

Australian Sandalwood Co-operative Ltd

(a non-distributing co-operative without share capital registered under the *Co-operatives Act 2009*)

Rules

CERTIFICATION:

We the undersigned, certify that this is a copy of the rules which were presented to the formation meeting on ___/___/_____ for the purpose of forming a co-operative to be known as the Australian Sandalwood Co-operative Ltd.

_____ Chairperson of formation meeting

Signature

_____ Secretary of formation meeting

Signature

1. Terms used

In these rules —

active member means a member who is in active membership under clause 6;

auditor means a registered company auditor or auditors (within the meaning of that term in the Corporations Act) for the time being of the co-operative;

CCU means a co-operative capital unit;

director includes alternate director;

financial institution account means an account at a financial institution into which the co-operative's money may be paid;

financial year means the financial year of the co-operative specified in clause 56;

member means a member of the co-operative;

regulations means the *Co-operatives Regulations 2010*;

special resolution means a resolution passed in accordance with clause 38(1), (2) and (3).

2. Rules

- (1) The rules of the co-operative have the effect of a contract under seal —
 - (a) between the co-operative and each member; and
 - (b) between the co-operative and each director, the chief executive officer and the secretary of the co-operative; and
 - (c) between a member and each other member.
- (2) Under the contract, each of those persons agrees to observe and perform the rules as in force for the time being so far as those provisions apply to the person.
- (3) The rules may be altered by a special resolution, by a resolution of the board in accordance with section 105 of the Act or as otherwise permitted by the Act.
- (4) If alteration to these rules under section 28(3A) of the Act requires the prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot be put to a resolution unless it is approved by the Registrar.
- (4A) If alteration to these rules under section 103 of the Act requires the prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot be put to a resolution unless it is approved by the Registrar.
- (5) An alteration to these rules does not take effect until it is registered by the Registrar.

- (6) A member is entitled to obtain a copy of the rules free of charge.
- (7) Any person may obtain a copy of these rules from the Registrar on payment of the prescribed fee.

3. Powers

The co-operative has the power of an individual and the ability to restrict or place additional powers in the rules.

4. Name

- (1) The name of the co-operative is Australian Sandalwood Co-operative Ltd.
- (2) The co-operative may change its name under section 241 of the Act.
- (3) The co-operative may abbreviate its name under section 239 of the Act.

5. Objects

The objects of the co-operative are to:

- develop the Australian sandalwood (*santalum spicatum*) industry supporting quality, traceable, sustainable production
- maximise members' returns by unlocking the economic value derived from growing Australian sandalwood
- provide consistent quality and grades for buyers seeking to achieve economies of scale.

6. Active membership provisions

- (1) Under Part 6 of the Act —

Primary activities

Marketing and identifying markets for its members; and
information sharing, education, training and plantation development for its members

are primary activities of the co-operative, and

Active membership requirements

a member must —

complete and return annual plantation surveys issued by the co-operative to establish active membership of the co-operative.

- (2) All members of a co-operative must be active members.

- (3) Subject to sections 123 and 124 of the Act, a member who fails to be or stops being an active member must, under the Act, have their membership cancelled.

7. Qualifications for membership

A person is not qualified to be admitted to membership of the co-operative unless the person is a sandalwood grower and there are reasonable grounds for believing the person will be an active member of the co-operative.

8. Membership, subscriptions, periodic fees

- (1) The co-operative must give to a person intending to become a member —
 - (a) a copy of the documents required to be given under section 68(1) of the Act, whether or not the person requests a copy of any or all of those documents; and
 - (b) written notice of entry fees or regular subscriptions payable by a member of the co-operative.
- (2) The entry fee and annual subscription fee will be determined at the formation meeting and can only be altered at a general meeting.
- (3) The annual subscription fee is payable when applying for membership and within one month of each anniversary of membership approval.
- (4) Applications for membership must be lodged at the registered office in the application form, approved by the board, and should be accompanied by payment of any applicable entry fee or annual subscription fee.
- (5) Every application must be considered by the board.
- (6) If the board approves of the application, the applicant's name and any other information required under the Act must be entered in the register of members within 28 days of the board's approval.
- (7) 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.
- (8) The board may, at its discretion, refuse an application for membership.
- (9) The board need not assign reasons for the refusal. On refusal any amounts accompanying the application for membership must be refunded within 28 days without interest.

9. Ceasing membership

A person ceases to be a member in any of the following circumstances —

- (a) if the member's membership is cancelled under Part 6 of the Act (Active membership);

- (b) if the member is expelled under these rules;
- (c) if the member becomes bankrupt and the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the co-operative;
- (d) on death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) on written notice of the member's resignation from membership, given by the member to the secretary;
- (g) for a corporation — if the corporation becomes insolvent or is deregistered.

10. Expulsion of members

- (1) A member may be expelled from the co-operative by special resolution to the effect —
 - (a) that the member has failed to discharge the member's obligations to the co-operative under these rules or a contract; 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 co-operative principles as described in section 6 of the Act and has caused the co-operative harm.
- (2) Written notice of the proposed 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) If a general meeting is to be called under this clause 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 act must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
 - (c) once the act is considered, the co-operative may decide to expel the member who committed the act;

- (d) the co-operative must not make a decision on the act or on expulsion, except by vote by secret ballot of the members present, in person or represented by proxy or by attorney, and entitled to vote. A motion for the decision is not taken to be passed unless two-thirds of the members present, in person or represented by proxy or by attorney, vote in favour of the motion.
- (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.

11. Payments upon expulsion of member

- (1) If a member is expelled from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.
- (2) If a member who had paid his or her annual subscription in full is expelled from the co-operative, the board may repay either the full annual subscription or a proportion of that annual subscription to the expelled former member.

12. Payments upon resignation of member

- (1) If a member 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 who had paid his or her annual subscription in full resigns from the co-operative, the board may repay either the full annual subscription or a proportion of that annual subscription to the former member.

13. Suspension of members

- (1) The co-operative may suspend a member for not more than one year, who does any of the following acts —
 - (a) contravene any of these rules;
 - (b) fail to discharge obligations to the co-operative, whether under these rules or a contract;
 - (c) act detrimentally to the interests of the co-operative.
- (2) In order to suspend a member, the procedure for expulsion of a member set out in clause 10 is to be followed as if references to expulsion were references to suspension.
- (3) 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 for membership fees paid, or payable, to the co-operative; and
- (c) remains liable for any fine that may be imposed.

14. Disputes and mediation

- (1) The grievance procedure set out in this clause applies to disputes under the rules between a —
 - (a) member and another member; or
 - (b) member or members 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, then the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.
- (5) The mediator must be —
 - (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement —
 - (i) for a dispute between a member and another member, a person appointed by the board of the co-operative; or
 - (ii) for a dispute between a member(s) and the co-operative, a person appointed by the Co-operative Federation of Western Australia Inc.
- (6) A member of the co-operative can be a mediator.
- (7) The mediator cannot be a member who is a party to the dispute.
- (8) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (9) The mediator, in conducting 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.
- (10) The mediator cannot determine the dispute.
- (11) The mediation must be confidential and without prejudice.
- (12) The costs of the mediation are to be shared equally between the parties unless otherwise agreed.
- (13) Nothing in this clause extends to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.
- (14) Nothing in this clause extends to any dispute involving the expulsion or suspension of a member or the imposition of a fine.
- (15) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the Act or otherwise at law.

15. Fines payable by members

- (1) The board may impose on a member a maximum fine of \$1,000 for a contravention of the rules.
- (2) A fine must not be imposed on a member under subclause (1) unless —
 - (a) written notice of intention to impose the fine and the reason for it has been given to the member; and
 - (b) 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, to show cause why the fine should not be imposed.

16. Liability of members to co-operatives

- (1) A member is, under section 67 of the Act, liable to pay to the co-operative the charges, including entry and periodic fees, payable by the member to the co-operative under these rules.
- (2) On the death of a member, the member's estate is subject to the same liability as the member would have been until the member's personal representative or some other person is registered in the member's place.
- (3) Joint members are jointly and severally liable for charges mentioned in subclause (1).

17. Forfeiture and cancellations — inactive members

- (1) Subject to sections 123 and 124 of the Act, the board must declare the membership of a member cancelled 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 a continuous period of at least 2 years; or
 - (b) the member is not presently an active member and has not been an active member at any time in the past 2 years.
- (2) Subclause (1) applies to a member if he or she was a member of the co-operative throughout the 2 year period.
- (3) Unless subclause (4) applies, the board of a co-operative must ensure that notice of its intention to declare the membership of a member to be cancelled is given to the member not less than 28 days prior to the intended day of the cancellation.
- (4) Notice is not required to be given under subclause (3) if —
 - (a) the member's whereabouts are unknown to the co-operative; or
 - (b) the amount required to be repaid to the member in relation to the cancelled membership does not exceed \$100.00 or such other amount as may be prescribed under section 125(2) of the Act.
- (5) The co-operative must keep a register of cancelled memberships under subclause (1), that must include the particulars in Schedule 4 clause 5 of the regulations.

18. Death of member

- (1) Subject to section 159 of the Act, the board must transfer a deceased member's interest in the co-operative to —
 - (a) the personal representative of the deceased, that is, an executor or administrator of the estate of the deceased; or
 - (b) the person specified by the deceased's personal representative, in an application made to the co-operative within 3 months after the death of the member.
- (2) The board may approve the transfer of the interest to a person other than the executor or administrator if the board is satisfied that —
 - (a) there are reasonable grounds for believing the proposed transferee will be an active member of the co-operative; or
 - (b) the proposed transferee is qualified to be a member of the co-operative under these rules.
- (3) If the total value of the deceased member's interest in the co-operative is less than \$10 000 or another amount fixed by the regulations, the board may

transfer the interest under section 76 of the Act if there has not been a grant of letter of administration or probate of the deceased's will.

- (4) Under section 77 of the Act, the board must decide the value of the interest of a deceased member as the amount payable to the deceased member less any amounts owing to the co-operative by the deceased member.

19. Dealings of members with co-operatives

- (1) The co-operative may, under section 70 of the Act, make a contract with a member requiring the member to have specified dealings with the co-operative for a fixed period.
- (2) The contract may require a member —
 - (a) to sell products through or to the co-operative; or
 - (b) to obtain supplies or services through or from the co-operative; or
 - (c) to pay to the co-operative specified amounts as liquidated damages for a contravention of a requirement authorised by this clause.
- (3) Any amount specified as liquidated damages is to be considered as a debt payable to the co-operative for which the co-operative has, under section 72 of the Act, a charge on each of the following —
 - (a) the credit balance and deposits of the member or past member;
 - (b) entry fees and regular subscriptions required to be repaid to a member when the member ceases to be a member.

20. Registration of Official Trustee in Bankruptcy

If a member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the interest held by the bankrupt member.

21. Registration as administrator of estate on incapacity of member

A person appointed under a law of a State or a Territory to administer the estate of a member who, through mental or physical infirmity is incapable of managing his or her affairs, may be registered as the holder of the member's interest in the co-operative.

22. Entitlements and liabilities of person registered as trustee, administrator etc.

- (1) A person entitled to hold the interest of a member because of the death, bankruptcy or incapacity of the holder of the interest, is entitled to the advantages to which that member would be entitled if he or she were the registered holder of the interest. However, before being registered as a member, the person cannot exercise any right conferred by membership in relation to meetings of the co-operative.

- (2) A person registered under clause 18, 20 or 21 has, while registered, the same liabilities as those to which the dead person, the bankrupt person or the incapable person would have been liable if he or she had remained a member with full legal capacity.

23. Transfer and transmission of debentures

- (1) On the written request of the transferor (the *giver*) of a debenture, the co-operative must enter in the appropriate register the name of the transferee (the *receiver*) in the same way and on the same conditions as if the application for entry were made by the receiver.
- (2) If the co-operative refuses to register a receiver of debentures it must, within 28 days after the date on which the transfer was lodged with it, send to the receiver notice of the refusal.
- (3) An instrument of transfer of a debenture must be executed by or on behalf of the giver and the receiver. The giver is taken to remain the holder of the debenture until the debenture in the name of the receiver is entered in the register of debentures.
- (4) The board may decline to recognise an instrument of debenture and may decline to register a debenture unless —
 - (a) a fee of \$10 (or a lesser amount decided by the board) is paid to the co-operative for the transfer of registration; and
 - (b) the instrument of transfer is accompanied by the relevant debenture and any other evidence the board reasonably requires, in particular evidence showing the right of the transferor to make the transfer; and
 - (c) any government stamp duty payable is paid.

- (5) Debentures must be transferred in the following form or in a form approved by the board —

I, A.B. (the giver) of in the State of
..... in consideration of the sum of \$ paid
to me by C.D. (the receiver), of in the State of
..... transfer to the receiver the debenture(s)
numbered to be held by the receiver, the
receiver’s executors, administrators and assigns, subject to any
conditions on which I hold the debenture(s) and any other conditions
being terms of the transfer of the debenture(s).

And I, the receiver agree to take the debenture(s) subject to the conditions mentioned.

Dated this day of 20

Signed by giver.

In the presence of witness.

Signed by receiver.

In the presence of witness.

24. Issue of CCUs

- (1) The board of the co-operative may confer an interest in the capital of the co-operative by issuing CCUs in accordance with the Act.
- (2) The board of the co-operative may issue CCUs to a person, whether or not that person is a member of the co-operative.
- (3) Each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs.
- (4) 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.
- (5) 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.
- (6) 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.

25. Transfer and transmission of CCUs

- (1) Subject to this clause, the transfer and transmission of a CCU is to follow the same process as for a debenture under clause 23.
- (2) Where the terms of issue of a CCU differ from clause 23 in respect to the manner of transfer or transmission, the terms of its issue prevail.

26. Annual general meetings

- (1) An annual general meeting must, under section 190 of the Act, be held each year at a place and on a date and a time decided by the board within 5 months after the close of the financial year of the co-operative or within the further time allowed by the Registrar or fixed under a regulation.

- (2) A general meeting of the co-operative other than the annual general meeting must be a special general meeting.
- (3) If an annual general meeting is not held as required by subclause (1), the members may, under section 195 of the Act and clause 27 of these rules, requisition a special general meeting.

27. Special general meetings

- (1) The board may, whenever it considers appropriate, call a special general meeting of the co-operative.
- (2) The board must call a general meeting of the co-operative on the requisition in writing by members who together are able to cast at least 10% of the total number of votes able to be cast at a meeting of the co-operative.
- (3) The requisition must —
 - (a) state the objects of the meeting; and
 - (b) be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members); and
 - (c) be served on the co-operative by being lodged at the co-operative's registered office.
- (4) A meeting requisitioned by members under these rules must be called and held as soon as practicable and in any case must be held within 2 months after the requisition is served.
- (5) If the board does not call a meeting within 35 days after the requisition is served, the following provisions apply —
 - (a) the requisitioning members (or any of them representing at least half their total voting rights) may call the meeting in the same way, as nearly as possible, as meetings are called by the board;
 - (b) for that purpose they may ask the co-operative to supply a written statement of the names and addresses of the persons entitled, when the requisition was served, to receive notice of general meetings of the co-operative;
 - (c) the board must send the statement to the requisitioning members within 7 days after the request for the statement is made;
 - (d) the meeting called by the requisitioning members must be held within 3 months after the requisition is served;
 - (e) the co-operative must pay the reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting;
 - (f) any amount required to be paid by the co-operative is to be retained by the co-operative out of amounts payable by the co-operative for

fees or other remuneration for their services to the directors who were in default.

28. Notice of general meetings

- (1) At least 14 days notice (not including the day on which the notice is served or taken to be served, but including the day for which notice is given) must be given to every member of any general meeting, in the way stipulated in clause 65.
- (2) Notice must be given to the persons who are, under these rules, entitled to receive notices from the co-operative, but the non-receipt of the notice does not invalidate the proceedings at the general meeting.
- (3) The notice must state the place, day and hour of the meeting and, for special business, the general nature of the business.
- (4) For a special resolution, notice of —
 - (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,must be given at least 21 days before the meeting.
- (5) Members who together are able to cast at least 10% of the total number of votes that are able to be cast at a meeting of the co-operative and who have a resolution to submit to a general meeting must give written notice of it to the co-operative at least 45 days before the day of the meeting.
- (6) In a notice calling a general meeting, the board must include any business members have notified their intention to move at the meeting under subclause (5) (provided the members' notification has been made under these rules and within time).

29. Business of general meetings

- (1) The ordinary business of the annual general meeting must be —
 - (a) to confirm minutes of the last preceding general meeting (whether annual or special); and
 - (b) to receive from the board, auditors or officers of the co-operative —
 - (i) the financial reports of the co-operative for the financial year; and
 - (ii) a report on the state of affairs of the co-operative.
- (2) The annual general meeting may also transact special business of which notice has been given to members under these rules.

- (3) All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.

30. Quorum at general meetings

- (1) An item of business cannot be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item.
- (2) Unless these rules state otherwise 6 members present in person, each being entitled to exercise a vote, constitute a quorum.
- (3) 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.
- (4) If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the members present constitute a quorum.

31. Chairperson at general meetings

- (1) The chairperson, if any, of the board 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, then 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 from time to time and from place to place. However, 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. When a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given just as for the original meeting. Apart from this it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

32. Attendance and voting at general meetings

- (1) The right to vote attaches to membership.
- (2) Joint members have only one vote between them.
- (3) Every joint member is entitled to attend and be heard at a general meeting.

- (4) 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 will vote.
- (5) A resolution, other than a special resolution, must be decided by simple majority.
- (6) Subject to subclauses (7) and (8), at any general meeting a question for decision must (as provided in section 194 of the Act) be decided on a show of hands of members present at the meeting.
- (7) A poll may be demanded on any question for decision.
- (8) Where 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 5 members present in person or represented by proxy demand a poll,the question for decision must be determined by a poll.
- (9) The poll must be taken when and in the manner that the chairperson directs.
- (10) A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
- (11) Once the votes on a show of hands or on a poll have been counted then, subject to subclause (8), a declaration by the chairperson that a resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.
- (12) The result of the vote must be entered in the minute book.

33. Voting on a show of hands

On a show of hands at a general meeting, each member —

- (a) present; or
- (b) represented by a non-member acting under a power of attorney; or
- (c) represented by a non-member appointed under section 61(1) of the Act; or
- (d) represented by a non-member appointed as a proxy under these rules,

may exercise only one vote.

34. Voting on a poll

On a poll called at a general meeting, each member —

- (a) present; or
- (b) represented by a proxy; or
- (c) represented by a person acting under a power of attorney; or
- (d) represented by a person appointed under section 61(1) of the Act,

has one vote.

35. Determining the outcome where equality of votes

- (1) Where the votes in favour and against a resolution are equal, the chairperson of the meeting, provided he or she is a member of the co-operative, may exercise a second or casting vote.
- (2) Where the chairperson is not a member of the co-operative or decides not to exercise a casting vote, the outcome of an equality of votes is taken to have been decided in the negative.

36. Proxy votes

- (1) The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (2) An instrument appointing a proxy may direct the way the proxy is to vote in relation to a particular resolution and, if an instrument of proxy directs, the proxy is not entitled to vote on the resolution other than as directed in the instrument.
- (3) A person may act as a proxy despite that person not being a member of the co-operative.
- (4) A person may be appointed as a proxy by more than one member.
- (5) An instrument appointing a proxy may be in the following form, or another form the board approves —

Australian Sandalwood Co-operative Ltd

I/we (name) of (address)

being a member(s) of the co-operative appoint

..... (name) of (address)

as my/our proxy or, in that person's absence, the chairperson of the meeting or a person nominated by the chairperson as my/our proxy, to vote for me/us and on my/our behalf at the * annual general/*special general meeting of the co-operative, to be held on the

day of 20 and at any adjournment of
the meeting.

#This form is to be used *in favour/*against the resolution.

Signed this day of 20.....

**Strike out if not applicable.*

#To be inserted if desired.

- (6) An instrument appointing a proxy is not valid until the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of the power or authority, are deposited, at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the registered office of the co-operative or at another place specified for the purpose in the notice calling the meeting.
- (7) A vote given in accordance with an instrument of proxy or a power of attorney is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the co-operative at the registered office before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

37. Postal ballots

- (1) A postal ballot or special postal ballot must be held when required by the Act, these rules or when the members by ordinary resolution approve one.
- (2) Subject to sections 185 and 186 of the Act, regulation 9A of the regulations and this clause, a postal ballot or special postal ballot is to be conducted using such method, in such form and returnable in such manner, as the board decides.
- (3) A postal ballot or special postal ballot may incorporate one or more methods of electronic voting.
- (4) The board is to appoint a returning officer to conduct the postal ballot or special postal ballot or, in default of such appointment, the secretary is the returning officer.
- (5) At least 21 days prior to the closing date of a postal ballot or special postal ballot, the returning officer is to send ballot papers (in the form and with such content as the board may approve) to all voting members giving —
 - (a) particulars of the business in relation to which the postal ballot or special 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.
- (6) The returning officer shall receive, validate and count the votes and advise the Board of —
 - (a) the number of formal votes cast in favour of the proposal concerned; and
 - (b) the number of formal votes cast against the proposal concerned; and
 - (c) the number of informal votes cast.
- (7) On declaration of the result of the ballot, the secretary must enter the subclause (6) details in the minute book of the co-operative.
- (8) 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.

38. Special and ordinary resolutions

- (1) A special resolution is a resolution of which the notice set out in subclause (2) has been given of the intention to propose the resolution as a special resolution and that is passed —
 - (a) by two-thirds of the members who vote in person or by proxy or attorney, at a general meeting; or
 - (b) by a two-thirds majority in a postal ballot; or
 - (c) by three-quarters of the members who cast formal votes in a special postal ballot of members.
- (2) A resolution is not taken to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the co-operative stating —
 - (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.
- (3) A special resolution has effect from the date it is passed, however a special resolution required to be passed by special postal ballot has no effect until registered by the Registrar and no amendment to these rules is to take effect until the amendment is registered by the Registrar.
- (4) An ordinary resolution is one passed by a simple majority and has effect from the date it is passed.

39. Board of directors

- (1) The business and operations of the co-operative are to be managed and controlled by the board of directors, and for that purpose the board has and may exercise the powers of the co-operative as if expressly conferred on the board by a general meeting of the co-operative.
- (2) The board must have at least 5 member directors and no more than 9 each of whom must be an individual, whether as a member of the co-operative, or as a representative of a corporation member, and at least 18 years old.
- (3) The powers of the board are subject to any restrictions imposed by the Act or by these rules.

40. Qualifications of directors

A person is not qualified to be a director of the co-operative unless the person is —

- (a) a member of the co-operative or a representative of a corporation that is a member of the co-operative; or
- (b) an employee of the co-operative or a person qualified under clause 41 to be an independent director.

41. Independent directors

- (1) The board may appoint persons with special skills to be independent directors of the co-operative on the conditions and for the period the board decides.
- (2) The special skills required of an independent director may be specified by the board, and may be varied by the board from time to time, or from appointment to appointment.
- (3) An independent director is, subject to this clause, a director of the co-operative for the period of the appointment.
- (4) The majority of directors must be member directors.
- (5) Unless this clause provides otherwise, all other rules relating to directors apply to an independent director.
- (6) On the termination of appointment as independent director by death, retirement, resignation or another way, the independent director stops being a director of the co-operative.
- (7) An independent director is entitled to attend any general meeting of the co-operative and be heard on any part of the business of the meeting.
- (8) An independent director is not entitled to vote at a meeting of directors on a motion about the terms and conditions of his or her appointment, conditions

of service or termination of service but may be permitted by the chairperson of the board to speak in relation to the motion.

- (9) Despite anything else in these rules a vote is not valid if taken at a meeting of the board of directors unless, when the vote is taken, the number of independent directors present is less than the number of member directors present.
- (10) Despite the term of appointment fixed under subclause (1), the appointment of an independent director must be ratified by the members of the co-operative at the general meeting next after the appointment of the independent director. Ratification must be by a simple majority of members of the co-operative present and entitled to vote at the meeting.
- (11) If the appointment of an independent director is not ratified by the members of the co-operative, anything done by the independent director since the appointment and up to that time is taken to have been validly done.
- (12) Despite the terms of appointment, the members may, by special resolution at a general meeting of members, terminate the appointment of an independent director.
- (13) An independent director cannot be required to be an active member of the co-operative.

42. Managing director

- (1) The board may, if it considers appropriate, appoint a person to be managing director of the co-operative and may from time to time remove the person from office. The conditions and the period of appointment must be decided by the board.
- (2) The managing director is not counted for clause 39(2).
- (3) In all other respects the managing director has all the privileges of a director and all other rules relating to directors apply to the managing director.
- (4) On the termination of the appointment as managing director either by death, retirement, resignation or termination by the board, the managing director stops being a director of the co-operative.
- (5) The managing director 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.
- (6) A managing director cannot be required to be an active member of the co-operative.
- (7) A managing director is classified as an independent director under the Act.

43. First and subsequent directors

- (1) The first member directors must be elected by poll at the formation meeting of the co-operative.
- (2) The term of office of the first member directors is to be determined at the formation meeting in order to provide for staggered director elections over a three-year cycle ending on the day of the third annual general meeting after the formation meeting.
- (3) The term of office of member directors elected thereafter is to commence from the annual general meeting at which they are elected or at which their election is confirmed and ends on the day of the third annual general meeting thereafter.

44. Election of member directors

- (1) At an annual general meeting at which a director retires, the vacated office may be filled in the following manner:
 - (a) At least 6 weeks before an annual general meeting, the board must:
 - (i) notify all members of the number of directors retiring at the annual general meeting; and
 - (ii) invite nominations of nominees to serve as directors; 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 nomination must:
 - (i) be signed by 2 or more members; and
 - (ii) provide details of the qualifications and experience of the person nominated; and
 - (iii) be accompanied by a notice in writing signed by the nominee consenting to their nomination.
 - (c) The nomination and the notice of consent must be lodged with the secretary of the co-operative at least 28 days before the annual general meeting.
 - (d) The secretary, or an officer nominated by the board, must give details of each person who has been nominated to members with the notice of the annual general meeting. Details to be provided to members 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 co-operative or with any other co-operative.
- (2) If the number of nominees equals the number of vacancies, the nominees must be declared elected at the annual general meeting.
- (3) If there are insufficient nominees to fill all vacancies, the nominees to be declared elected at the annual general meeting and nominations for people to fill the remaining vacancies are to be called from the floor and a ballot held if required.
- (4) 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.
- (5) If any vacancies remain at the end of the meeting, the vacancies are to be casual vacancies and must be filled in accordance with clause 47.

45. Removal from office of member director

The co-operative may by ordinary resolution remove a member director before the end of the member director's period of office, and may by a simple majority appoint another person in place of the member director. The person appointed must retire when the removed member director would otherwise have retired.

46. Vacation of office of director

A director vacates office if —

- (a) the director dies or is permanently incapacitated; or
- (b) the director is disqualified or otherwise unable to be a director under Part 9 Division 2A of the Act; or
- (c) the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave; or

- (d) the director resigns from the office of director by written notice given by the director to the co-operative; or
- (e) the director is removed from office by ordinary resolution of the co-operative; or
- (f) the person ceases to hold a qualification that qualified the person to be a director; or
- (g) an administrator of the co-operative's affairs is appointed under Part 12 Division 4 of the Act.

47. Filling of casual vacancies

- (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) For the purposes of this clause, a casual vacancy arises if the office of director is vacated under clause 46.

48. Remuneration

- (1) Under section 215 of the Act the directors must not receive remuneration for their services as directors other than fees, concessions and other benefits approved at a general meeting of the co-operative.
- (2) All necessary expenses incurred by the board members in the business of the co-operative must be refunded to them.

49. Proceedings of the board

- (1) Meetings of the board (including meetings conducted under clause 50) are to be held as often as may be necessary for properly conducting the business and operations of the co-operative and must be held at least quarterly.
- (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 by a majority of votes.
- (4) If votes are equal, the chairperson, if a member director, has a second or casting vote.
- (5) A meeting of the board of directors may be called by a director giving notice individually to every other director.
- (6) 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.

50. Transaction of business outside board meetings

- (1) The board may under section 202 of the Act transact any of its business —
 - (a) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of the members is taken to be a decision of the board; or
 - (b) at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting, can be heard by the other members.
- (2) For the purposes of this clause the chairperson of the board and each member of the board have the voting rights they have at an ordinary meeting of the board.
- (3) A resolution approved under subclause (1)(a) is to be recorded in the minutes of the meetings of the board.
- (4) The secretary may circulate papers among members of the board for the purposes of subclause (1)(a) by email, fax or other transmission of the information in the papers concerned.

51. Quorum for board meetings

- (1) The quorum for a meeting of the board is half the number of directors (or if half is not a whole number the whole number next higher than one-half).
- (2) The number of independent directors must be fewer than the number of member directors present at a meeting of the board.

52. Chairperson of board

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

53. Delegation and board committees

- (1) The board may (under section 204 of the Act) 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 clause may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (3) A delegation under this clause may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (4) Despite any delegation under this clause, 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 subclause (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 5 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 a meeting must be decided by a majority of votes of the members present and voting and if the votes are equal, the chairperson has a second or casting vote.

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) Clause 53(6) and (7) apply to committees appointed under this clause, with the changes approved of 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.
- (2) Minutes must be entered in the appropriate records within one month after the meeting to which they relate is held.
- (3) The minutes are to be confirmed at, and signed by the chair of, the next meeting.

56. Financial year

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

57. Custody and inspection of records and registers

- (1) The co-operative must have at its registered office and available during normal office hours for inspection by any member free of charge the following —
 - (a) a copy of the Act and the regulations;
 - (b) a copy of the rules of the co-operative and any attachments under section 345 of the Act;
 - (c) a copy of the most recent annual return of the co-operative under section 244ZB of the Act;
 - (ca) a copy of the most recent financial information reported to members under Part 10A of the Act;
 - (d) the register of directors and members;
 - (e) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative;
 - (f) the register of memberships cancelled under Part 6 of the Act, required to be kept under section 230(1)(g) of the Act;
 - (g) the register of notifiable interests required to be kept under section 284 of the Act;
 - (h) a copy of the minutes of each general meeting;

- (i) the other registers required under the Act or the regulations to be open for inspection.
- (2) A member may make a copy of the entries in a register mentioned in subclause (1) during normal office hours free of charge.

58. Accounts

- (1) The board must have a financial institution account or accounts, electronic or otherwise, in the name of the co-operative, into which all amounts received 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 for the co-operative, must be signed by 2 directors or by any 2 persons authorised by the board or authorised by the chief executive officer.

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. Appointing an auditor — co-operatives

- (1) The board of a co-operative (unless the co-operative is a small co-operative) must appoint an auditor within one month of being registered under the Act, unless an auditor has already been appointed at a general meeting of the co-operative.
- (2) An auditor appointed under subclause (1) holds office until the first annual general meeting of the co-operative.
- (3) At its first annual general meeting, the co-operative must appoint an auditor of the co-operative and at each subsequent annual general meeting must appoint an auditor to fill any permanent vacancy in the office of the auditor.

61. Appointing an auditor — small co-operatives

- (1) The co-operative, if a small co-operative, may appoint an auditor at its first annual general meeting and at subsequent annual general meetings to fill a permanent vacancy in the office of the auditor.
- (2) Subclauses (3) and (4) only apply where no appointment is made under subclause (1).
- (3) The board of a small co-operative must appoint an auditor within one month of being directed to prepare a financial report and have it audited under either section 244I or 244J of the Act.

- (4) An auditor appointed under subclause (3) holds office until the financial report prepared as a result of the direction has been audited and sent to members.

62. Terms of appointment, remuneration and removal of auditors

- (1) The appointment, remuneration and removal of an auditor must comply with Part 10A Division 12 of the Act.
- (2) An auditor appointed at an annual general meeting holds office until the auditor —
 - (a) dies; or
 - (b) is removed or resigns from office in accordance with section 244ZW of the Act; or
 - (c) ceases to be a registered company auditor within the meaning of the Corporations Act; or
 - (d) ceases to be an auditor under section 327B(2A), (2B) or (2C) of the Corporations Act.
- (3) While a casual vacancy in the office of the auditor continues, the surviving or continuing auditor or auditors, if any, may act.
- (4) Where there is no surviving or continuing auditor, the board must fill a casual vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office, within one month of the vacancy occurring, unless the co-operative at an annual general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as auditor under this subclause holds office until the next annual general meeting of the co-operative.
- (5) An individual, audit company or audit firm can be appointed as an auditor.
- (6) A co-operative cannot appoint a person —
 - (a) (including a person who is a substantial shareholder in a corporation) who is indebted to the co-operative (or to a subsidiary corporation of the co-operative) for an amount that is more than \$5 000; or
 - (b) who is —
 - (i) an officer of the co-operative; or
 - (ii) a partner, employer or employee of an officer of the co-operative; or
 - (iii) a partner of an employee of an officer of the co-operative; or
 - (iv) an employee of an employee of an officer of the co-operative,

to be auditor of the co-operative.

- (7) All reasonable fees and expenses of an auditor are payable by the co-operative.
- (8) The board must enable an auditor to have access to all books, accounts, vouchers, securities and documents of the co-operative and to be given such information as the auditor requires to perform his or her duties as auditor.
- (9) An auditor may attend any general meeting of the co-operative and is entitled to be heard, at any general meeting the auditor attends on any part of the business of the meeting.
- (10) An auditor is entitled to receive all notices and other communications relating to a general meeting that any member of the co-operative is entitled to receive.
- (11) Subject to section 244ZW of the Act, an auditor may be removed from office by resolution at a general meeting.
- (12) Subject to section 244ZW of the Act, an auditor may resign as auditor.

63. Co-operative funds

- (1) The board may resolve to 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 discount, rebate or otherwise by way of profit, to members of the co-operative.
- (3) A part of the surplus, of not more than 10%, arising in any year from the business of the co-operative may be applied for charitable purposes.
- (4) In this clause —
surplus means the excess of income over expenditure after making appropriate allowance for taxation expense, depreciation in value of the property of the co-operative and future contingencies.

64. Provision for loss

The board must make provision for loss that may result from transactions of the co-operative.

65. Notices

- (1) A notice or other document required under the Act, the regulations or these rules to be given to a member of the co-operative may be given —
 - (a) personally; or

- (b) by leaving it with a person who appears to be 16 years of age or older at the member's address; or
 - (c) by post; or
 - (d) by faxing it or emailing it to a fax number or email address provided by the person; or
 - (e) by sending it to the member by other electronic means (if any) nominated by the member; or
 - (f) by publishing the notice in a newspaper circulating generally in this State or in the area served by the co-operative.
- (2) A document may be served on the co-operative —
- (a) by post addressed to the registered office; or
 - (b) by leaving it at the registered office of the co-operative with a person who appears to be 16 years of age or older.
- (3) If a notice is sent by post, service is taken to be effected by properly addressing, prepaying and posting a letter containing the notice. For a notice of a meeting service is taken to be effected at the end of 24 hours after the letter containing the notice is posted. Otherwise, service is taken to be effected when the letter would be delivered in the ordinary course of post and in proving service it is enough to prove that the envelope containing the notice was properly addressed and posted.
- (4) A notice or other document directed to a member and advertised in the newspaper is taken to be given to the member on the day the advertisement appears.
- (5) A notice given by fax or other electronic means is taken to have been served, unless the sender's fax or other electronic device indicates a malfunction in transmission, on the day the notice is sent, if sent on a business day, otherwise on the next business day.
- (6) A notice may be given by the co-operative to the person entitled to an interest because of the death, bankruptcy or incapacity of a member by sending it through the post in a prepaid letter addressed to the 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 similar description. The address should be the address given for the purpose by the person claiming to be entitled. Alternatively, if no address has been given, the notice can be given in the way it could have been given if the death, bankruptcy or incapacity had not happened.
- (7) Notice of every general meeting must be given, in the same way as authorised in this clause, to —

- (a) every member of the co-operative other than members who have not supplied to the co-operative an address for giving notices to them; and
 - (b) every person entitled to an interest because of the death, bankruptcy or incapacity of a member, who, but for the member's death, bankruptcy or incapacity, would be entitled to receive notice of the meeting; and
 - (c) every independent director.
- (8) Except as provided in this clause and in clause 62(10) no other person is entitled to receive notices of general meetings.

66. Winding-up

- (1) The winding-up of the co-operative must be in accordance with Part 12 Division 3 of the Act.
- (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 the co-operative; 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 the chief judge of the court with jurisdiction in the matter; and
 - (d) that satisfies the relevant provision of Division 50 of the *Income Tax Assessment Act 1997* (Commonwealth).