimentally to the interests of the co-operative.
2. In order to suspend a member, the Members' Council must give written notice to the member of its intention to suspend membership. Such written notice must include the grounds for suspension and allow the member a reasonable time and opportunity to respond in writing to the notice.
3. The Members' Council must convene a Members' Council meeting to consider suspension of the member and must permit the member to attend the meeting and address the Members' Council on the matter of the suspension.
4. If the Members' Council resolves to suspend a member, then it must provide the member with written notice of such suspension, the terms of the suspension and the reasons for suspension.
5. During the period of suspension, the member:
  - a. loses any rights (except the right to vote) arising as a result of membership; and
  - b. is not entitled to a refund, rebate, relief or credit amounts paid or payable to the co-operative under these rules.
6. A member may appeal against the decision of the Members' Council to suspend membership within 14 days of the Members' Council's decision.
7. An appeal against suspension may be dealt with at a general meeting of the co-operative called to consider a special resolution to confirm or overturn the suspension decision by the Members' Council.
8. An appeal against suspension shall follow the same procedure set out for the expulsion of a member under rule 2.5.3.
9. A decision by the Members' Council to suspend a member does not take effect until the time for appeal has expired or the appeal against such suspension has been determined.

## 2.8 DISPUTE RESOLUTION

1. The grievance procedure set out in this rule applies to disputes under these rules between:
  - a. a member and another member; or
  - b. a member and the co-operative.
2. If a dispute arises, a party cannot commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this rule, except where a person seeks urgent interlocutory relief.
3. The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days of:
  - a. the dispute coming to the attention of each party; or
  - b. a party giving notice, to each of the other parties involved, of the dispute or grievance.
4. If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.
5. The mediator is, where possible, to be chosen by agreement between the parties. In the absence of agreement between the parties:
  - a. for a dispute between a member and another member, the mediator is to be a person appointed by the Members' Council; or
  - b. for a dispute between a member and the co-operative, the mediator is to be a person appointed by the Australian Mediation Association or some other body that provides alternative dispute resolution services.
6. The mediator may be a member of the co-operative, unless they are also party to the dispute.
7. The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
8. The mediator, in concluding the mediation, must:
  - a. give the parties to the mediation process every opportunity to be heard; and
  - b. allow due consideration by all parties of any written statement submitted by any party; and
  - c. ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
9. The mediator cannot determine the dispute.
10. The mediation must be confidential and without prejudice.
11. The costs of the mediation are to be shared equally between the parties unless otherwise agreed.
12. This rule does not apply to any dispute:
  - a. as to the construction or effect of any mortgage or contract contained in any document, or
  - b. involving the expulsion or suspension of a member.
13. If the mediation process does not resolve the dispute, either party may seek resolution through arbitration or legal action.
14. In this rule, the word **member** includes any person who was a member not more than 6 months before the dispute occurred.

## 2.9 FINES PAYABLE BY MEMBERS

No fines are to be imposed on members in any circumstances.

## 2.10 LIABILITY OF MEMBERS

1. A member is liable to the co-operative for the amount, if any, unpaid in respect of any application fees or regular subscriptions payable by the member to the co-operative under these rules.
2. Joint members are jointly and severally liable for any amount unpaid on under paragraph 1 of this rule.

## 2.11 VALUE OF INTEREST OF DECEASED MEMBER

The value of the interest of a deceased member, who is not part of a joint membership, is the amount that would have been payable to the member if the member had resigned.

## 2.12 RIGHTS AND LIABILITIES OF MEMBERS WHO ARE BANKRUPT OR OTHERWISE INCAPABLE

1. The interest of an individual member who becomes bankrupt may be transferred to the member's, trustee, administrator or liquidator, as the case may be, in accordance with the laws dealing with such events.
2. A legal personal representative appointed to administer the estate of a person who, through mental or physical incapacity, is incapable of managing their affairs, may be registered as a member and the rights and liabilities of membership vest in that person during the period of the appointment.
3. The Members' Council may decide to suspend some or all active membership obligations where a legal personal representative has been appointed for a member, if there are grounds to believe that the member's mental or physical incapacity is temporary.

**Note:** *If a member becomes bankrupt (natural person) or incapable of managing their affairs, then various laws provide that another qualified person will take charge of that person's financial affairs. For a bankrupt it is usually a trustee in bankruptcy, for person who is mentally or physically incapable, it will be a legal personal representative, who is substituted as the person with authority to deal with that person's financial affairs. Normally only persons who are active members are permitted to maintain an interest in a co-operative. This rule permits the substitution of an administrator, or trustee as the case may be, to stand in the place of a member in these circumstances.*



## **CATEGORY THREE – Finance and securities**

### **3.1 ANNUAL SUBSCRIPTIONS**

1. Members must pay an annual subscription of up to \$50 plus GST each calendar year as determined by the Members' Council from time to time and announced at the co-operative's Annual General Meeting.
2. The annual subscription fee shall be payable in advance within a period determined by the Members' Council.
3. The Members' Council may, in its discretion, waive all or part of the annual subscription fee and/or extend the payment period for a member or a class of members.

### **3.2 TRANSFER OF DEBENTURES AND OTHER SECURITIES**

1. Non-share securities, such as debentures or co-operative capital units, may be transferred using an instrument or form approved by the Members' Council that is executed by, or on behalf of, the transferor and the transferee.
2. The transferor is taken to remain the holder of the security until the transferee's name is entered in the register of security holders.
3. The Members' Council may decline to register an instrument or form transferring a security other than a share if:
  - a. the transfer would be contrary to the terms of issue of such security; or
  - b. the transfer fee (as noted on the transfer form or instrument) is not paid to the co-operative for the transfer of registration.
4. The Members' Council of the co-operative may require the instrument or form of transfer to be accompanied by:
  - a. the relevant security certificate(s) and any other evidence the Members' Council reasonably requires showing the right of the transferor to make the transfer; and
  - b. evidence of the payment of any government duty where such duty is payable.
5. If the co-operative refuses to register a transfer of securities under this rule, it must, within 28 days after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

### **3.3 ISSUE OF CO-OPERATIVE CAPITAL UNITS (CCUs)**

1. The Members' Council may confer an interest in the capital of the co-operative by issuing CCUs in accordance with the Law.
2. At a meeting of CCU holders, each CCU holder is entitled to one vote regardless of the number of CCUs held.
3. The rights of the holders of CCUs may be varied only in the way and to the extent provided by their terms of issue and only with the consent of at least 75% of those holders of CCUs who, being entitled to do so, cast a formal vote to accept the variation at a meeting.
4. The holder of a CCU has, in the person's capacity as a holder of a CCU, none of the rights or entitlements of a member of the co-operative.
5. The holder of a CCU is entitled to receive notice of all relevant meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative.

# CATEGORY 4 – Members’ Council and Members’ Council meetings

## 4.1 MEMBERS’ COUNCIL

1. The business of the co-operative is to be managed by or under the direction of the board of directors, known as the Members’ Council, and for that purpose the Members’ Council has and may exercise all the powers of the co-operative that are not required to be exercised by the co-operative in a general meeting.
2. The Members’ Council shall consist of a minimum of five and a maximum of nine directors.
3. The Members’ Council may, by resolution, delegate any of its powers (other than this power of delegation) provided that the delegation:
  - a. is in writing; and
  - b. the instrument of delegation clearly describes the power delegated and any limitations on the exercise of such delegated power.

**Note 1:** *The board is empowered to make decisions regarding the operations and business of the co-operative. Important questions such as the election, removal and remuneration of directors, changes to this constitution and other matters that require a resolution or special resolution under the Law, must be made by the members.*

**Note 2:** *A co-operative board may also establish committees to assist with particular functions in an advisory capacity. Advisory committees may comprise directors or directors and other members or other members. Boards need to identify particular functions and establish a system to appoint or elect persons to various committees. For example, it may be useful to establish a finance committee or a member engagement committee to assist the board in planning and delivering its obligations. Committees would need to report to the board and may, if authorised by a delegation under this rule, have delegated authority to perform certain functions.*

## 4.2 QUALIFICATIONS OF DIRECTORS

1. A person is not qualified to be a director of the co-operative unless the person is a natural person over the age of 18 years and is an active member of the co-operative.
2. A person qualified to be a director under this rule is known as a member director.

## 4.3 FIRST DIRECTORS AFTER ADOPTION OF THESE RULES AND TERMS OF OFFICE

1. The first directors are those directors who are elected at the next Annual General Meeting (AGM) after the adoption of these rules at the AGM on 23 February 2020.
2. The term of office of the first directors shall be determined at the AGM in order to enable their retirement by rotation and in any event shall be no more than two years ending on the day of the second AGM.
3. Thereafter the term of office for a director is two years, ending on the day of the second AGM after that director’s election.
4. A director shall serve for no more than three consecutive terms of office, unless there remain vacancies after nominations have been called.

#### 4.4 ELECTION OF MEMBER DIRECTORS

1. The member directors are to be elected to the Members' Council in the manner specified in this rule.
2. At an AGM at which there are vacancies in the office of director as a result of retirement or due to a casual vacancy, the vacated office may be filled in the following manner:
  - a. At least three weeks before the AGM, the Members' Council must:
    - i. notify all members of the number of directors retiring at the AGM and any casual vacancies to be filled; 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.
3. A notice must also be displayed at the place of business of the co-operative inviting nominations of persons to serve as directors.
4. A nomination for election of a member director must:
  - a. be signed by two or more members; and
  - b. provide details of the qualifications and experience of the person nominated; and
  - c. be accompanied by a notice in writing signed by the person consenting to their nomination.
5. The nomination and the notice of consent must be lodged with the secretary of the co-operative at least 7 days before the AGM.
6. If the number of nominees equals the number of vacancies, the nominees must be declared elected at the AGM.
7. If there are insufficient nominees to fill all vacancies, the nominees must be declared elected at the AGM and any remaining vacancies will become casual vacancies.
8. 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 for the last vacancy then there must be a new ballot between the tied nominees.
  - e. The returning officer is to declare the election results.

#### 4.5 REMOVAL OF A DIRECTOR

1. The co-operative may by resolution under the Law, with special notice, 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.
2. For the purposes of this rule, 'special notice' is a notice required under the Law to be given two months prior to the meeting at which the resolution is to be considered.

#### 4.6 WHEN A DIRECTOR VACATES OFFICE AND CASUAL VACANCIES

1. In addition to the circumstances set out in s179 of the CNL, a director vacates office if the director dies or becomes unable to manage their affairs by reason of mental incapacity.
2. The Members' Council may appoint a qualified person to fill a casual vacancy in the office of director that arises because of an event referred to in paragraph 1 of this rule or because there were insufficient nominees for election at an AGM.
3. A person appointed to fill a vacancy under paragraph 2 of this rule is appointed until the next AGM.

#### 4.7 ALTERNATE OR DEPUTY DIRECTORS

1. The Members' Council may appoint a person to act as a director (an alternate director or deputy director) in the place of an absent director (the principal director).
2. A person is qualified to be appointed as an alternate or deputy director for a member director if the person is an active member.
3. An alternate or deputy director holds office until the next AGM or until the next general meeting held to elect directors to fill any vacancies (whichever is earlier).
4. An alternate or deputy 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 under these rules or
  - b. if the or deputy alternate director is removed from office by the Members' Council as alternate or deputy director for failure, without its leave, to attend a meeting of the Members' Council at which the principal director is absent.

#### 4.8 DIRECTOR REMUNERATION

Directors' remuneration must be approved at a general meeting.

**Note:** *Co-operatives legislation requires all director fees, remuneration and benefits to be approved by members. Directors may claim expenses relevant to their obligations as directors without member approval.*

#### 4.9 MEMBERS' COUNCIL MEETINGS

1. Meetings of the Members' Council 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 a meeting must be decided using consensus decision-making, including the right of Members' Council members to block a decision. If the chairperson deems that consensus decision-making has failed, matters are to be decided by majority vote, as long as the majority comprise a quorum for the Members' Council meeting.
4. If votes are equal, the chairperson has a second or casting vote, but only if the chairperson is a member director.
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 Members' Council, without which the meeting cannot be held.

*Note: Directors may also consider and pass resolutions without a physical meeting by circulating papers that require each director to record their vote and sign. Co-operatives legislation provides a process for this to occur.*

#### **4.10 MEMBERS' COUNCIL QUORUM**

1. The quorum for a meeting of the Members' Council is 50% of the number of directors (or if that percentage of the number of directors is not a whole number, the whole number next higher than 50%).
2. For a quorum, the number of member directors must outnumber the non-member directors by at least one.

#### **4.11 CHAIRPERSON OF THE MEMBERS' COUNCIL**

1. The chairperson of the Members' Council is to be elected by the Members' Council.
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 Members' Council may elect co-chairs. In event of dispute on exercise of the role of chairperson, then the first elected chairperson exercises the role.

#### **4.12 MINUTES OF MEMBERS' COUNCIL AND OTHER MEETINGS**

1. The Members' Council must keep minutes of all 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 Members' Council or of a board Working Group; and
  - c. all resolutions and proceedings at all general meetings of the co-operative, Members' Council meetings and any Working Group meetings.
2. Minutes must be entered in the appropriate records within 28 days of when the meeting to which they relate was held.
3. The minutes are to be signed and confirmed by the chairperson within a reasonable time after the meeting to which they relate was held.
4. Members do not have a right to access to the minutes of Members' Council or Working Group meetings, however the Members' Council may make such minutes available to members and members may write to the Members' Council to request access to such minutes.

# CATEGORY 5 – Member meetings

## 5.1 GENERAL MEETINGS

1. An AGM must be held on a date and at a time decided by the Members' Council within five months of the end of the co-operative's financial year or within any further time allowed by the Registrar.
2. The Members' Council may, whenever it considers appropriate, call a special general meeting of the co-operative.
3. General meetings may be held using technology that permits a member to participate contemporaneously in the meeting and enables the member to hear proceedings, ask questions of the Members' Council or the auditor and to cast a vote.

## 5.2 NOTICE OF GENERAL MEETINGS AND MEMBER RESOLUTIONS

1. At least 14 days' notice of a general meeting must be given.
2. The period of notice is calculated by starting from the day after the notice is served or taken to be served, and is taken to include the day on which the meeting is to be held.
3. Notice must be served on each member of the co-operative and any other persons who are entitled to receive such notices under the Law.
4. The notice must state the place, day and hour of the meeting and if the meeting is to be conducted using technology, the notice must include instructions about how to participate in the meeting.

**Note:** See 5.6 regarding attending meetings and rule 6.9 regarding notices and other documents to members.

5. The notice must state what ordinary business is to be considered and, if there is to be any special business, the general nature of any special business.
6. The notice must also include any business that members have notified their intention to move at the meeting provided that paragraph 7 of this rule has been complied with.
7. Any active member of the co-operative who has a resolution that requires a decision by the members at a general meeting, must serve written notice of it on the co-operative.
8. If the co-operative has been served with notice under paragraph 7 the resolution is to be considered at the next general meeting that occurs more than two months after the notice is served or taken to be served.

**Note:** For a special resolution it is necessary to give at least 21 days' notice. See rule 5.12 for more instructions about special resolutions.

## 5.3 BUSINESS OF THE AGM

1. The ordinary business of the AGM of the co-operative must be:
  - a. to confirm minutes of the preceding general meeting (whether annual or special); and
  - b. to receive from the Members' Council, auditors or officers of the co-operative:
    - i. the financial reports or financial statements of the co-operative for the financial year;
    - ii. a report on the state of affairs of the co-operative; and
    - iii. the Members' Council's solvency resolution stating whether or not there are reasonable grounds to believe that the co-operative will be able to pay its debts as and when they become due and payable; and
  - c. to approve any payments of fees to directors; and
  - d. to announce the annual subscription fee, if any, for the following calendar year; and
  - e. to appoint (if necessary) an auditor or reviewer; and
  - f. to elect member directors to fill any vacancies on the Members' Council; and
  - g. To allow members a reasonable opportunity to ask questions about or comment on the management of the co-operative and ask the auditor or reviewer or their representative, if present, questions relevant to the audit or review and the preparation of the audit and the preparation and content of the auditor or reviewer's report and the accounting policies adopted by the co-operative in relation to the financial statements.
2. The AGM may also transact special business, notice of which has been given to members under these rules.
3. All business of a general meeting, other than business of the AGM that is ordinary business, is special business.

## 5.4 QUORUM AT GENERAL MEETINGS

1. An item of business cannot be considered or decided at a general meeting unless a quorum of members is present.
2. If the number of active members of the co-operative is less than or equal to 100, the quorum is five active members.
3. If the number of active members is more than 100, then the quorum is 15 active members.
4. A member is present for the purpose of these rules if the member is entitled to vote and
  - a. is physically present, or
  - b. is represented by their legal personal representative, or
  - c. is attending via video link or other technology that enables the member to participate in the proceedings.
5. A proxy given to another member does not entitle the person giving the proxy to be counted as a member who is present for the purposes of this rule.
6. If a quorum is not present within half an hour after the appointed time for a meeting, 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.
7. If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the members present constitute a quorum.

## 5.5 CHAIRPERSON AT A GENERAL MEETING AND ADJOURNMENTS

1. The chairperson of the Members' Council may preside as chairperson at every general meeting of the co-operative.
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, 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 to a different time and place.
4. 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. It is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting unless the meeting is adjourned for 14 days or more, in which case notice of the adjourned meeting must be given just as for the original meeting.

## 5.6 ATTENDANCE AND VOTING AT GENERAL MEETINGS

1. The right to vote attaches to membership and not shareholding.
2. Each active member has only one vote at a meeting of the co-operative.
3. In the case of a joint membership:
  - a. Joint members have only one vote between them,
  - b. Every joint member is entitled to attend and be heard at a general meeting, and
  - c. In the event of a dispute between joint members as to which member will 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 entitled to vote.
4. A resolution, other than a special resolution, must be decided by simple majority.
5. Subject to paragraphs 6 and 7 of this rule, a question for decision at any general meeting must be decided on a show of hands of members attending the meeting.
6. A poll may be demanded on any question for decision.
7. If before a vote is taken or before or immediately after the declaration of the result on a show of hands:
  - a. the chairperson directs that the question is to be determined by a poll; or
  - b. at least five members present in person or represented by proxy demand a poll; the question for decision must be determined by a poll.
8. The poll must be taken when and in the manner that the chairperson directs.
9. A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
10. Once the votes on a show of hands or on a poll have been counted a declaration by the chairperson that a resolution has been carried (unanimously or by a majority) or lost is evidence of that fact.
11. The result of the vote must be entered in the minute book.



## 5.7 VOTING ON A SHOW OF HANDS OR ON A POLL

1. On a show of hands at a general meeting, each member who is present in accordance with rule 5.4.4 may only exercise one vote.
2. On a poll called at a general meeting, each member
  - a. who is present in accordance with rule 5.4.4, or
  - b. who is represented by a proxy (but only if proxies are allowed under rule 5.9), may only exercise one vote.

## 5.8 DETERMINING THE OUTCOME WHEN VOTES ARE EQUAL

Where the votes in favour and against a resolution are equal then the resolution fails.

## 5.9 PROXY VOTING

1. For the purposes of this rule:
  - a **directed proxy** is a document appointing a person to vote on behalf of a member and where the document specifies how the member's vote is to be cast on a particular matter, and
  - an **undirected proxy** is a document appointing a person to vote on behalf of a member and the document contains no direction on how the member's vote is to be cast.
2. Voting may be by proxy at a general meeting.
3. The document appointing a proxy must be in writing signed by the appointer or the appointer's representative, provided that any such representative has authority to appoint a proxy.
4. A document appointing a proxy may only appoint a person who is an active member of the co-operative as their proxy.
5. If the document appointing the proxy is a directed proxy, the proxy is not entitled to vote on the resolution other than as directed in the proxy document.
6. A person may be appointed as a proxy by no more than one member.
7. A document appointing a proxy is not valid unless it is delivered, either by post or electronic means, to the registered office of the co-operative at least 48 hours before the time for holding the meeting or any adjournment of that meeting.
8. A vote given in accordance with a directed proxy is valid unless the co-operative receives notice in writing at its registered office of the death or unsoundness of mind of the appointer, or revocation of that directed proxy, before the start of the meeting or adjourned meeting at which the proxy document is used.

## 5.10 POSTAL BALLOTS

1. For the purposes of this rule:
  - a. a **postal ballot** includes a ballot conducted by the use of technology, such as email or other voting software; and
  - b. a **ballot paper** means a ballot paper in paper or electronic form.
2. A postal ballot may be held in respect of any matter that may be decided by the members at general meeting, under rule 5.3.
3. In determining whether to hold a postal ballot on a matter for decision by members, the Members' Council must take into consideration the following matters:
  - a. whether a postal ballot would facilitate a more democratic decision by members, and
  - b. whether a postal ballot is time and cost effective.
4. A postal ballot must be held in respect of a matter that may be decided by members, where members who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the co-operative, require the Members' Council to conduct the vote by postal ballot.
5. The Members' Council may determine in a particular case whether the matter to be decided by postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
6. If fax or electronic means for voting are used, members who have limited or no access to the fax or electronic means, must not be prejudiced, and must have reasonable time to be advised of the postal ballot, to consider, record and return their vote.
7. The Members' Council is to appoint a returning officer to conduct the postal ballot. In default of such an appointment, the secretary is the returning officer.
8. Ballot papers must be sent to all voting members at least 21 days before the closing date of the postal ballot.
9. Ballot papers are to be in the form approved by the Members' Council and must include the following:
  - a. particulars of the matter to be decided by postal ballot;
  - b. an explanation of how to lodge a valid vote;
  - c. the majority required to pass the vote; and
  - d. notice of the closing time and date of the postal ballot.
10. This rule does not apply to special postal ballots.

***Note:** Postal ballots are a convenient way to ensure a democratic vote in circumstances where it may be difficult for members to attend a meeting. They may also be used when a members' meeting is unable to properly consider a matter, and members need more time to decide how to vote. The matter for decision can be adjourned and conducted using a postal ballot process.*

## 5.11 SPECIAL POSTAL BALLOTS

1. For the purposes of this rule:
  - a. a **special postal ballot** includes a ballot conducted by the use of technology, such as email or other voting software, and
  - b. a **ballot paper** means a ballot paper in paper or electronic form.
2. Where a special postal ballot is required under the Law, the Members' Council may determine in a particular case whether the special postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.

3. If fax or electronic means for voting are used, members who have limited or no access to the fax or electronic means, must not be prejudiced in any way and must have reasonable time to be advised of the postal ballot, to consider, record and return their vote.
4. The Members' Council is to appoint a returning officer to conduct the special postal ballot. In default of such an appointment, the secretary is the returning officer.
5. Ballot papers must be sent to members at least 28 days before the closing date of the special postal ballot.
6. Ballot papers are to be in the form approved by the Members' Council and must include the following:
  - a. particulars of the matter to be decided by special postal ballot;
  - b. all documents required for special postal ballots as set out under the Law; and
  - c. an explanation of how to lodge a valid vote;
  - d. the majority required to pass the vote; and
  - e. notice of the closing time and date of the special postal ballot.

**Note:** A Special Postal Ballot is a voting process reserved for important decisions under co-operatives legislation, such as changing the type of co-operative, disposing of major assets, and structural matters. The procedure for a special postal ballot is similar to a postal ballot, except that the co-operative must give members a disclosure statement to inform their decision-making. This rule requires 28 days' notice of a special postal ballot.

## 5.12 SPECIAL RESOLUTIONS

1. 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 in the case of a special postal ballot).
2. The notice of special resolution must state:
  - a. the intention to propose the special resolution; and
  - b. the wording of the proposed special resolution; and
  - c. the reasons for proposing the special resolution; and
  - d. the effect of the special resolution being passed.
3. A special resolution is passed if:
  - a. two-thirds of the active members who cast a vote, vote in favour of the resolution at a general meeting or in a postal ballot of members; or
  - b. three-quarters of those active members who cast a vote, vote in favour of the resolution in a special postal ballot of members.

## CATEGORY SIX – Accounts and administration

### 6.1 FINANCIAL YEAR

The financial year of the co-operative ends on 30 June.

### 6.2 BANK ACCOUNTS

1. The Members' Council 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, bills of exchange, promissory notes and other negotiable instruments drawn on the account of the co-operative must be signed by two authorised officers or employees of the co-operative.
3. The Members' Council may authorise one or more officers or employees of the co-operative to operate an electronic account in the name of the co-operative, without the need for a second written or electronic signature, provided that the authority is restricted to:
  - a. transactions conducted in the ordinary course of the co-operative's business; and
  - b. subject to a monetary limit specified in the Members' Council's written authorisation.

### 6.3 MEMBER FINANCIAL STATEMENTS AND AUDIT

1. For the purposes of this rule **basic financial statements** comprise:
  - a. an income and expenditure statement that sets out the appropriately classified sources of income and expenses incurred in the operation of the co-operative
  - b. a balance sheet;
  - c. a statement of changes in equity; and
  - d. a cash flow statement.
2. Subject to paragraph 3 of this rule and any other provisions of the Law, the co-operative must make available to members *basic financial statements* no later than 21 days before the AGM by:
  - a. Sending a copy to each member; or
  - b. Giving members notice that the documents are available for inspection at the registered office and on the website of the co-operative.
3. If under the Law members or the Registrar direct the co-operative to prepare a financial report and the direction requires that the financial report be audited or reviewed, the Members' Council must appoint an auditor within one month of the direction.
4. An auditor appointed under paragraph 3 of this rule holds office until the financial report prepared as a result of the direction has been audited or reviewed in accordance with the directions and sent to members or the Registrar as directed.
5. If the co-operative is a large co-operative as defined in the Law, it must appoint an auditor to prepare financial statements in accordance with the Law.

### 6.4 PROVISION FOR LOSS

The Members' Council must make appropriate provision in the co-operative's accounts for losses. When reporting to members the Members' Council must indicate whether a loss is expected to continue and whether there is any resulting material prejudice to the co-operative's solvency.

## **6.5 SURPLUS OR RESERVES NOT TO BE DISTRIBUTED TO MEMBERS**

1. The co-operative must not give returns or distributions to members, either directly or indirectly, from any operating surplus or reserve.
2. The assets and income of the co-operative must be applied solely to further its purpose as set out in rule 1.3.
3. An amount not exceeding ten percent of the surplus arising in any year from the business of the co-operative may be applied to any charitable purpose.
4. If the co-operative is wound up, any surplus assets must not be distributed to a member or a former member of the co-operative unless that member or former member is an organisation or entity described in rule 6.11.

## **6.6 SAFEKEEPING OF SECURITIES**

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

## **6.7 CO-OPERATIVE SEAL**

1. This rule applies if the co-operative chooses to authenticate a document under its common seal.
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 safe custody in the manner directed by the Members' Council.
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 the co-operative is registered, and any other requirements under the legislation of that other State or Territory.
4. The seal of the co-operative must not be affixed to an instrument other than under a resolution of the Members' Council. Two directors, or one director and the secretary, must be present and must sign all instruments sealed when the seal is affixed.

## **6.8 AMENDMENT AND COPIES OF RULES**

1. Any amendment of the rules must be approved by special resolution of the co-operative unless the Law allows.
2. A proposal to amend any rules must be made in a form approved by the Members' Council and clearly shows the existing rule or rules concerned and the proposed amendment to those rules.
3. A member is entitled to a copy of the rules, being a current consolidated set of the rules, on payment to the co-operative of the following amount:
  - a. For a hard copy of the rules - \$10.
  - b. For an electronic copy of the rules – Nil.

## 6.9 NOTICES AND OTHER DOCUMENTS TO MEMBERS

1. In addition to any other requirements of the Law regarding notices to members, 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.
2. 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.
3. 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.
4. 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.
5. A notice may be given by the co-operative to the person entitled to any interest in the co-operative 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 in their capacity as the representative of the deceased, incapacitated person, trustee, or liquidator, as the case may be, 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 would have been given if the death, incapacity or bankruptcy had not occurred.

## 6.10 WINDING UP

1. The winding up of the co-operative must be in accordance with the Law.
2. If on the winding up or dissolution after the satisfaction of all the co-operative's debts and liabilities there remains any surplus property this must be distributed by repayment of any securities issued by the co-operative in accordance with their terms of issue and also in accordance with rule 6.11.2.
3. If on the winding up or dissolution there is a deficiency, members are liable to contribute towards the deficiency to the extent of any amount unpaid on any guarantee made by each member and any charges payable by the member to the co-operative as required by these rules.

## 6.11 DISTRIBUTION OF SURPLUS ASSETS ON WINDING UP

1. Subject to the Law and any other applicable Australian laws, or any court order, surplus assets remaining after the co-operative is wound up must be distributed to:
  - a. one or more co-operatives which prohibit the distribution of any surplus assets to its members to at least the same extent as the co-operative, and
  - b. with similar purposes to, or inclusive of, the co-operative's purposes set out in rule 1.3.
2. The decision as to which the organisations are to be given surplus assets remaining after the repayment of share capital must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the co-operative may apply to the Supreme Court to make this decision.