

A non-distributing co-operative with shares
incorporated under

the *Co-operatives National Law* as applied in
Victoria by the *Co-operatives National Law
Application Act 2013*

Constitution of Hobsons Bay Community Advancement Co-operative Ltd

ABN 60542351573

Registration No. G3118K

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Ref: DFM:17/0015

1 PRELIMINARY

1.1 Exclusion of replaceable rules

- (a) To the extent there is an inconsistency between a clause in this constitution and the ACNC Act while the co-operative is a registered charity, the ACNC Act prevails.
- (b) A word or expression that is defined in **the Law**, or used in the Law and covering the same subject, has the same meaning as in this constitution.

2 INTERPRETATION

In these rules, unless the context otherwise requires and without derogation from any definition of a word in **the Law**:

- (a) “**ACNC Act**” means the *Australian Charities and Not-for-profits Commission Act 2012*, and related legislative instruments for the time being in force;
- (b) “**active member**” means a member who is in active membership within the provisions of rule 6;
- (c) “**alter**” or similar word or expression used in relation to a rule amendment, includes add to, detract from, substitute, and rescind;
- (d) “**auditor**” means auditor for the time being of the co-operative appointed pursuant to the regulations as referred to in rule 67;
- (e) “**banking account**” includes an account with a credit union or building society registered under the *Financial Institutions (Vic) Code* into which the co-operative's monies may be paid or an account with a friendly society registered under the *Friendly Societies Act 1986* or successor legislation to that Act;
- (f) “**business day**” means any day between Monday to Friday inclusive between the hours of 8am to 5pm inclusive.
- (g) “**the co-operative**” means Hobsons Bay Community Advancement Co-operative Ltd ABN 60 542 351 573;
- (h) “**Deductible Contribution**” means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event held for the Principal Purpose;
- (i) “**Department**” means the Department responsible for administering the ROCO;
- (j) “**director**” means any director of the co-operative for the time being and includes a deputy director;
- (k) “**Eligible Entity**” means a fund, institution or authority that is:
 - (i) Charitable at law;
 - (ii) Eligible to receive tax deductible donations under Subdivision 30-B section 30-100 of the ITAA97; and

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- (iii) Listed on the ROCO.
 - (l) “**financial year**” means the financial year of the co-operative as specified in rule 62;
 - (m) “**Gift**” means a gift as described in item 1 of the table in section 30-15 of the ITAA 97 to the co-operative;
 - (n) “**ITAA97**” means *Income Tax Assessment Act 1997*;
 - (o) “**general meeting**” means any annual or special general meeting.
 - (p) “**member**” means a member of the co-operative;
 - (q) “**month**” means calendar month;
 - (r) “**Principal Purpose**” means the “primary activity” set out in rule 6;
 - (s) “**prescribed**” means prescribed by the Act or under the Act by regulation;
 - (t) “**regulation**” or “**regulations**” means a regulation or regulations made under the Law;
 - (u) “**Responsible Person**” means an individual who:
 - (i) performs a significant public function;
 - (ii) is a member of a professional body having a code of ethics or rules of conduct;
 - (iii) is officially charged with spiritual functions by a religious institution;
 - (iv) is a director of a company whose shares are listed on the Australian Stock Exchange;
 - (v) has received formal recognition from government for services to the community;
 - (vi) is an individual before whom a statutory declaration may be made; or
 - (vii) is approved as a Responsible Person by the Commissioner.
 - (v) “**ROCO**” means the Register of Cultural Organisations maintained under the ITAA97;
 - (w) “**rules**” mean the registered rules of the co-operative as amended from time to time with the amendment being registered by the registrar and reference to particular rules has a corresponding meaning;
 - (x) “**share**” means a share in the share capital of the co-operative;
 - (y) “**the Law**” means the Co-operatives National Law as applying in this jurisdiction;
 - (z) “**the board**” means the whole or any number of the directors assembled at a meeting of the directors being not less than a quorum;

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- (aa) “**the registrar**” means the Registrar of Co-operatives or any person delegated the Registrar's functions;
 - (bb) “**the State**” means the State of Victoria;
 - (cc) “**writing**” includes printing, typing, lithography and other modes of representing or reproducing words in a visible form and “written” has a corresponding meaning;
 - (dd) Words importing one gender include the other;
 - (ee) Words importing persons include corporations;
 - (ff) Words in the singular include the plural, and vice versa; and
 - (gg) Words or expressions used have the same meanings as those given to them by **the Law**.

3 RULES

3.1 These rules have the effect of a contract under seal:

- (a) between the co-operative and each member;
- (b) between the co-operative and each director, the principal executive officer and the secretary of the co-operative; and
- (c) between a member and each other member.

3.2 Under the contract, each of those persons agrees to observe and perform the provisions of the rules as in force for the time being so far as those provisions are applicable to that person and they further agree to abide by the co-operatives principles as set out in **section 10 of the Law and as replicated in the Appendix**.

3.3 These rules may be altered by a special resolution or by a resolution of the board in accordance with **sections 61 and 62 of the Law**.

3.4 No alteration to these rules takes effect until it is registered by the registrar.

3.5 Any member shall be entitled on demand to a copy of these rules upon payment of a sum not exceeding \$10.

4 POWERS

The co-operative has the powers of a natural person and the ability to restrict or place additional powers in the rules.

5 NAME

5.1 The name of the co-operative shall be HOBSONS BAY COMMUNITY ADVANCEMENT CO-OPERATIVE LTD.

5.2 The co-operative may abbreviate its name in accordance with the Law.

5.3 The co-operative may change its name in accordance with the Law.

6 PRIMARY ACTIVITY AND ACTIVE MEMBERSHIP PROVISIONS

6.1 In accordance with **Part 2.6 of the Law**:

(a) Primary activity:

To promote community arts and the value of creativity to the Hobsons Bay community, including visual and performing arts, music, literature and craft.

(b) Active membership requirements:

A member shall maintain a supportive relationship with the co-operative in connection with the carrying on of its primary activity in order to establish active membership of the co-operative.

* Payment of a regular subscription to be applied in connection with the co-operative's primary activity is sufficient to establish active membership.

6.2 All members of the co-operative must be active members.

6.3 A member who fails to be or ceases to be an active member must, in accordance with the Law, have their shareholding cancelled and, subject to the Law, their share forfeited.

7 QUALIFICATIONS FOR MEMBERSHIP

7.1 Every member shall hold at least one share.

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

8 MEMBERSHIP, SUBSCRIPTIONS, PERIODIC FEES AND SHARES

8.1 The co-operative shall supply, with each application for membership, a written notice of any intending or prescribed entry or periodic fees that a person will be liable to pay on becoming a member of the co-operative.

8.2 Applications for:

- membership,
- shares,
- bonus shares,
- or additional shares -

shall be lodged at the registered office together with any amount required.

8.3 Every such application shall be considered by the board.

8.4 If the board approves the application, the board shall allot the applied shares for.

8.5 The applicant's name together with the number of shares allotted, date of allotment and any other information required by or under the Law shall be

entered in the register of shares and, if applicable, the register of members, and the information may be entered in the board minutes.

- 8.6 The applicant shall be notified in writing of the allotment and of the entry in the register and shall then be entitled to the privileges attaching - to membership, or to the holding of shares, or bonus or additional shares as is appropriate to the case.
- 8.7 The board may, at its discretion, refuse any application for membership or shares (other than additional shares the subject of a compulsory issue under the Law). The board need not assign reasons for such refusal.
- 8.8 Upon refusal the applicant's deposit shall be refunded without interest.

9 NOT FOR PROFIT ORGANISATION

- 9.1 The income and property of the co-operative must be applied solely towards the Principal Activity.
- 9.2 The co-operative must not distribute any surplus, income or assets directly or indirectly to its members.
- 9.3 Rule 9.1 does not prevent the co-operative from paying a member:
- (a) the nominal value of their share when they cease membership, as permitted by the Law;
 - (b) reimbursement for expenses properly incurred by the member; or
 - (c) for goods or services provided by the member—
- if this is done in good faith on terms no more favourable than if the member was not a member.

10 CEASING MEMBERSHIP

- 10.1 A person shall cease to be a member in any of the following circumstances:
- (a) if the member's membership ceases in any of the circumstances in **section 117 of the Law**;
 - (b) if the member is expelled in accordance with 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) if the member's share is transferred to another person and the transferee is registered as the holder of the share;
 - (g) if the member's share is forfeited in accordance with the provisions of the Law or the provisions of these rules;

- (h) if the member's share is purchased by the co-operative in accordance with the provisions of these rules;
- (i) if a members share is sold by the co-operative pursuant to any power in these rules and the purchaser is registered as holder in the member's place;
- (j) if the amount paid up on the member's share is repaid to the member in accordance with the provisions of these rules;
- (k) on notice in writing given by the member to the Secretary, of the member's resignation from membership; and
- (l) in the case of a member that is a body corporate, if the body is dissolved.

11 EXPULSION OF MEMBERS

11.1 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, whether prescribed by these rules or arising out of any contract under section 125 of the Law; or
- (b) that the member has acted in a manner 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 10 of the Law, and in so acting has caused the co-operative harm.
- (c) Written notice of the proposed resolution shall be forwarded to the member not less than 28 days before the date of the meeting at which the special resolution is to be moved, and the member shall be given a reasonable opportunity of being heard at the meeting.
- (d) Where a general meeting is to be called pursuant to this rule the following procedure shall apply:
 - (i) at least 28 days written notice stating the date, time and place of meeting shall be given to any member whose act is to be considered at the general meeting;
 - (ii) at the meeting, the member shall be afforded a full opportunity to be heard and shall be entitled to call witnesses and to cross examine witnesses against the member;
 - (iii) if the member fails to attend at the time and place mentioned, without reasonable excuse, the act shall be considered and the co-operative may decide on the evidence before it, in spite of the absence of the member;

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- (iv) once the act is considered, the co-operative may decide to suspend the member who committed the act;
 - (v) the co-operative shall not make a decision on the act or on expulsion, except by vote by secret ballot of the members present and entitled to vote. A motion for that decision shall not be deemed to be passed, unless two-thirds of the members so present and so entitled, vote in favour of the motion.
- (e) Where a member is expelled from the co-operative all moneys owing by him/her to the co-operative shall forthwith become payable in full.
 - (f) The shares of any member expelled shall be cancelled as at the date of expulsion and the cancellation shall be noted in the register of shares save where there are specific written terms to the contrary in respect to a class of shares issued and his/her/its expulsion shall be recorded in the register of members.
 - (g) Subject to subrule 11.1(h), **section 128 of the Law**, and the written terms of a class of shares issued, the co-operative shall pay to the expelled member the amount of capital paid up on the member's shares at the time of expulsion (less any amount owing by the member to the co-operative).
 - (h) For the purpose of this rule "deficiency" shall mean the amount of accumulated loss or deficiency disclosed in the last preceding balance sheet of the co-operative. Where such a deficiency exists an appropriate proportion of the loss or deficiency must be deducted from the amount of capital paid up on the shares of the expelled member. This is done having regard to the number of such shares in relation to the number of shares in the co-operative.
 - (i) Payment to the expelled member shall be made at such time as shall be determined by the board in its discretion but not later than twelve (12) months from the date of expulsion in the manner set out in **section 128 of the Law**.
 - (j) An expelled member shall not be re-admitted as a member unless such re-admission is approved by special resolution. A member so re-admitted shall not have restored to him or her any shares which were cancelled on his, her or its expulsion.

12 SUSPENSION OF MEMBERS

12.1 The co-operative may, in general meeting, suspend members, by special resolution, for a period not exceeding one year, who do any of the following acts:

- (a) infringe any of these rules (excluding by-laws);
- (b) fail to discharge obligations to the co-operative, whether prescribed by these rules and/or arising out of contract, or

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- (c) act detrimentally to the interests of the co-operative.
- 12.2 Where in the opinion of the board, a member does any act referred to in subrule 12.1, the board may call a special general meeting, if required, within 28 days of the occurrence of the act to consider it.
- 12.3 Where a general meeting is to be called pursuant to this rule the procedure set out in subrule 11.1(d) shall apply and all references to expulsion in subrule 11.1(d) shall be taken to be references to suspension.
- 12.4 A person whose membership has been suspended shall not have a right to benefits conferred by these rules other than those that are conferred specifically by the Law and enunciated in these rules.
- 12.5 A person whose membership has been suspended shall have a right to all the benefits and rights attaching to membership when the period of suspension has been lifted.

13 DISPUTES

- 13.1 Where there is a dispute or a grievance existing between members, a member or members and the co-operative (the “parties”) then:
- (a) All parties must meet to discuss and if possible, resolve the dispute or grievance within fourteen (14) days of the dispute or grievance arising to the knowledge of all involved, or a party giving notice to the other party's involved of the dispute or grievance, whichever is the earlier.
- (b) If the matter is not resolved in accordance with the procedure in paragraph 13.1(a) then within ten (10) days of the meeting required in that paragraph taking place a further meeting must be held by all parties involved in the presence of a mutually agreed referee. In the absence of agreement as to a referee then the meeting must be held in the presence of a referee, whether a member of the co-operative or otherwise, appointed by the board of the co-operative.
- (c) The referee shall not make any decision binding on the parties but shall conciliate and mediate.
- (d) If the matter is not settled in accordance with sub-paragraph 13.1(b) then all parties must seek resolution within ten (10) days by the assistance and with the mediation of the Dispute Settlement Centre of Victoria, (Department of Justice).
- (e) If settlement by mediation in accordance with sub-paragraph 13.1(b) is not successful then any of the parties involved may consider whether they have grounds to apply to the Supreme Court for an order under **section 130 of the Law (Oppressive conduct of affairs)**.

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- 13.2 For the purposes of this rule “co-operative” includes the board acting as a whole or in respect of a majority decision whether by ordinary or special resolution or otherwise, and any member includes:
- (a) any person aggrieved who has ceased to be a member for not more than three calendar months;
 - (b) any person claiming through or under a member or through or under such a person as is referred to in the immediately preceding paragraph 13.2(a).
 - (c) “members” shall not be taken to include non-member employees.
- 13.3 Nothing in this rule shall apply to any dispute as to the construction or effect of any mortgage or of any contract contained in any document other than the rules of the co-operative.
- 13.4 If there is an entitlement to expel a member pursuant to the Law, rules, regulations or contract, the dispute or grievance procedure shall not apply unless the members, by special resolution vote for that procedure to apply, or vote for it to apply whilst reserving the right to vote on, determine or consider expulsion as the case may be, if the dispute or grievance is not resolved by the procedure.

14 FINES PAYABLE BY MEMBERS

- 14.1 The board may impose on a member maximum fine of \$100 for any infringement of these rules.
- 14.2 A fine shall not be imposed on a member pursuant to rule 14.1 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, for the purpose of showing cause why the fine should not be imposed.

15 CAPITAL AND SHARES

- 15.1 The capital of the co-operative shall be raised by the issue of shares which shall be of a nominal value of \$1 each.
- 15.2 No member shall hold more than 20% of the nominal value of issued share capital of the co-operative except in accordance with section 280 of the Act.
- 15.3 Members shall fully pay for any shares purchased by them on application.
- 15.4 The right to vote in the co-operative is attached to membership and governed by section 228 of the Law.

16 LIABILITY OF MEMBERS TO CO-OPERATIVES

- 16.1 A member shall be liable to the co-operative for the amount, if any, unpaid on the shares held by that member, together with any charges, including entry and periodic fees, payable by the member to the co-operative as required by these rules.
- 16.2 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.
- 16.3 The joint holders of a share shall be jointly and severally liable in respect of any such amount unpaid on shares and to any such charges referred to in 16.1 of this rule.

17 CERTIFICATE OF SHARES

- 17.1 Every person whose name is entered as a member in the register of members shall be given, after application by the member, and without payment, a certificate under the seal of the co-operative specifying the shares held by him or her and the amount paid up on those shares.
- 17.2 However, where shares are held jointly by several persons the co-operative shall not be bound to issue more than one certificate, and delivery of a certificate to one of the joint holders shall be sufficient delivery to all.
- 17.3 If a share certificate or certificate of shares is defaced, lost or destroyed a duplicate may be issued by the co-operative on payment of a fee, not exceeding \$10 and on such terms as to evidence and indemnity as the board thinks fit.

18 SALE OF MEMBERS' SHARES

A member's share may be sold by the co-operative at the request of the member provided such share has not been purchased by the co-operative nor forfeited by the member pursuant to **the Law**.

19 TRANSFER AND TRANSMISSION OF SHARES

19.1 The instrument of transfer of any share shall be executed by or on behalf of the transferor (the giver) and the transferee (the receiver)

19.2 The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members.

19.3 Shares shall be transferred in the following form or in a form approved by the board:

I, A.B (“the transferor”) of.....in the State of Victoria in consideration of the sum of \$..... paid to me by C.D.(“the transferee”) of _____in the State of Victoria transfer to the transferee the share (or shares) numbered..... in the.....

[Name of co-operative]

to hold for the transferee, the transferee's executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution

And I, the transferee, agree to take the share (or shares) subject to the conditions previously referred to in this document.

Dated this.....day of.....Month.....year

Signed by

.....transferor.

In the presence ofwitness.

Signed by

....., transferee.

In the presence of..... witness.

19.4 A share may not be sold or transferred except:

(a) with the consent of the board, and to a person who is qualified to be admitted to membership of the co-operative under rules 5 and 6; or

(b) as otherwise provided by these rules or the Law.

19.5 The board may decline to register any transfer of shares to a person not qualified to be a member or of whom they do not approve.

19.6 The board may also decline to register any transfer of shares on which the co-operative has a lien or charge. If the board refuses to register a transfer of shares it shall send notice of the refusal to the transferee within 2 weeks after the date on which the board declined to register the transfer.

19.7 The board of the co-operative shall not consent to the sale or transfer of shares in excess of the nominal value of shares permitted under the Law to be sold in the financial year.

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- 19.8 The board may decline to recognise any instrument of transfer unless:
- (a) a fee of \$10 (or such lesser sum as may be determined by the board from time to time) is paid to the co-operative for the transfer; and
 - (b) the instrument of transfer is accompanied by the certificate (if any) of the shares to which it relates, and such other evidence as the board may reasonably require to show the right of the transferor to make the transfer.
- 19.9 The board shall maintain a record of all transfers made in the proper books of the co-operative.
- 19.10 The board may suspend the registration of transfers during the 14 days immediately preceding the annual general meeting in each year.

20 EFFECT OF SALE, TRANSFER OR DISPOSAL OF SHARES

A member who has sold or transferred, or disposed of the beneficial interest in, that member's shares, or has agreed to do any of those things, is not entitled to vote at any meeting of the co-operative.

21 FORFEITURES AND CANCELLATIONS- INACTIVE MEMBERS

- 21.1 The board shall, after giving notice in accordance with the Law, 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 3 years before that date; or
 - (b) the member is not presently an active member and has not been an active member throughout the past 3 years immediately before that time; and
 - (c) the member was a member throughout the period stated.
- 21.2 The board is to declare the shares of a member forfeited at the same time as the membership is cancelled and the amounts due in respect of that cancellation and forfeiture shall be dealt with and repaid in accordance with the Law.
- 21.3 The co-operative shall, in a form approved of by the registrar, keep a register of cancelled memberships pursuant to paragraph 21.1, which shall specify the particulars prescribed in the regulations.

22 FORFEITED SHARES

- 22.1 A person whose shares have been forfeited pursuant to these rules shall cease to be a member. That person shall nevertheless remain liable to pay to the co-operative all moneys which (as at the date of forfeiture) were payable by him or her to the co-operative in respect of the shares (this is apart from calls in default).
- 22.2 A statutory declaration in writing by a director of the co-operative stating that a share in the co-operative has been forfeited on a date stated in the declaration, shall be conclusive evidence of that fact as against all persons claiming to be entitled to the share.

23 FORFEITURE FOR NON-PAYMENT OF SUBSCRIPTION

- 23.1 The shares of a member whose subscription under rule 6.3 has not been paid may be forfeited by resolution of the board.
- 23.2 Written notice of the proposed forfeiture shall be forwarded to the member not less than 14 days before the date of the board meeting at which the resolution for forfeiture of the shares is to be moved, and the member shall be given an opportunity of being heard at the meeting.
- 23.3 Rule 22 applies to the forfeiture.
- 23.4 Subject to subrule 23.5, payment to the member of any amount due under this rule shall be made at such time as shall be determined by the board at its discretion, but not later than 12 months from the date of forfeiture.
- 23.5 Instead of payment of an amount due to a member whose membership is cancelled, the amount due may be applied as a deposit if the co-operative takes deposits, or the co-operative may allot or issue debentures in satisfaction of the amount, or if the member consents in writing the amount may be appropriated as a donation.

24 DEATH OF MEMBER

In this rule “interest” means any interest being a requirement for membership (such as a share) or resulting from it, it is not an interest in membership itself: membership, along with interests in it, ceases on death.

- 24.1 Subject to the form required by **the Law**, the board must transfer the deceased member's share or any 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 member; or
 - (b) to such person as the deceased's personal representative may specify, in an application made to the co-operative within 3 months after the death of the member,
- but the transfer to such person can only be made with the consent of the board who must be satisfied:
- (a) there are reasonable grounds for believing that the proposed transferee will be an active member of the co-operative;
 - (b) the proposed transferee is qualified to be a member of the cooperative in accordance with these rules; and
 - (c) that if there is a transfer the nominal value of the shares held by the transferee will not exceed 20% of the nominal value of the share capital of the co-operative or such lower percentage as is specified in the rules of the co-operative.
- 24.2 If the total value of the deceased member's shares in the co-operative is less than \$10,000.00 or such other amount prescribed in the regulations the board may transfer the shares in accordance with **section 99 of the Law** if there has not been a grant of letters of administration or of probate of the deceased's will.

25 REGISTRATION OF OFFICIAL TRUSTEE IN BANKRUPTCY

- 25.1 Where a member is declared bankrupt the Official Trustee in Bankruptcy may be registered as the holder of the share held by the bankrupt member under the provisions of **section 95 of the Law**.
- 25.2 The board may register the Official trustee in Bankruptcy as the holder of a share in which a bankrupt member has an entitlement in equity, with the consent of the holder of the share.

26 REGISTRATION AS ADMINISTRATOR ON MEMBER'S INCAPACITY

A person appointed under a law of a state or 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 that member's share in accordance with **section 96 of the Law**.

27 ENTITLEMENTS AND LIABILITIES OF PERSON REGISTERED AS TRUSTEE, ADMINISTRATOR, ETC.

- 27.1 A person entitled to be shareholder by reason of the death, bankruptcy or the incapacity of the holder shall be entitled to the dividends and other advantages to which that person would be entitled if he or she were the registered holder of the share or shares. However, before being registered as a member the person shall not be entitled to exercise any right conferred by membership in relation to meetings of the co-operative.
- 27.2 A person registered pursuant to rules 24, 25, and 26 is, while registered, subject to the same liabilities in respect of the share/s as those which the dead person, incapable person or bankrupt person would have been liable if the share had remained with, or had been registered in the name of the dead person, incapable person or the bankrupt.
- 27.3 The board shall have the same right to decline or to suspend registration of a share as it would have had in the case of a transfer of a share by the bankrupt or incapacitated person before the bankruptcy or incapacity.

28 TRANSFER AND TRANSMISSION OF DEBENTURES

- 28.1 On the written request of the transferor ("the giver") of a debenture, the co-operative shall enter in the appropriate register the name of the transferee ("the receiver") in the same manner and subject to the same conditions as if the application for entry were made by the transferee.
- 28.2 If the co-operative refuses to register a transfer of debentures it must, within 28 days after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.
- 28.3 An instrument of transfer of a debenture shall be executed by or on behalf of the transferor and the transferee. The transferor shall be deemed to remain the holder of the debenture until the debenture in the name of the transferee is entered in the register of debentures.
- 28.4 The board may decline to recognise any instrument of debenture and may decline to register any debenture unless:

- (a) a fee of \$10 (or such lesser sum as may be determined by the board members from time to time) is paid to the co-operative for the transfer registration;
- (b) the instrument of transfer is accompanied by the relevant debenture/s and such other evidence as the board may reasonably require, in particular such evidence that shows the right of the transferor to make the transfer; and
- (c) any government stamp duty payable is paid.

28.5 Debentures shall be transferred in the following form or in a usual or common form which the board shall approve:

I, A.B. ("the transferor") of.....in the State of.....

in consideration of the sum of \$.....

paid to me by C.D ("the transferee") of..... in the State of.....

transfer to the transferee the debenture (or debentures) numbered.....

to be held by the transferee, the transferee's executors, administrators, and assigns, subject to any conditions on which I hold the debenture/s and subject to any other conditions being terms of the transfer of the debenture/s.

I, C.D. *the transferee* agree to take the debenture/s subject to the conditions mentioned.

Dated this.....day of.....199

Signed by -..... transferor

In the presence of.....witness

.....witness address

Signed by -.....transferee

In the presence of.....witness

.....
witness address

29 ANNUAL GENERAL MEETINGS

- 29.1 An annual general meeting shall, as provided in **section 252 of the Law**, be held each year at a place and on a date and a time determined by the board as long as it is within five (5) months after the close of the financial year of the co-operative or within such further time as may be allowed by the Registrar or prescribed by regulation.
- 29.2 All general meetings of the co-operative other than the annual general meeting shall be special general meetings.
- 29.3 If an annual general meeting is not held in accordance with paragraph (a) of this rule, the members may, in accordance with **section 257 of the Law** and rule 30.2 requisition such a meeting.

30 SPECIAL GENERAL MEETINGS

- 30.1 The board may, whenever it thinks fit, convene a special general meeting of the co-operative.
- 30.2 The board must convene a general meeting of the co-operative on the requisition in writing by any active 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.
- 30.3 The requisition must:
- (a) state the objects of the meeting inclusive of whether there is to be a special resolution and the nature of it;
 - (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 registered office of the co-operative.
- 30.4 A meeting requisitioned by members in accordance with these rules must be convened within twenty one (21) days with the meeting being fixed to be held as soon as practicable, and held not later than two (2) calendar months after the requisition is served. The members must be notified of any special resolution at least 21 days before the meeting and the registrar must be given notice of the special resolution at least 28 days before the notice is given to the members.
- 30.5 Where the board does not convene a meeting twenty one (21) days after the requisition is served, the following provisions apply:
- (a) the requisitioning members (or any of them representing at least half their aggregate voting rights) may convene the meeting in the same manner as nearly as possible as meetings are convened by the board;
 - (b) for that purpose they may request the co-operative to supply a written statement setting out the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the co-operative;

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- (c) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made;
 - (d) the meeting convened by the requisitioning members must be held not later than 3 months after the requisition is served;
 - (e) any reasonable expenses incurred by the requisitioning members because of the board's failure to convene the meeting must be paid by the co-operative;
 - (f) any such amount required to be paid by the co-operative is to be retained by the co-operative out of any money due from the co-operative by way of fees or other remuneration in respect of their services to such of the directors as were in default.

31 NOTICE OF GENERAL MEETINGS

- 31.1 At least 14 days' notice (not including the day on which the notice is served or deemed to be served, but including the day for which notice is given) shall be given of any general meeting in the manner stipulated in rule 71. Notice must be given to those persons who are, under these rules entitled to receive such notices from the co-operative, but the non-receipt of the notice by any member shall not invalidate the proceedings at such general meeting. The notice must specify the place, the day, and the hour of the meeting and, in the case of special business, the general nature of that business.
- 31.2 In the case of a special resolution, notice shall be given at least 21 days before the meeting.
- 31.3 Any member who has a resolution to submit to a general meeting shall give written notice of it to the co-operative not less than 28 days prior to the date of the meeting.
- 31.4 The board shall have inserted in any notice convening a general meeting any business which a member has notified, before the notice convening the meeting is issued, he, she or it intends to move at the meeting (if the notification has been made in accordance with these rules).

32 BUSINESS OF GENERAL MEETINGS

- 32.1 The ordinary business of the annual general meeting shall be:
 - (a) to confirm minutes of the last preceding general meeting (whether annual or special);
 - (b) to receive from the board, auditors, or any officers of the co-operative reports upon the transactions of the co-operative during the financial year, including the matters specified in clause 67 ("accounts");
 - (c) to determine the rates of dividend, bonus shares and rebate;
 - (d) to elect directors; and
 - (e) to determine the remuneration of directors.
- 32.2 The annual general meeting may also transact special business of which notice has been given to members in accordance with these rules.

32.3 All business of a general meeting, other than business of the annual general meeting that is by this rule termed ordinary business, is special business.

33 QUORUM AT GENERAL MEETINGS

33.1 No item of business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting is considering that item.

33.2 Except where these rules state otherwise, 15% of the active members present in person, each being entitled to exercise a vote.

33.3 If within half an hour after the appointed time for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall be adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present shall constitute a quorum.

34 CHAIRPERSON AT GENERAL MEETINGS

34.1 The chairperson, if any, of the board shall preside as chairperson at every general meeting of the co-operative.

34.2 If there is no such chairperson, or if at any meeting he or she 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 shall choose someone from their number to be chairperson (until such time as the chairperson attends and is willing to act).

34.3 The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so 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 any 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 shall be given just as in the case of the original meeting. Apart from this it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

35 STANDING ORDERS AT GENERAL MEETINGS

35.1 The following standing orders shall be observed at general meetings, subject to any suspension of, or amendment of, or addition to, these orders adopted for the purposes of that meeting by the members present at a meeting:

(a) the mover of a proposition shall not speak for more than 10 minutes. Subsequent speakers shall be allowed 5 minutes, and the mover of the proposition 5 minutes to reply. The meeting may however by simple majority extend in a particular instance the time permitted by this rule;

(b) whenever an amendment to an original proposition is proposed, no second amendment shall be considered until the first amendment is disposed of;

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- (c) if an amendment is carried, the proposition as so amended shall displace the original proposition and may itself be amended;
 - (d) if an amendment is defeated, then a further amendment may be moved to the original proposition. However, only one amendment shall be submitted to the meeting for discussion at one time;
 - (e) the mover of every original proposition, but not of an amendment, shall have the right to reply. Immediately after this the question shall be put from the chair. No other member shall speak more than once on the same question, unless permission is given for an explanation, or where the attention of the chairperson is called to a point of order;
 - (f) propositions and amendments shall be submitted in writing, if requested by the chairperson;
 - (g) any discussion may be closed by a resolution "that the question be now put" being moved seconded, and carried. Such resolution shall be put to the meeting without debate;
 - (h) any member, or visitor invited to attend the meeting by the board, may speak on any issue at a meeting with the permission of the chairman provided that the permission may be conditional; and
 - (i) standing orders may be suspended for any period by ordinary resolution.

36 ATTENDANCE AND VOTING AT GENERAL MEETINGS

- 36.1 At any meeting of the co-operative a member who has been given notice that the member's shares are required to be forfeited under the active membership provisions is not entitled to attend.
- 36.2 A member of the co-operative is not entitled to vote at a meeting of the co-operative unless that person is an active member of the co-operative.
- 36.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands. This is unless a poll is (before or on the declaration of the result of the show of hands) demanded under **section 256(2) of the Law** by at least 5 members.
- 36.4 If no poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the co-operative shall be evidence of the fact. No proof is needed of the number or proportion of the votes recorded in favour of, or against, that resolution.
- 36.5 On a show of hands or on a poll every representative of a body corporate, or every member (not under the age of 18), who is present at a meeting in person or represented by proxy or attorney, shall have, subject to subrule 36.10 one vote. However, no member shall have a vote, or be entitled or eligible to vote, contrary to **the Law**.

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- 36.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- 36.7 All resolutions, except special resolutions, shall be determined by a simple majority.
- 36.8 An active member of the co-operative shall have one vote only in respect of any question or motion arising at a general meeting of the co-operative.
- 36.9 In the case of joint membership, the joint members shall have 1 vote only between them.
- 36.10 In the event of a dispute between joint members as to which member shall exercise the vote, the joint member whose name appears first in the register of members shall be the one to exercise the vote.
- 36.11 A member's right to vote is a personal right and is not attached to, or conferred by, any share held by the member in the co-operative.

37 POSTAL BALLOT

- 37.1 Voting shall not be by facsimile or electronic means.
- 37.2 The manner of postal voting shall be in accordance with the regulations.
- 37.3 A special postal ballot or a postal ballot must be held when required by section 250 of the Law or when the members by ordinary resolution approve one.
- 37.4 A special postal ballot must be held for the purpose of passing a special resolution in respect to any of the following matters relating to a co-operative:
- (a) conversion of -
 - (i) a share capital co-operative to a non-share capital co-operative or vice versa; or
 - (ii) a trading co-operative to a non-trading co-operative or vice versa;
 - (b) transfer of incorporation;
 - (c) an acquisition or disposal of assets referred to in section 359 of the Law;
 - (d) the maximum permissible level of share interest in the co-operative;
 - (e) takeover;
 - (f) merger;
 - (g) transfer of engagements; and
 - (h) members' voluntary winding-up.

38 SECRET BALLOT AT GENERAL MEETINGS

- 38.1 For the purposes of this rule a secret ballot is referred to as a poll.
- 38.2 If a poll is demanded it shall be taken in a manner which the chairperson directs. The polling is complete on the day of the vote at the moment when the poll closes. The result of the poll shall be made known on its declaration.
- 38.3 A poll demanded on the election of a chairperson, or on a question of adjournment, shall be taken immediately.

39 SPECIAL AND ORDINARY RESOLUTIONS

- 39.1 A special resolution means a resolution of which notice has been given of the intention to propose the resolution as a special resolution and which is passed by two-thirds of the members who vote in person or by proxy or attorney, at a general meeting, or by a two-thirds majority in a postal ballot, or by three quarters of the members who cast formal votes in a special postal ballot of members.
- 39.2 A special resolution has effect from the date it is passed, save in those circumstances under **the Law**, when it does not take effect until registered by the registrar.
- 39.3 An ordinary resolution is one passed by a simple majority and has effect from the date it is passed.

40 BOARD OF DIRECTORS

40.1 There shall be a board of not less than three (3) directors and no more than nine (9) directors all of whom shall be natural persons, and at least 18 years old.

40.2 For such time that it acts as the Public Fund Management Committee as set out at rule 52, the board must comprise a majority of Responsible Persons.

41 QUALIFICATIONS OF DIRECTORS

41.1 A person is not eligible to be elected as director of a co-operative unless:

- (a) the person is an active member of the co-operative; or
- (b) the person is otherwise qualified to be a director by these rules.

42 TERM AND ROTATION OF DIRECTORS

42.1 A director must serve a term of no more than three years.

42.2 At every Annual General Meeting those directors who have been in office for 3 years or until the third Annual General Meeting following such directors' appointment (whichever is the longer) must retire

42.3 The directors or director to retire under clause 42.2 must be the directors or director longest in office since last being elected but as between directors who were elected on the same day, the director or directors to retire must (in default of agreement between them) be determined by lot.

42.4 The co-operative at any general meeting at which any directors retire may fill up the vacated office by electing a like number of persons to be directors and may fill up any other vacancies.

42.5 If, at any Annual General Meeting at which an election of directors ought to take place, the places of the retiring directors are not filled up, the retiring directors, or such of them as have not had their places filled up, may (if willing to act) be re-appointed for a further three year term, concluding at the third Annual General Meeting following such directors' re-appointment

42.6 A director or directors reappointed under clause 42.5 must not continue in office beyond the third Annual General Meeting following such directors' re-appointment unless such continuation is approved by a special resolution of members.

43 REMOVAL FROM OFFICE OF DIRECTOR

The co-operative may by special resolution remove any director before the expiration of the director's period of office, and may by a simple majority appoint another person in place of the director. The person so appointed shall retire at the same time as the removed director would have done if not removed.

44 VACATION FROM OFFICE OF DIRECTOR

44.1 A director vacates office:

- (a) if disqualified or otherwise unable to be a director pursuant to the **ACNC Act or the Law**;
- (b) if the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave;
- (c) on resigning;
- (d) if the director is removed from office by special resolution of the co-operative;
- (e) if the person ceases to hold the qualification by reason of which the person was qualified to be a director; or
- (f) if an administrator of the co-operative's affairs is appointed under **Part 4.1 of the Law**.

45 FILLING OF CASUAL VACANCIES

45.1 The board may appoint a person to fill a casual vacancy in the office of director until the next annual general meeting.

45.2 For the purpose of this rule, a casual vacancy shall arise where the office of a director is vacated in accordance with rule 44.

46 REMUNERATION

46.1 In accordance with **the Law** the directors shall not receive remuneration for their services as directors other than fees, concessions and other benefits that are approved at a general meeting of the co-operative.

46.2 Expenses shall not be reimbursed unless they can be substantiated by the production of documentary evidence or in the absence of documentary evidence unless those expenses are approved by the board.

46.3 Insofar as it not be contrary to **the Law**, travelling, meal, overnight and like expenses incurred as disbursements in the course of a director's business carried out for the co-operative shall be substantiated by the production of documentary evidence and paid by the board.

47 DEPUTY DIRECTORS

47.1 In the absence of a director from a meeting of the board, the board may appoint a person to act as a deputy for that director and to accordingly act in the director's place.

47.2 A deputy director appointed by the board shall be entitled to notice of meetings of the directors and to attend and vote at those meetings and to sign resolutions and to exercise such powers, authorities and discretions as are vested in or would otherwise be exercisable by the director he/she is deputy for.

47.3 A deputy director shall vacate office if the director he/she acts in place of as deputy ceases to be a director or on a majority of the other directors removing him/her from office.

47.4 An appointment or removal under this rule must be in writing and notice thereof must be served on the deputy director and the appointment or removal shall take effect forthwith upon the service thereof. Service of any such notice must be effected in accordance with rule 71.

47.5 All necessary expenses of a deputy director, incurred whilst acting as a director, shall be refunded to a deputy director. The attendance of the deputy director at any meeting of the board shall be deemed to be attendance by the director he/she is deputy for.

48 PROCEEDINGS OF THE BOARD

48.1 Meetings of the board (including meetings conducted outside board meetings pursuant to section 176 of the Law) are to be held as often as may be necessary for properly conducting the business of the co-operative and must in any case be held at least every three months.

48.2 Questions arising at any meeting shall be decided by a majority of votes.

48.3 In the case of an equality of votes, the chairperson shall have a second or casting vote.

48.4 A director may call a meeting of the board of directors by giving notice individually to every other director.

48.5 Except in special circumstances determined by the chairperson, at least 48 hours' notice shall be given to the directors of all meetings of the board.

49 QUORUM FOR BOARD MEETINGS

The quorum for a meeting of the board shall be one half of the number of directors (or where one half is not a whole number the whole number next higher than one half).

50 CHAIRPERSON OF BOARD

50.1 The chairperson of the board shall be elected by the board.

50.2 If no such chairperson is elected, or if at any board meeting the chairperson is not present within 5 minutes after the time appointed 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 such time as the chairperson attends and is willing to act in that capacity.

50.3 The chairperson may be removed by ordinary resolution of the board and a new chairperson elected in his/her place.

51 ESTABLISHMENT AND OPERATION OF THE HOBSONS BAY COMMUNITY ARTS ACTIVITIES FUND

51.1 The co-operative must establish and maintain a public fund called the “Hobsons Bay Community Arts Activities Fund” to support the Principal Purpose:

- (a) which is listed as a public fund on the ROCO;
- (b) to which members of the public must be invited to make Gifts or Deductible Contributions for the Principal Purpose;
- (c) to which any money received because of such Gifts or Deductible Contributions, including interest and the sale of donated property, will be credited; and
- (d) that does not receive any other money or property.

52 THE PUBLIC FUND MANAGEMENT COMMITTEE

52.1 The Hobsons Bay Community Arts Activities Fund must be managed by a management committee (“the Public Fund Management Committee”) appointed by the co-operative in general meeting.

52.2 To avoid doubt, the board or a sub-committee delegated by the board may be the Public Fund Management Committee.

52.3 The Public Fund Management Committee must comprise a majority of Responsible Persons.

52.4 Where a sub-committee has been delegated by the board to manage the Hobsons Bay Community Arts Activities Fund, that committee must comprise a majority of Responsible Persons.

52.5 The Public Fund Management Committee must comprise a majority of Australian citizens who live permanently in Australia.

53 PUBLIC MUST BE INVITED TO CONTRIBUTE TO THE PUBLIC FUND

The public must be invited to contribute to the Hobsons Bay Community Arts Activities Fund.

54 RULES OF THE PUBLIC FUND

54.1 The Public Fund Management Committee must ensure that:

- (a) money from interest in donations, income derived from donated property and money from the realisation of such property is deposited in the Hobsons Bay Community Arts Activities Fund; and
- (b) the Hobsons Bay Community Arts Activities Fund must be operated on a not-for-profit basis.

55 LIMITS ON USE OF THE PUBLIC FUND

55.1 The co-operative must apply for no other purpose than the Principal Purpose:

- (a) Gifts made to the Hobsons Bay Community Arts Activities Fund; and
- (b) Any money received because of those gifts.

56 RECEIPTS FOR THE PUBLIC FUND

56.1 Receipts for gifts must be issued and proper accounting records and procedures must be kept and used for the Hobsons Bay Community Arts Activities Fund including the following details:

- (a) the number of the receipt;
- (b) the date the donation was received;
- (c) the name of the co-operative and ABN;
- (d) full name of the Hobsons Bay Community Arts Activities Fund;
- (e) signature of the person authorised to act on behalf of the Public Fund Management Committee;
- (f) name of the donor;
- (g) an indication that the Hobsons Bay Community Arts Activities Fund is listed on the Australian Government's Register of Cultural Organisations maintained under Subdivision 30-F of the ITAA 97; and
- (h) that the amount is a gift.

57 PUBLIC FUND BANK ACCOUNT

The co-operative must maintain a separate bank account for the Hobsons Bay Community Arts Activities Fund.

58 PUBLIC FUND NON-CONDUIT POLICY

58.1 The co-operative must not be directed by the preference of the donor to allocate funds or property from the Hobsons Bay Community Arts Activities Fund to other persons or organisations.

58.2 The co-operative must not act as a collection agency for tax deductible donations intended by a donor to be passed on to another organisation or person.

58.3 Despite subrules 58.1 and 58.2, the co-operative may pass funds from the Hobsons Bay Community Arts Activities Fund to another organisation where to do so will further the Principal Purpose.

59 STATISTICAL INFORMATION

- 59.1 The co-operative must agree to give the secretary to the Department within a reasonable period after the end of the financial year;
- (a) statistical information requested by the Department on donations to the Hobsons Bay Community Arts Activities Fund during the previous financial year; and
 - (b) an audited financial statement for the co-operative and the Hobsons Bay Community Arts Activities Fund.

60 AGREEMENT TO ABIDE BY MINISTERIAL RULES

- 60.1 The co-operative must comply with any rules that the Assistant Treasurer and Minister responsible for the Department make to ensure that gifts to the Hobsons Bay Community Arts Activities Fund are only used for the Principal Purpose.
- 60.2 The co-operative must inform the Department as soon as possible if:
- (a) it changes the name of the Hobsons Bay Community Arts Activities Fund;
 - (b) if there is a change to the membership of the Public Fund Management Committee; or
 - (c) if there is any departure from the model rules for public funds in the Guidelines for the Register of Cultural Organisations.

61 WINDING UP OF PUBLIC FUND

In the case of winding up the Hobsons Bay Community Arts Activities Fund, any surplus assets must be transferred to one or more public funds that are Eligible Entities.

62 FINANCIAL YEAR

The financial year of the co-operative shall end on the 30th June.

63 SEAL

- 63.1 The co-operative may have the name of the co-operative appear in legible characters on its common seal and on any official seal. The common seal shall be kept at the registered office in such custody as the board shall direct.
- 63.2 The co-operative may have for use in place of its common seal outside the State, one or more official seals. 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 it is to be used.
- 63.3 The seal of the co-operative shall not be affixed to any instrument except by resolution of the board. Any two directors must be present and must sign all instruments sealed while they are present.
- 63.4 The persons affixing the official seal must certify in writing on the instrument to which it is affixed, the date and place at which it is affixed.

64 CUSTODY AND INSPECTION OF RECORDS AND REGISTERS

64.1 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 **CNL and the National Regulations**;
- (b) a copy of these rules of the co-operative;
- (c) a copy of the last annual report;
- (d) a copy of the minutes of each general meeting;
- (e) the register of directors, members and shares;
- (f) the register of the names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative; and
- (g) such other registers as the Law or regulations provide are to be open for inspection.

64.2 A member is entitled to make a copy of entries in a register specified in the preceding paragraph (a) and to do so free of charge or, if **by facsimile** or scanning for the fee of \$1 per page to a maximum of \$20.

65 BANKING

65.1 The board shall have a banking account or accounts electronic or otherwise in the name of the co-operative, into which all moneys received shall be paid as soon as possible after receipt.

65.2 All cheques drawn on such accounts and all drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the co-operative, shall be signed by any 2 or more directors.

65.3 The operation of any electronic accounts must be restricted so that there is a requirement for authorisation by 2 authorised persons.

65.4 For the purposes of this rule, an **authorised person** is:

- (a) a director; or
- (b) a person approved by the board

66 SAFEKEEPING OF SECURITIES

Securities shall be safely kept by the co-operative in such manner and with such provision for their security as the board directs.

67 ACNC REPORTS

67.1 Directors must arrange for the financial report, the Directors' Report and the Auditors or Reviewers' Report (if required by the ACNC Act or the Law) to be made out and laid before the Annual General Meeting.

67.2 Directors must arrange for any Information Statement or Financial Statement as required by the ACNC Act to be made out.

68 AUDIT

- 68.1 One or more auditors shall be appointed, hold office, be remunerated, be removed and have qualifications, duties and responsibilities as provided by the regulations, or any order made by the registrar pursuant to those regulations.
- 68.2 Audits must be carried out annually.

69 CO-OPERATIVE FUNDS

- 69.1 The board may resolve to retain all or any 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 and no portion thereof shall be paid or transferred directly or indirectly by way of discount, rebate or otherwise by way of profit to members of the co-operative.
- 69.2 A part of the surplus, not exceeding 10% arising in any year from the business of the cooperative may be applied for charitable purposes;
- 69.3 For the purposes of this rule, "surplus" means the excess of income over expenditure after making proper allowance for taxation expense, depreciation in value of the property of the cooperative and for future contingencies.

70 PROVISION FOR LOSS

- 70.1 A minimum 5 per cent of the surplus arising in any year from the operations of the co-operative shall be carried to a reserve fund until that fund is at least 25 per cent of the aggregate amount of the capital for the time being paid up.
- 70.2 The surplus funds shall be utilised to meet expenditure which would result in a loss if the reserve was not used to meet it.

71 NOTICES

- 71.1 Subject to **section 611 of the Law**, a notice or other document **required** to be given to a member of a co-operative may be given:
- (a) personally, or
 - (b) by post addressed to the member's registered address; or
 - (c) by publishing the notice in a newspaper circulating generally in Victoria or in the area served by the co-operative.
- 71.2 A document may be served on a 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 aged 16 years or more.
- 71.3 A document may be served on a **participating** co-operative:
- (a) by post addressed to a place in Victoria where it carries on business;
or

-
- (b) by leaving it with a person who appears to be aged 16 or more at the place where the participating co-operative carries on business in Victoria; or
 - (c) by leaving it at the registered office in Victoria of the participating co-operative registered under schedule 3, section (2)(2) of the Law.

71.4 Where a notice is sent by post, service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice. In the case of a notice of a meeting, service is deemed to be effected at the expiration of 24 hours after the letter containing the notice is posted. In every other case service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post and in proving such service it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.

71.5 A notice or other document directed to a member, advertised in a newspaper, shall be deemed to be duly given to the member on the date on which the advertisement appears.

71.6 A notice forwarded by facsimile transmission shall be deemed to have been served, unless the sender's facsimile machine indicates a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.

71.7 A notice may be given by the co-operative to the joint holders of a share by giving the notice to the joint holder named first in the register of members and shares in respect of that share.

71.8 A notice may be given by the co-operative to the person entitled to a share 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.

71.9 Alternatively a notice 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 like description. The address should be that supplied for the purpose by the person claiming to be entitled. Alternatively, if no such address has been supplied, the notice can be given in the manner in which it could have been given if the death, incapacity or bankruptcy had not occurred.

71.10 Notice of every general meeting shall be given in same manner as authorised above, to:

- (a) every member of the co-operative except those members who have not supplied to the co-operative an address for the giving of notices to them; and
- (b) every person entitled to a share in consequence of the death, incapacity or bankruptcy of a member, who, but for that member's death, incapacity or bankruptcy, would be entitled to receive notice of the meeting.

71.11 For the purpose of this rule "registered address" means the address of the member as appearing in the register of members.

72 DISTRIBUTION OF ASSETS ON REVOCATION OF ENDORSEMENT

- 72.1 Where the endorsement of the co-operative or its Hobsons Bay Community Arts Activities Fund as a deductible gift recipient is revoked by the Commissioner of Taxation, the following assets remaining after satisfying the co-operative's liabilities and expenses must be transferred to such Eligible Entities in Australia:
- (a) Gifts of money or property for the Principal Purpose;
 - (b) Deductible Contributions made to an eligible fundraising event for the Principal Purpose; and
 - (c) Money received by the co-operative as a consequence of those Gifts or Contributions.
- 72.2 The identity of the Eligible Entity or Entities will be decided by the Members by ordinary resolution as near as practicable following receipt of a notice of revocation from the Commissioner of Taxation. If the Members fail to decide, the Eligible Entity shall be determined by application to the Supreme Court in the State of incorporation.

73 DISTRIBUTION OF ASSETS ON WINDING UP

- 73.1 The winding up of the co-operative shall be in accordance with **Part 4.5 of the Law**.
- 73.2 Where on the winding up or dissolution of the co-operative, there is a surplus of assets after satisfying all the co-operative's liabilities and expenses, the surplus:
- (a) must not be paid or distributed to Members; and
 - (b) will be given or transferred to such other Eligible Entity or Entities in Australia which:
 - (A) has a similar purpose to the Principal Purpose; and
 - (B) prohibits the distribution of income, profit or assets to its Members.
- 73.3 The identity of the Eligible Entity or Entities must be decided by the Members by ordinary resolution on or before the time of such winding up or dissolution. If the Members fail to decide, the Eligible Entity shall be determined by application to the Supreme Court in the State of incorporation.

74 APPENDIX- CO-OPERATIVE PRINCIPLES

The co-operative principles are the following principles:

1 Voluntary and open membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2 Democratic member control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (1 member, 1 vote) and co-operatives at other levels are organised in a democratic way.

3 Member economic participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of the capital is usually the common property of the co-operative. They usually receive limited compensation (if any) on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes:

- (a) developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible;
- (b) benefiting members in proportion to their transactions with the co-operative;
- (c) supporting other activities approved by the membership.

4 Autonomy and independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5 Education, training and information

Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public, particularly young people and opinion leaders, about the nature and benefits of co-operation.

6 Co-operation among co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7 Concern for the community

While focusing on member needs, co-operatives work for the sustainable development of their communities through policies accepted by their members.

Note. The co-operative principles are those adopted by the International Co-operative Alliance.

11 Interpretation to promote co-operative principles

In the interpretation of a provision of this Law, a construction that would promote the co-operative principles is to be preferred to a construction that would not promote the co-operative principles.

SCHEDULE OF CHARGES

Copy book of rules -..... - Rule 2(d)
maximum fine -.....- Rule 12(a)
duplicate share certificate - - Rule 17(c)
transfer of shares - - Rule 19(f)(i)
registration of debenture..... - Rule 28(d)(i)
copies of entries in register -..... - Rule 53(b)

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