

The Pack Music Co-operative Limited

Co-operative Rules

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1. INTERPRETATION

In these rules, unless the context otherwise requires –

"**the Act**" means the Co-operatives Act 2009 of the State of Western Australia and includes any amendment or re-enactment of that Act, or any Act, code or other statutory instrument in substitution of that Act;

"**acting chairperson**" means a director acting as chairperson in the absence of the chairperson;

"**active member**" means a member who is in active membership under rule 8;

"**alter**" or similar word or expression used in relation to a rule amendment, includes add to, substitute, and rescind;

"**auditor**" means registered company auditor or auditors (within the meaning of that term in the Corporations Act 2001) for the time being of the Co-operative;

"**banking account**" includes an account with a credit union or building society;

"**business day**" means a day that is not a Saturday, Sunday, Public Holiday or bank holiday in Western Australia;

"**board**" means the whole or any number of the directors assembled at a meeting of the directors or transacting business in accordance with rule 50 not being less than a quorum;

"**calendar month**" means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month;

"**chairperson**" means the director elected as chairperson of the board;

"**Co-operative**" means The Pack Music Co-operative Limited;

"**Corporations Act**" means the Corporations Act 2001 of the Commonwealth of Australia (Cth);

"**deputy chairperson**" means the director, if any, elected as deputy chairperson of the board;

"**director**" means any director of the Co-operative for the time being;

"**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 rule 59;

"**GST**" means the goods and services tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cwth);

"**may**" or a similar word or expression, used in relation to a power of the board indicates that the power may be exercised or not at the board's discretion;

"**member**" means a member of the Co-operative;

"**month**" means calendar month;

"Platform Co-operative" means a co-operatively owned, democratically governed business that establishes a computing platform, and uses a website, mobile app or a protocol to facilitate the sale of goods and services as an alternative business model to venture capital-funded investor models;

"platform technology" means the computer and related online systems used by a Platform Co-operative to carry out its business;

"**prescribed**" means prescribed by the Act or under the Act by Regulation;

"**provision**" in relation to the Act, means words or other matter that form or forms part of the Act, and includes -

(i) a chapter, part, division, subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to the Act; and

(ii) a section, clause, subclause, item, column, table or form of or in a Schedule to the Act; and

(iii) the long title and any preamble to the Act;

"**Registrar**" means the Registrar of Co-operatives under that title or such other title as exists from time to time, or any person delegated the Registrar's functions;

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"**regulation**" means a regulation made under the Co-operatives Regulations 2010;

"**rules**" means the registered rules of the Co-operative as amended from time to time and reference to particular rules has a corresponding meaning;

"**Schedule 1**" means Schedule 1 of the Act;

"**secretary**" means any person appointed by the board as secretary of the Co-operative in accordance with section 206 of the Act and includes a person appointed to act as the secretary during the absence or incapacity of the secretary;

"**section**" means a section of the Act;

"**shall**" or a similar word or expression, used in relation to a power of the board indicates that the power must be exercised, subject to the Act or the rule granting the power;

*"**small co-operative**"* means a co-operative of a class or description prescribed by the regulations, which as at March 2021 stated in Regulation 3A -

*(1) For the purposes of the definition of **small co-operative** in section 4 of the Act, a co-operative is a small co-operative for a financial year if —*

(a) subregulation (2) does not apply to the co-operative for the financial year and it satisfies at least 2 of the following subparagraphs —

(i) the consolidated revenue of the co-operative and the entities it controls (if any) is less than $8 million for the financial year;

(ii) the value of the consolidated gross assets and the entities it controls (if any) is less than $4 million at the end of the financial year;

(iii) the co-operative and the entities it controls (if any) had fewer than 30 employees at the end of the financial year; or

(b) it is a co-operative declared under subregulation (5) to be a small co-operative for the financial year (regardless of whether or not subregulation (2) would apply to the co-operative).

(2) This subregulation applies to a co-operative for a financial year for the purposes of this regulation, if it issues shares to more than 20 prospective members during that year and the amount raised in that year by the issue of those shares exceeds $2 million.

(3) In counting employees for the purposes of this regulation, part-time employees are to be taken into account as an appropriate fraction of a full-time equivalent.

(4) Consolidated revenue and the value of consolidated gross assets are to be calculated for the purposes of this regulation in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of some or all of the entities concerned).

(5) On application by a co-operative, the Registrar may, for the purposes of a financial year, declare the co-operative to be a small co-operative, but the Registrar may make the declaration only if satisfied that unusual and non-recurring circumstances have occurred that warrant doing so.

(6) An application by a co-operative to the Registrar for a declaration under subregulation (5) must be made within 5 months after the end of the financial year;

"**special resolution**" means a resolution of the type referred to in rule 37;

"**State**" means the State of Western Australia;

"**writing**" includes printing, typing, lithography and other modes of representing or reproducing words in a visible form and "written" has a corresponding meaning;

words importing one gender include other genders;

words importing persons include bodies corporates;

words in the singular include the plural, and vice versa;

words or expressions used have the same meanings as those given to them by the Act; and

a reference to an Act of Parliament is a reference to that Act as it may be amended from time to time.

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2. RULES

2.1 Rules constitute a contract

The rules of the Co-operative have the effect of a contract under seal -

(i) between the Co-operative and each member; and

(ii) between the Co-operative and each director, the chief executive officer and the secretary of the Co-operative; and

(iii) between a member and each other member.

[Note: Refer Co-operatives Act 2009 section 97(1).]

2.2 Effect of contract

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.

[Note: Refer Co-operatives Act 2009 section 97(2).]

2.3 Alteration of rules

(a) These 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.

(b) If alteration to these rules under section 28(3A) or section 103 of the Act requires prior approval of the Registrar following an order made under section 103(1B) of the Act, a proposed alteration cannot be put to a resolution unless it is approved by the Registrar.

(c) An alteration to these rules does not take effect until it is registered by the Registrar.

[Note: Refer Co-operatives Act 2009 sections 103 and 106 and Schedule 1 clause 1(w).]

2.4 Inspecting and copying of rules

(a) Any member may inspect a copy of these rules free of charge at the registered office during ordinary business hours.

(b) A member is entitled to obtain from the Co-operative a copy of these rules on payment of $11.60 for the first page and $1.50 for each additional page up to a maximum of $86.60, GST inclusive, or such lesser amount as the board may from time to time determine.

[Note: Refer Co-operatives Act 2009 section 232.]

2.5 Replacement of model rules

The Co-operatives Regulations 2010 Schedule 1 model rules expressly do not apply to the Co-operative, notwithstanding any omission from these rules of something contained in the model rules.

3. OBJECTS

The objective of the Co-operative is to make a long-lasting positive financial and social impact on the music ecosystem, primarily within Australia, through inter alia;

(a) creating a fair trade music streaming service for the mutual benefit of original musicians, businesses, listeners and local governments based on equitably distributed streaming fees channelled to member creators and artists through their member-controlled co-operative; and

(b) securing exclusive access rights to existing platform technology developed and owned by The Pack Australia Pty Ltd; and

(c) building sustainable localised geo-fenced music industry hubs for the benefit of Australian-based artists; and

(d) deploying platform technology to facilitate cost effective management of, and member engagement with, the Co-operative; and

(e) establishing and financially supporting where possible, a not-for-profit Cultural Organisation for the purposes of supporting the creation and recording of new Australian original music.

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4. POWERS

4.1 Non-distributing co-operative

The Co-operative is a non-distributing co-operative without share capital within the meaning of the Act.

[Note: Refer Co-operatives Act 2009 section 14.]

4.2 Powers of a natural person

The Co-operative has, both within and outside the State, the legal capacity of an individual.

[Note: Refer Co-operatives Act 2009 section 39(1).]

4.3 Power to raise finance

The powers of the Co-operative to -

(i) obtain financial accommodation; and

(ii) give security for the repayment of money,

shall be exercised by the board, subject to the Act, but otherwise unlimited by the rules.

[Note: Refer Co-operatives Act 2009 section 39(3).]

4.4 Power to apply property and funds and employ a member

For the avoidance of doubt -

(i) the property and income of the Co-operative are under the control of the board and must be applied solely towards the promotion of the objects and activities of the Co-operative and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member, except in good faith in the promotion of those objects and activities;

(ii) a payment may be made to a member out of the funds of the Co-operative if it is authorised under paragraph (iii);

(iii) a payment to a member out of the funds of the Co-operative is authorised if it is -

(A) the payment in good faith of reasonable remuneration for any services provided to or made available to the Co-operative, or for goods supplied to the Co-operative in the ordinary course of business; or

(B) the payment in good faith to the member as reasonable market based remuneration as an executive director or an employee of the Co-operative; or

(C) the payment of directors fees under these rules; or

(D) the payment of money under rule 28.1 or rule 28.2; or

(E) the payment of interest at commercial rates on money borrowed by the Corporative from the member; or

(F) the payment of reasonable rent to the member for premises leased by the member to the Co-operative; or

(G) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Co-operative.

5. NAME

5.1 Co-operative name

The name of the Co-operative is “The Pack Music Co-operative Limited”.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(a).]

5.2 Use of abbreviations

The Co-operative may abbreviate its name in accordance with section 239 of the Act.

5.3 Change of name

The Co-operative may change its name in accordance with section 241 of the Act.

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6. REGISTERED OFFICE

6.1 The Co-operative must maintain a registered office.

6.2 The office shall be at such place as the board of the Co-operative determines from time to time.

6.3 Within 28 days after changing the address of its registered office, the Co-operative must give the Registrar written notice of the new address.

[Note: Refer Co-operatives Act 2009 section 243.]

7. POWER TO FORM COMPANIES AND ENTER INTO JOINT VENTURES

The Co-operative has the power -

(i) to form or participate in the formation of a corporation, co-operative group or unit trust; and

(ii) to acquire interests in and sell or otherwise dispose of interests in corporations, unit trusts and joint ventures; and

(iii) to form or enter into partnerships, joint venture or other association with other persons or bodies.

[Note: Refer Co-operatives Act 2009 sections 36 and 57.]

8. ACTIVE MEMBERSHIP PROVISIONS

8.1 Primary activity

Under Part 6 of the Act -

(i) creating and maintaining as a social good enterprise an equitable and democratic music streaming service to members of the Co-operative; and

(ii) the collection and sharing of data that -

(A) empowers a musician member to grow awareness of and to market their individual brand;

(B) empowers the Co-operative to grow awareness of and to market any individual brand under the umbrella of the Co-operative and the brand of the Co-operative itself; and

(C) enables the Co-operative to advocate on behalf of all members or cohorts of the membership; and

(iii) providing in-kind support and where possible financial support to any philanthropic entity capable of building and maintaining a healthy music industry and ecosystem.

are primary activities of the Co-operative.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(b).]

8.2 Active membership

A member must -

(i) identify with and actively support the objects of the Co-operative; and

(ii) be capable of contributing and actually contribute, as a composer of music or as a performer, artistic material to the Co-operative for streaming; and

(iii) pay, by the due date for payment, any rule 18.2 entry fee or periodical subscription.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(b).]

9. QUALIFICATIONS FOR MEMBERSHIP

9.1 Membership prerequisite

A person is not qualified to be admitted to membership of the Co-operative -

(i) as a rule 10.3(a) member, unless there are reasonable grounds for believing that the person will satisfy fully the requirements of active membership rule 8.2; or

(ii) as a rule 10.3(b) member unless there are reasonable grounds for believing that the person will satisfy active membership sub-rules 8.2(i) and 8.2(iii).

[Note: Refer Co-operatives Act 2009 section 58(1)(a) and Schedule 1 clause 1(c).]

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9.2 Members to be of good standing

A member, in whatever class of membership, must be of good standing at all times and not act in a manner detrimental to the affairs of the Co-operative or any enterprise formed by or associated with the Co-operative.

10. MEMBERSHIP, SUBSCRIPTIONS, PERIOD FEES

10.1 Intending members

(a) The board of the Co-operative must give each person intending or applying to become a member of the Co-operative and eligible to do so -

(i) a consolidated copy of the rules of the Co-operative; and

(ii) a copy of all special resolutions applicable to the member and passed by the members of the Co-operative since its last annual general meeting, except special resolutions providing for an alteration of the rules of the Co-operative; and

(iii) a copy of the Co-operative's most recent financial information reported to members under Part 10A of the Act; and

(iv) written notice of entry fees or periodical subscriptions payable by a member of the Co-operative.

(b) The board may comply with rule 10.1(a) by giving the person a notice stating any or all of the following -

(i) that the person may request to inspect the documents referred to in paragraph (a) of this rule at an office of the Co-operative nominated by the person;

(ii) that the person may request to be sent an electronic copy of the documents referred to in paragraph (a) of this rule by an electronic means nominated by the person;

(iii) that the documents referred to in paragraph (a) of this rule are available on a website and specifying the direct address on the website where the documents may be accessed.

(c) If a person makes a request under subparagraphs (b)(i) or (b)(ii) of this rule the Co-operative must comply with that request

[Note: Refer Co-operatives Act 2009 sections 68 and 69.]

10.2 Applications

(a) Applications for membership must be lodged at the registered office in the application form approved by the board.

(b) Every applicant is required to warrant, if accepted as a member with voting rights, that they will fulfil their active membership requirements.

(c) Every application must be considered by the board.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(c).]

10.3 Classes of membership

(a) As a non-distributing co-operative without share capital the voting membership of the Co-operative shall be comprised of the following membership classifications –

(i) individual memberships, which are held by natural persons of at least 14 years of age acting in their own right either as a solo composer of music or a solo performer; and

(ii) joint memberships, which are held jointly by up to four natural persons who collaborate in composing music or who perform as a group; and

(iii) individuals or body corporates being the parent or guardian of a person under the age of 14 years, or being the legal guardian, trustee or attorney for a composer or artist who if it was not for their legal or other impairment would be eligible for membership.

(b) At the board's discretion one or more non-voting Associate Membership classifications can be created that gives recognition to the relationship business and government instrumentalities might have with the Co-operative.

[Note: Refer Co-operatives Act 2009 section 59.]

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10.4 Joint membership

Where up to four persons are accepted as joint members of the Co-operative they shall be deemed to be joint tenants with the benefits of survivorship and be subject to the following provisions -

(i) joint members are liable severally as well as jointly in respect of all payments which ought to be made to the Co-operative in respect of their joint membership;

(ii) joint members have only one vote between them;

(iii) the joint member whose name appears first in the register of members will be taken to be the official representative of the joint members, unless written advice the contrary is delivered to the Co-operative;

(iv) on the death of any one joint member the survivor or survivors shall be the only persons recognised by the Co-operative as having title to the benefits of such membership; and

(v) any one of the joint members may give effectual receipt for any return of capital payment to the joint members.

[Note: Refer Co-operatives Act 2009 section 59.]

10.5 Applicants for joint membership

Application for a joint membership will be refused if each of the joint applicants is already a member of the Co-operative.

10.6 Joint member standing for office

(a) Only one member of a joint membership can nominate for the position of member director.

(b) All joint members must approve in writing to the board, any nomination for election to the board or appointment to fill a casual vacancy by one of their joint members.

10.7 Representatives of a body corporate member

(a) If a member is a body corporate the member may by notice served on the Co-operative appoint a person to represent it (a "primary representative") in relation to its membership.

(b) In addition to a paragraph (a) notice the member can give notice of the appointment of one or more deputies of the primary representative and if two or more deputies are appointed must nominate the order in which they are authorised to deputise for the primary representative.

(c) A person is not qualified to be appointed a primary representative or a deputy under this rule to represent a body corporate that is not a listed corporation (within the meaning of the Corporations Act) unless the person is an officer, member or employee of the body corporate.

(d) A person appointed under this rule can exercise the same rights as the member making the appointment and their presence at a meeting constitutes the presence of the member at that meeting.

[Note: Refer Co-operatives Act 2009 section 61.]

10.8 Membership approval

(a) If the board approves an application for membership, the board must have entered in the register of members, within 28 days of the board's approval, the applicant's name and any other information required under the Act.

(b) The applicant -

(i) becomes a member and is entitled to the privileges attaching to membership as soon as the applicant's details are recorded according to paragraph (a) of this rule; and

(ii) must be notified in writing of the entry in the register.

[Note: Refer Co-operatives Act 2009 section 66(2).]

10.9 Right to refuse

(a) The board may, at its discretion, refuse an application for membership.

(b) The board need not assign reasons for the refusal with any amounts accompanying the application for membership to be refunded without interest within 28 days of the application being refused.

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11. CEASING MEMBERSHIP

11.1 Membership ceases

A person ceases to be a member of the Co-operative in any of the following circumstances and as otherwise provided by the Act and these rules -

(i) if the member's membership is cancelled under the rule 19 (Inactive Members);

(ii) if the member is expelled in accordance with these rules;

(iii) where the member is a natural person, 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;

(iv) on death of the member;

(v) if the contract of membership is rescinded on the ground of misrepresentation or mistake;

(vi) if written notice is given to the secretary of an intention to resign from membership, on being removed from the register of members by the board or on the expiry of 3 months' notice, whichever occurs first;

(vii) where the member is a body corporate - if the body corporate becomes insolvent or is deregistered;

(viii) if the member is in default of rule 18, i.e. non-payment of a periodical subscription.

[Note: Refer Co-operatives Act 2009 sections 63 and 64 and Schedule 1 clause 1(f).]

12. CANCELLATION OF MEMBERSHIP FOR BREACH OF OBLIGATIONS

12.1 Grounds for expulsion

A member may be expelled from the Co-operative by a two-thirds majority decision of the board to the effect -

(i) that the member has failed to discharge the member's obligations to the Co-operative under these rules or a contract written or otherwise, including inter alia the obligation to act lawfully in their dealings with the Co-operative; or

(ii) that the member has acted in a way that has -

(A) prevented or hindered the Co-operative in carrying out its primary activity or one or more of its primary activities; or

(B) brought the Co-operative into disrepute; or

(C) been contrary to one or more of the co-operative principles, as described in section 6 of the Act, and has or was likely to cause harm to the Co-operative.

12.2 Notice to affected member

The member must be given at least 28 days' written notice of the nature of the complaint, the proposed resolution and the date, time and place of the board meeting at which the resolution will be moved.

12.3 Board meeting

The following procedures apply at the board meeting at which the rule 12.2 resolution is to be proposed -

(i) 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;

(ii) if the member fails to attend at the time and place mentioned, without reasonable excuse, the act must be considered and the board may decide on the evidence before it, despite the absence of the member;

(iii) once the act is considered, the board may by a two-thirds majority determine to cancel the member's membership;

(iv) if the board resolves to cancel the membership, the secretary is to confirm the decision in writing to the member; and

(v) the cancellation takes effect 24 hours (Saturdays, Sundays and Public Holidays in Western Australia excluded) after the board's decision if the member does not appeal the decision, or immediately on any appeal being dismissed.

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12.4 Right of appeal

(a) A member may appeal a decision to cancel their membership within 24 hours (Saturdays, Sundays and Public Holidays in Western Australia excluded) of the decision by lodging written notice of appeal with the secretary.

(b) The board acting reasonably, can require the member to pay to the Co-operative a cash security deposit to cover the estimated cost of conducting a special general meeting under this rule 12.4.

(c) Within 3 business days of receiving a notice of appeal the secretary is to provide the member with details of any required cash security deposit which the member must pay to the Co-operative within 3 business days of being advised that a security deposit is required.

(d) If the member fails to pay any required cash security deposit on time the notice of appeal will lapse.

(e) On receipt of any required security deposit or if no security deposit is required the board is to convene a special general meeting of the Co-operative for the sole purpose of considering an ordinary resolution to confirm the board's decision to cancel the membership.

(f) At the special general meeting of the Co-operative convened under this rule 12.4 the chairperson shall endeavour to have the vote conducted by secret ballot but failure to do so does not nullify the decision of the meeting as declared by the chairperson.

(g) If the resolution confirming the board's decision to cancel the membership is not passed, the board resolution is revoked.

12.5 Special general meeting costs

(a) In the event of the member's appeal being dismissed the board can –

(i) appropriate some or all of the cash security deposit to the payment of reasonable special general meeting costs;

(ii) recover as a debt due by the exited member to the Co-operative any shortfall in the recovery of reasonable costs of conducting the special general meeting; or

(iii) otherwise allow the cost of the meeting to be borne by the Co-operative.

(b) In the event of the member's appeal being upheld the board must refund to the member within 7 days the relevant cash security deposit, free of any interest.

12.6 Re-admission

An expelled member must not be re-admitted as a member unless the re-admission is approved by a two-thirds majority vote of directors.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(e).]

13. MONETARY CONSEQUENCES OF EXPULSION

(a) 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.

(b) If a member who had paid their periodical subscription (if any) in full is expelled from the Co-operative, the board may repay the full subscription, a proportion of the subscription or none of the subscription to the expelled former member.

14. SUSPENSION OF MEMBERSHIP

14.1 Grounds for suspension

The board of the Co-operative may suspend a member for not more than one year, who does any of the following acts -

(i) contravene any of these rules;

(ii) fails to discharge obligations to the Co-operative, whether under these rules or a contract;

(iii) act detrimentally to the interests of the Co-operative.

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14.2 Procedure for suspension

To suspend a member, the procedure set out in rule 12 is to be followed as if references to expulsion were references to suspension.

14.3 Consequences of suspension

During the period of suspension, the member -

(i) loses any rights (except the right to vote) arising as a result of membership; and

(ii) is not entitled to a refund, rebate or credit for membership fees paid, or payable, to the Co-operative; and

(iii) remains liable to having their membership cancelled at any time in accordance with rule 12.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(e).]

15. PAYMENTS UPON RESIGNATION OF MEMBER

(a) If a member resigns from the Co-operative, all amounts owing by the former member to the Co-operative become immediately payable in full.

(b) If a member who had paid their periodical subscription (if any) in full resigns from the Co-operative, the board may repay either the full subscription, a proportion of the subscription or none the subscription to the former member.

16. DISPUTES AND MEDIATION

16.1 Procedure

(a) The grievance procedure set out in this rule applies to disputes under the rules between a -

(i) member and another member; or

(ii) member or members and the Co-operative.

(b) 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.

(c) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days of -

(i) the dispute coming to the attention of each party; or

(ii) a party giving notice to each of the other parties involved, of the dispute or grievance.

16.2 Mediation

(a) 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.

(b) The mediator must be -

(i) a person chosen by agreement between the parties; or

(ii) in the absence of agreement -

(A) for a dispute between a member and another member, a person appointed by the board of the Co-operative; or

(B) for a dispute between a member(s) and the Co-operative, a person appointed by the Supreme Court of Western Australia.

(c) A member of the Co-operative can be a mediator.

(d) The mediator cannot be a member who is a party to the dispute.

(e) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

(f) The mediator, in conducting the mediation, must -

(i) give the parties to the mediation process every opportunity to be heard; and

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(ii) allow due consideration by all parties of any written statement submitted by any party; and

(iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.

(g) The mediator cannot determine the dispute.

(h) The mediation must be confidential and without prejudice.

(i) The costs of the mediation are to be shared equally between the parties unless otherwise agreed.

16.3 Excluded matters

(a) Nothing in this rule extends to any dispute as to the construction or effect of any mortgage or any contract written or otherwise other than these rules.

(b) Nothing in this rule extends to any dispute involving the expulsion or suspension of a member.

(c) 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.

17. NO FINES PAYABLE BY MEMBERS

The board does not have the right to impose any fine on a member.

[Note: Refer Co-operatives Act 2009 section 71.]

18. LIABILITY OF MEMBERS TO CO-OPERATIVE

18.1 Liability for charges

A member is liable to the Co-operative for the amount of any charges, including entry and periodical fees, payable by the member to the Co-operative under these rules.

[Note: Refer Co-operatives Act 2009 section 67(2) and Schedule1 clauses 1(d) and 1(g).]

18.2 Entry fee and periodical subscriptions

(a) The board may require the payment by members of entry fees and periodical subscriptions set by the board from time to time.

(b) The board can set different entry fees and periodical subscriptions for different membership classifications and sub-classifications within a classification.

(c) An entry fee may be evidenced fully or in part by the allocation of a The Pack Music Foundation Capital Unit.

[Note: Refer Co-operatives Act 2009 section 69 and Schedule 1 clause 1(g).]

18.3 Liabilities on death of member

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.

[Note: Refer Co-operatives Act 2009 section 63(2) and Schedule 1 clause 1(g).]

19. CANCELLATION OF MEMBERSHIP - INACTIVE MEMBERS

19.1 Board to declare membership cancelled

Subject to rules 19.2 and 19.3 the board must declare effective as at each 31 March the membership of a member cancelled if -

(i) 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 3 months immediately prior to that date; or

(ii) the member has not been an active member at any time during the continuous period of 3 months immediately prior to that date.

[Note: Refer Co-operatives Act 2009 section 120.]

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19.2 Deferral of cancellation by board

(a) The board may by resolution defer cancellation of a member's membership for a period of up to 12 months (deferral period) -

(i) if the board has reasonable grounds to believe that the member has ceased to be an active member because of unusual circumstances that prevent the member fulfilling their active membership obligations; or

(ii) if -

(A) the board thinks that during the deferral period an active membership resolution may be put to the members of the Co-operative; and

(B) the effect of the resolution would be relevant to the question of whether the member is an active member.

(b) The board must review the resolution to defer within the deferral period to determine if a further resolution should be made under paragraph (a).

19.3 Prohibition of cancellation of membership

Unless the regulations otherwise provide, the board must not declare the membership of a member to be cancelled under this rule -

(i) if the Co-operative is insolvent; or

(ii) if the Co-operative is under administration under the Corporations Act Part 5.3A as applying under the Act; or

(iii) if a compromise or an arrangement is being administered in relation to the Co-operative; or

(iv) if the Co-operative is in the course of being wound up; or

(v) if an appointment of a receiver, whether or not a receiver and manager, of any property of the Co-operative is in force; or

(vi) if the Co-operative has, for the purposes of being registered as a company under the Corporations Act, lodged with the Registrar a copy of the entry made in the minute book of the Co-operative under section 185 of the Act; or

(vii) in other circumstances as may be prescribed by the regulations.

[Note: Refer Co-operatives Act 2009 section 124.]

19.4 Notice of intention to cancel membership

(a) Unless paragraph (b) of this rule applies, the board of the 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.

(b) Notice is not required to be given under paragraph (a) if -

(i) the member's whereabouts are unknown to the Co-operative; or

(ii) the amount required to be repaid to the member in relation to the cancelled membership, does not exceed the amount prescribed by the regulations, or if an amount is not prescribed, $100.

[Note: Refer Co-operatives Act 2009 section 125. As at February 2020 the prescribed amount was $100.]

20. CANCELATION OF MEMBERSHIP FOR NON-PAYMENT OF SUBSCRIPTION

20.1 Cancellation of membership

The membership of a member whose periodical fee (subscription) under rule 18.2 has not been paid may be cancelled by resolution of the board.

20.2 Notice requirement

Written notice of the proposed cancellation must be given to the member at least 14 days before the date of the board meeting at which the resolution for cancellation is to be moved.

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21. DEATH OF MEMBER

21.1 Individual membership

(a) Subject to paragraph (b), the board must transfer a deceased member's financial interest in the Co-operative to -

(i) the personal representative(s) of the deceased, that is, an executor(s) or administrator(s) of the estate of the deceased; or

(ii) 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.

(b) If the total value of the deceased member's interests in the Co-operative is less than $10,000 or another amount fixed by the regulations, the board may transfer the interests under section 76 of the Act if there has not been a grant of letter of administration or of probate of the deceased's will.

(c) For the purposes of paragraph (b) the board must decide the value of the interest of a deceased member as the amount due to the deceased member less any amounts owing to the Co-operative by the deceased member.

[Note: Refer Co-operatives Act 2009 sections 75, 76, 77, 159 and 160.]

22. DEALINGS OF MEMBERS WITH CO-OPERATIVE

22.1 Contracting with members

The Co-operative may make a contract with a member requiring the member to have specified dealings with the Co-operative for a fixed period.

[Note: Refer Co-operatives Act 2009 section 70.]

22.2 Content of contract

The contract may require a member -

(i) to sell products through or to the Co-operative;

(ii) provide services through or to the Co-operative;

(iii) to obtain supplies or services through or from the Co-operative; and

(iv) to pay to the Co-operative specified amounts as liquidated damages for a contravention of a requirement authorised by this rule.

22.3 Liquidated damages and security therefore

Any amount specified as liquidated damages is to be considered as a debt payable to the Co-operative for which the Co-operative has a charge on each of the following -

(i) the interest in the capital and the credit balance and deposits of the member or past member;

(ii) any interest payable to the member or past member;

(iii) any entry and periodical fees required to be repaid to a member when the member ceases to be a member.

[Note: Refer Co-operatives Act 2009 section 72.]

22.4 Nature of security

The charge created under rule 22.3 shall be enforced under rule 23.

23. CHARGE ON INTEREST AND CO-OPERATIVE CAPITAL UNITS

23.1 Charge and set off

(a) The Co-operative has a charge on the interest in the capital, and on the credit balance and deposits of a member or past member, and on any interest payable to a member or past member, in respect of any debt due from the member or past member to the Co-operative. The Co-operative may also set off any amount paid on account of any amount credited or payable to the member or past member in or towards payment of the debt.

[Note: Refer Co-operatives Act 2009 section 72.]

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(b) The charge may be enforced at any time after 7 days' notice to the member or past member, by the appropriation by the Co-operative of the capital, interest or deposit subject to the charge.

24. 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 interests held by the bankrupt member.

[Note: Refer Co-operatives Act 2009 section 154(2).]

25. 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 their affairs, may be registered as the holder of the member's interest in the Co-operative.

[Note: Refer Co-operatives Act 2009 sections 153 and 158 and Schedule 1 clause 1(d).]

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

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

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(d).]

27. TRANSFER AND TRANSMISSION OF DEBENTURES

(a) 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 transferee.

(b) 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 receiver notice of the refusal.

(c) 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.

(d) The board may decline to recognise an instrument of debenture and may decline to register a debenture unless -

(i) a fee of $5.00 (or a lesser amount decided by the board from time to time) is paid to the Co-operative for the transfer registration; and

(ii) the instrument of transfer is accompanied by evidence the board reasonably requires; in particular, evidence showing the right of the transferor to make the transfer; and

(iii) any government stamp duty payable is paid.

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

I/We,… (the transferor) of ... in the State of ... in consideration of the sum of $… paid to me by … (the transferee), of ... in the State of... transfer to the transferee the following security ... (enter description and quantity of the Debenture or CCU) to be held by the transferee, the transferee's executors, administrators, and assigns, subject to any conditions on which I/we hold the security and subject to any other conditions being terms of the transfer of the security.

And I/we, the transferee agree to take the debenture/s subject to the conditions mentioned.

Dated this .....day of 20…

Signed by....., transferor(s).
In the presence of..... , witness.
Signed by....., transferee(s).
In the presence of..... , witness.

[Note: Refer Co-operatives Act 2009 Schedule 1clause 1(p).]

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28. CO-OPERATIVE CAPITAL UNIT

28.1 The Pack Music Foundation Capital Unit

(a) The Pack Music Foundation Capital Unit (a **"TPFC Unit"**) is a particular class of co-operative capital unit (a **"CCU"**) for the raising of financial accommodation in accordance with rule 4.3.

(b) Terms of issue of The Pack Music Foundation Capital Unit are -

(i) a unit has a fixed nominal value of $1.00;

(ii) the repayment of capital can only be -

(A) from retained profits and is at the discretion of the board; or

(B) on winding-up of the Co-operative;

(iii) each unit ranks equally with every other The Pack Music Foundation Capital Unit on issue;

(iv) The Pack Music Foundation Capital Unit carries no entitlement to interest or a dividend however the board can in its absolute discretion determine to pay interest or a dividend on the nominal value of a Unit at a rate of return not greater than the prevailing Reserve Bank of Australia cash rate plus a maximum of 600 basis points i.e. 6%.

(v) On a winding-up, repayment of The Pack Music Foundation Capital Units rank in priority to payment -

(A) behind secured debts; and

(B) behind unsecured debts;

but other than the return of capital a unit holder has no entitlement to any surplus on wind-up.

(vi) There is no limit on the total holding of The Pack Music Foundation Capital Units that may be acquired by persons who are not members of the Co-operative.

28.2 Co-operative capital units – other

(a) The board of the Co-operative may in addition to issuing co-operative capital units under rule 28.1 issue other classes of co-operative capital units that confer an interest in the capital of the Co-operative.

[Note: Refer Co-operatives Act 2009 Part 10 Division 2.]

(b) Co-operative capital units cannot be issued under this rule 28.2 unless -

(i) the terms of issue have been approved by a special resolution of the Co-operative; and

(ii) the issue is made pursuant to an offer accompanied by a copy of a statement approved by the Registrar under section 262(3) of the Act; and

(iii) the Registrar approves of the terms of the issue under section 262(4) of the Act.

[Refer: Co-operatives Act section 262(1).]

(c) The terms on which CCUs are issued under this rule 28.2 must include, but are not limited to the following information -

(i) details of entitlement to repayment of capital;

(ii) details of entitlement to participate in surplus assets and profits;

(iii) details of entitlement, if any, to interest on capital, including whether interest is cumulative or non-cumulative;

(iv) details of entitlement, if any, to a dividend on capital;

(v) details of how capital and interest on capital are to rank for priority of payment on a winding-up; and

(vi) whether there is a limit on the total holding of CCUs that may be acquired by persons who are not members of the Co-operative and, if there is a limit, what the limit is.

[Refer: Co-operatives Act 2009 section 262(2).]

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28.3 Co-operative capital units – generally

(a) The board of the Co-operative may issue CCUs to a person, whether or not that person is a member of the Co-operative.

(b) Each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs.

(c) 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.

(d) 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.

(e) 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.

(f) Multiple classes of co-operative capital units can be on issue at the one time provided each class is clearly distinguishable from every other class.

[Note: Debenture holders receive notice of meetings of debenture holders not general meetings of the Co-operative.]

29. TRANSFER AND TRANSMISSION OF CCUs

29.1 General

(a) Subject to this rule, the transfer and transmission of a CCU is to follow the same process as for a debenture under rule 27.

(b) Where the terms of issue of a CCU differ from rule 27 in respect to the manner of transfer or transmission, the terms of its issue prevail.

(c) The board can refuse to transfer a co-operative capital unit if the board has a charge over the unit under rule 23.

(d) For the removal of doubt The Pack Music Foundation Capital Unit is a transferrable CCU and can be held in the name of a member or non-member.

30. ANNUAL GENERAL MEETINGS

30.1 Timing of annual general meeting

An annual general meeting must 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.

[Note: Refer Co-operatives Act 2009 section 190.]

30.2 General meetings

A general meeting of the Co-operative other than the annual general meeting must be a special general meeting.

30.3 Requisition of meeting

If an annual general meeting is not held as required by rule 30.1, the members may, under rule 31, requisition a special general meeting.

[Note: Refer Co-operatives Act 2009 section 195 and Schedule 1 clause 1(t).]

31. SPECIAL GENERAL MEETINGS

31.1 Board may call on own motion

The board may, whenever it considers appropriate, call a special general meeting of the Co-operative.

[Note: Refer Co-operatives Act 2009 section 191.]

31.2 Board to call general meeting on requisition

(a) 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 20% of the total number of votes able to be cast at a meeting of the Co-operative.

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(b) The requisition must -

(i) state the objects of the meeting; and

(ii) 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

(iii) be served on the Co-operative by being lodged at the Co-operative's registered office.

(c) A meeting requisitioned by members under these rules must be called and held by the board as soon as practicable and in any case must be held within 2 months after a valid requisition is served.

(d) If the board does not call a meeting within 35 days after the requisition is served, the following provisions apply -

(i) 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;

(ii) 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;

(iii) the board must send the statement to the requisitioning members within 7 days after the request for the statement is received;

(iv) the meeting called by the requisitioning members must be held within 3 months after the requisition is served;

(v) the Co-operative must pay the reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting;

(vi) 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.

[Note: Refer Co-operatives Act 2009 section 195 and Schedule 1 clause 1(t). Rule 31.2 exists as a governance measure should the board fail to convene an AGM or a meeting requisitioned by members. A 20% member threshold is considered a balance between allowing reasonable access to call a meeting of member and the potential for abuse of process by minority interests. A requisitioned meeting called by the board must be held within 2 months of the requisition being received. If the requisitioning members need convene the meeting the meeting must be held within 3 months of the original request.]

32. NOTICE OF GENERAL MEETINGS

32.1 Issuing notice

(a) 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 and the auditor, if any, of any general meeting, in the way stipulated in rule 70.

[Note: Refer Co-operatives Act 2009 section 192.]

(b) Notice must be given to the persons who are, under these rules, entitled to receive notices from the Co-operative, but non-receipt of the notice does not invalidate the proceedings at the general meeting.

32.2 Notice to specify

The notice must state –

(i) subject to rule 36.1, the place of the meeting;

(ii) the day and time of the meeting;

(iii) if the meeting is held pursuant to rule 36.1, the technology that will be used to facilitate the meeting and information about how those entitled to attend can participate in the meeting;

(iv) for special business, the general nature of the business; and

(v) where the directors have determined to allow direct voting pursuant to rule 36.6, a summary of the process prescribed by the directors in respect of such direct voting.

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32.3 Notice of special resolution

For a special resolution, notice of -

(i) the intention to propose the special resolution; and

(ii) the reasons for proposing the special resolution; and

(iii) the effect of the special resolution being passed,

must be given at least 21 days before the meeting.

[Note: Refer Co-operatives Act 2009 section 177(3) and Schedule 1 clause 1(t).]

32.4 Members' business

(a) Members who together are able to cast at least 20% 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 35 days before the day of the meeting.

(b) In a notice calling a general meeting, the board must include any business members have notified their intention to move at the meeting under paragraph (a) (provided the member's notification has been made under these rules and within time).

[Note: Rule 32.4 exists as a governance measure allowing matters of concern to a reasonable number of members to be aired at a general meeting whilst reducing the prospect of an abuse of process by minority interests. The rule does not prevent the board from acting in its own right and placing any matter before a general meeting.]

33. BUSINESS OF GENERAL MEETINGS

33.1 Ordinary business

The ordinary business of the annual general meeting must be to receive from the board, auditors, if any, or officers of the Co-operative, as required by section 244Y of the Act -

(i) the financial and other reports of the Co-operative for the financial year; and

(ii) a report on the state of affairs of the Co-operative.

33.2 Special business

(a) The annual general meeting may also transact special business of which notice has been given to members under these rules.

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

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(u).]

33.3 Auditor's right to be heard at general meetings

(a) The Co-operative's auditor, if any, is entitled to attend any general meeting of the Co-operative.

(b) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

(c) The auditor is entitled to be heard even if -

(i) the auditor retires at the meeting; or

(ii) the meeting passes a resolution to remove the auditor from office.

(d) The auditor may authorise a person in writing as the auditor's representative for the purpose of attending and speaking at any general meeting.

[Note: Refer Co-operatives Act 2009 section 197B.]

33.4 Proceedings at annual general meeting

(a) The chairperson of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Co-operative.

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(b) If the Co-operative's auditor, if any, or their representative is at the meeting, the chairperson of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to -

(i) the conduct of the audit; and

(ii) the preparation and content of the auditor's report; and

(iii) the accounting policies adopted by the Co-operative in relation to the preparation of the financial statements; and

(iv) the independence of the auditor in relation to the conduct of the audit; and

(v) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor.

33.5 Tabling written answers

If -

(i) the Co-operative's auditor or their representative is at the annual general meeting; and

(ii) the auditor has prepared a written answer to a written question submitted to the auditor,

the chairperson of the annual general meeting may permit the auditor or their representative to table the written answer to the written question.

33.6 Access to written answers

The board must make the written answer tabled under rule 33.5 reasonably available to members as soon as practicable after the annual general meeting.

34. QUORUM AT GENERAL MEETINGS

34.1 Quorum number

(a) Five (5) members present in person and being entitled to exercise a vote, constitute a quorum for a general meeting;

(b) A member participating in meeting held in accordance with rule 36.1 and being entitled to exercise a vote, is deemed to be present at the general meeting.

(c) 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.

(d) If a quorum is not present within 15 minutes after the appointed time for a meeting, the meeting, if called on the requisition of members, must be dissolved. In any other case the meeting must be adjourned to the same day, time and place, using the same on-line meeting technology, in the next week.

(e) If a quorum is not present within 15 minutes after the time appointed for an adjourned meeting, the members present constitute a quorum.

[Note: Refer Co-operatives Act 2009 section 193(2) and Schedule 1 clause 1(t).]

34.2 Consequences of not maintaining a quorum

If at any stage after the opening of the meeting a quorum is not present, the chairperson shall adjourn the meeting for 15 minutes, at the conclusion of which the chairperson shall -

(i) if a quorum is present, resume the meeting; or

(ii) if a quorum is not present -

(A) and the meeting was called on the requisition of members - declare the meeting closed; or

(B) declare the meeting closed - if there is no unfinished business; or

(C) adjourn the meeting to the same day in the next week at the same time and place, using the same on-line meeting technology, to complete business left unfinished but no other business, and at the adjourned meeting if a quorum is not present within 15 minutes after the time appointed for the meeting the members present constitute a quorum.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(u).]

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35. CHAIRPERSON AT GENERAL MEETINGS

35.1 Chairperson of board presides

The chairperson or acting chairperson of the board may preside as chairperson at every general meeting of the Co-operative.

35.2 Members to choose if chairperson or deputy chairperson not present or not willing

If there is no chairperson or acting chairperson, or neither is present within 15 minutes after the time appointed for holding the meeting or neither is willing to act as chairperson, then the members present must choose someone from their number to be chairperson (until the chairperson or deputy chairperson is present and willing to act).

35.3 Conduct of meeting

The chairperson shall determine the procedures for conducting a general meeting having regard to any specific governance and/or procedural requirements set out in these rules.

35.4 Adjournment of meetings

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.

[Note: Refer Co-operatives Act 2009 Schedule1 clause 1(u).]

36. ATTENDANCE AND VOTING AT GENERAL MEETINGS

36.1 Use of technology

(a) A meeting may be held using one or more technologies (including telephone, electronic or other communications facilities) as may provide all persons in the meeting a reasonable opportunity to participate without being physically present in the same place.

(b) In these circumstances -

(i) participation during such a meeting via technology shall constitute presence in person at such meeting for all purposes (including for the purposes of establishing quorum under rule 34.1);

(ii) a vote taken at such a meeting must be taken by way of a poll, and not on a show of hands;

(iii) a requirement under the Act or these rules to allow an opportunity for persons attending such a meeting to speak or ask questions may be complied with by using one or more technologies that allow that opportunity; and

(iv) all the provisions in these rules relating to a meeting apply, so far as they can and with such changes as are necessary, to a meeting using the relevant technology.

(c) If the technology used in holding the meeting encounters a technical difficulty, whether before or during the meeting, which results in a member not being able to participate in the meeting, subject to the Act, the chairperson may -

(i) allow the meeting to continue; or

(ii) adjourn the meeting for such reasonable period as may be required to fix the technology; or

(iii) adjourn the meeting to such other time and location as the chairperson considers appropriate.

36.2 Voting

The right to vote attaches to the membership of the classes set out in rule 10.3(a).

36.3 Decision

(a) A resolution, other than a special resolution, must be decided by simple majority.

[Note: Refer Co-operatives Act 2009 section 176. The requirements for a special resolution are in section 177 of the Act.]

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(b) Subject to paragraph (c) and (d) and rule 36.1 and any process prescribed by the directors pursuant rule 36.6, at a general meeting a question for decision must be decided on a show of hands of members present at the meeting.

[Note: Refer Co-operatives Act 2009 section 194(1).]

(c) A poll may be demanded on any question for decision.

(d) Where, before a vote is taken or before or immediately after the declaration of the result on a show of hands -

(i) the chairperson directs that the question is to be determined by a poll; or

(ii) at least 3 members present demand a poll,

the question for decision must be determined by a poll.

[Note: Refer Co-operatives Act 2009 section 194(4).]

(e) Subject to paragraph (f), the poll must be taken when and in the manner that the chairperson directs.

(f) A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.

(g) Once the votes on a show of hands or on a poll have been counted then, subject to paragraph (d), a declaration by the chairperson that a resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.

(h) The result of the vote must be entered in the minute book.

36.4 Voting on a show of hands

On a show of hands at a general meeting, subject to rule 10.4(ii) each member -

(i) present; or

(ii) represented by a person -

(A) acting under a power of attorney; or

(B) appointed under rule10.7,

may exercise only one vote.

[Note: Refer Co-operatives Act 2009 section 194.]

36.5 Voting on a poll

Subject to any rules prescribed by the directors pursuant to rule 36.6, on a poll called at a general meeting, subject to rule 10.4(ii) each member -

(i) present; or

(ii) represented by a person acting under a power of attorney; or

(iii) represented by a person appointed under rule10.7, or

(iv) who has duly lodged a valid direct vote in respect of the relevant resolution under rule 36.6,

has and may exercise one vote.

[Note: Refer Co-operatives Act 2009 section 194.]

36.6 Direct voting

(a) The directors may determine that at any general meeting, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution.

(b) A paragraph (a) direct vote includes a vote delivered to the Co-operative by post, fax or other electronic means approved by the directors.

(c) The directors may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.

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36.7 Treatment of direct votes

A direct vote on a resolution at a Members' meeting cast in accordance with rule 36.6 is of no effect and will be disregarded -

(i) if, had the vote been cast in person at the meeting at which the resolution is considered -

(A) the vote would not be valid: or

(B) the Co-operative would be obliged to disregard the vote;

(ii) subject to any rules prescribed by the directors, if the person who cast the direct vote is present in person at the meeting at the time the resolution is considered; and

(iii) if the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Directors under rule 36.6.

36.8 Multiple votes

Subject to any rules prescribed by the Directors, if the Co-operative receives a valid direct vote on a resolution in accordance with rule 36.6 and rule 36.7 and, prior to, after or at the same time as receipt of the direct vote, the Co-operative receives an instrument appointing a attorney or a rule 10.7 representative to vote on behalf of the same member on that resolution, the Co-operative may regard the direct vote as effective in respect of that resolution and disregard any vote cast by attorney or rule 10.7 representative on the resolution at the meeting.

36.9 Determining outcome where equality of votes

(a) Where the votes in favour and against a resolution at a meeting of members are equal, the chairperson of the meeting, provided they are a member of the Co-operative, may exercise a second or casting vote.

(b) Where the chairperson is not a member of the Co-operative or decides not to exercise a casting a vote, the outcome of an equality of votes is taken to have been decided in the negative.

[Note: Refer Co-operatives Act 2009 section 194(5). A chairperson who is member can, but is not obliged to cast a deliberative vote at the same time all other votes are cast. Similarly if a chairperson holds a casting vote they are not obliged to use the casting vote in the event of an equality of votes. However if they do, they are free to cast the vote in whatever way they decide, which need not be cast in the same way the chairperson directed their deliberative vote. Under these rules if an independent director is the chairperson and is not a member with voting rights the chairperson does not hold any voting rights at a meeting of members.]

36.10 Postal ballots

(a) 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.

[Note: Section 187 of the Act lists matters for which a special postal ballot must be conducted. Section 188(1) requires the board to conduct a postal ballot or a special postal ballot for a special resolution on the requisition of members who together are able to cast at least 20% (or less if the rules provide) of the votes able to be cast at a meeting of members. Members proposing to give the board a written requisition should familiarise themselves with the requirements in section 188(2).]

(b) Subject to this rule and satisfying the notice provision of section 186 of the Act, a postal ballot or special postal ballot is to be conducted in the way prescribed by regulation 9A of the Co-operatives Regulations 2010.

(c) A postal ballot or special postal ballot may incorporate one or more methods of electronic voting.

(d) 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.

(e) Ballot papers must be provided to members at least 21 days prior to the closing date of a postal ballot or special postal ballot, giving -

(i) particulars of the business in relation to which the postal ballot or special postal ballot is being conducted; and

(ii) an explanation of how to lodge a valid vote and the majority required to pass the vote; and

(iii) notice of the closing date and closing time of the postal ballot.

[Note: Refer Co-operatives Act 2009 section 186(3) requirement for a disclosure statement containing specified information to be included with the material to be sent to members in connection with a special postal ballot.]

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(f) The returning officer shall receive, validate, and once the ballot closes, count the votes and advise the Board of -

(i) the number of formal votes cast in favour of the proposal concerned; and

(ii) the number of formal votes cast against the proposal concerned; and

(iii) the number of informal votes cast.

(g) On declaration of the result of the ballot, the secretary must enter the paragraph (f) details in the minute book of the Co-operative.

(h) 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.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(v).]

37. SPECIAL AND ORDINARY RESOLUTIONS

(a) A special resolution is a resolution of which the notice set out in paragraph (b) has been given of the intention to propose the resolution as a special resolution and that is passed -

(i) by two-thirds of the members who vote in person or by attorney, at a general meeting; or

(ii) by a two-thirds majority in a postal ballot; or

(iii) by three-quarters of the members who cast formal votes in a special postal ballot of members.

[Note: Refer Co-operatives Act 2009 section 177(1).]

(b) 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 -

(i) the intention to propose the special resolution; and

(ii) the reasons for proposing the special resolution; and

(iii) the effect of the special resolution being passed.

[Note: Refer Co-operatives Act 2009 section 177(3).]

(c) 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.

[Note: Refer Co-operatives Act 2009 sections 106(1) and 180).]

(d) An ordinary resolution is one passed by a simple majority and has effect from the date it is passed.

[Note: Refer Co-operatives Act 2009 section 176.]

38. RESOLUTION BY CIRCULATED DOCUMENT

38.1 Fewer than 50 members

This rule 38 applies if the Co-operative has fewer than 50 members.

38.2 Resolution by circulation of document

(a) If all the members of the Co-operative have signed a document that sets out the terms of a resolution and contains a statement that they are in favour of the resolution, the resolution is taken to have been passed at a general meeting of the Co-operative.

(b) The meeting is taken to have been held -

(i) if all the members signed the document on the one day, on that day and at the time the document was signed by the last member to sign; or

(ii) if the members signed the document on different days, on the day, and at the time, the document was signed by the last member to sign.

(c) The document need not exist as a single document, but may exist in the form of 2 or more documents in identical terms.

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(d) The document is taken to constitute a minute of the general meeting.

(e) Anything attached to the document and signed by the members signing the document is taken to have been laid before the Co-operative at the general meeting.

(f) The document is signed by all members of the Co-operative only if the document is signed by each person who was a member of the Co-operative at the time the document was signed by the last member to sign.

(g) Nothing in this section affects or limits any rule of law about the effectiveness of the assent of a member of the Co-operative given to a document, or to an act, matter or thing, otherwise than at a general meeting of the Co-operative.

39. BOARD OF DIRECTORS

39.1 Number of member directors

The board must have no less than 3 and no more than 10 member directors each of whom must be an individual, whether as a member of the Co-operative, or as a representative of a body corporate member, and be at least 18 years of age.

[Note: Refer Co-operatives Act 2009 section 197(3) and Schedule 1 clause 1(k). The acts of a director are valid despite any defect that may afterwards be discovered in their appointment or qualification.]

39.2 General powers

(a) 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.

(b) The powers of the board are subject to any restrictions imposed by the Act or by these rules.

[Note: Refer Co-operatives Act 2009 section 197 and Schedule1 clause 1(j).]

39.3 Management contract

(a) The Co-operative must not enter into a management contract, unless that contract has first been approved by special resolution.

(b) A Management Contract means a contract or other arrangement under which -

(i) a person who is not an officer of the Co-operative agrees to perform the whole, or a substantial part, of the functions of the Co-operative, whether under the control of the Co-operative or not; or

(ii) the Co-operative agrees to perform the whole or a substantial part of its functions -

(A) in a particular way; or

(B) in accordance with the directions of any person; or

(C) subject to specified restrictions or conditions.

[Note: Refer Co-operatives Act 2009 section 219.]

40. QUALIFICATIONS OF DIRECTORS

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

(i) a member of the Co-operative or a representative of a body corporate that is a member of the Co-operative with the right vote at a meeting of members; or

(ii) an employee of the Co-operative appointed in accordance with rule 43; or

(iii) a person qualified under rule 42 to be an independent director; and

(iv) not a disqualified person within the meaning of the Act.

[Note: Refer Co-operatives Act 2009 sections 199(2) and 200.]

41. MAINTAINING MINIMUM NUMBER OF DIRECTORS

If at any time, the number of directors in office is less than the required minimum number of directors under these rules -

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(i) the board may appoint sufficient directors so that the number of directors is not less than the minimum number; and

(ii) for the purpose only of enabling the board to make such an appointment, the number of directors required to constitute a quorum is the number of directors in office at that time.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(l).]

42. INDEPENDENT DIRECTORS

42.1 Board to appoint

(a) 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.

(b) 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.

[Note: Refer Co-operatives Act 2009 section 199(2)(b).]

(c) An independent director is, subject to this rule, a director of the Co-operative for the period of the appointment.

(d) The majority of directors must be member directors.

[Note: Refer Co-operatives Act 2009 section 199(3).]

(e) Unless this rule provides otherwise, an independent director is subject to all other rules relating to directors.

(f) 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.

(g) 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.

(h) An independent director cannot be required to be an active member of the Co-operative.

42.2 First independent directors

(a) The first independent directors and their respective term of office are as follows –

(i) Michael Iain Fuller - whose term of office ends at the conclusion of the eighth annual general meeting of the Co-operative; and

(ii) Shireen Joy Sampson - whose term of office ends at the conclusion of the eighth annual general meeting of the Co-operative; and

(iii) Adele Tan - whose term of office ends at the conclusion of the ninth annual general meeting of the Co-operative; and

(iv) Robert Michael Weymouth whose term of office ends at the conclusion of the fifth annual general meeting of the Co-operative.

(b) A retiring independent director is eligible for re-appointment in accordance with these rules.

42.3 When not to vote

(a) An independent director is not entitled to vote at a meeting of directors on a motion about the terms and conditions of their 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.

(b) 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.

42.4 Ratification and removal

(a) Despite the term of appointment fixed under rule 42.1(a), 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 voting at the meeting.

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(b) 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.

(c) Despite the terms of appointment, the members of the Co-operative may by a simple resolution at a general meeting of members, proposed in accordance with section 206A of the Act, terminate the appointment of an independent director.

43. EXECUTIVE DIRECTOR

43.1 Non-member director

(a) The board may, if it considers appropriate, appoint a person who is not a member director to hold the office of managing director of the Co-operative and may from time to time remove the person from office.

(b) The conditions and the period of appointment under this rule 43.1 must be decided by the board.

(c) The managing director appointment under this rule 43.1 is not counted for the purposes of rule 39.1.

(d) 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.

(e) On the termination of the appointment as a rule 43.1 managing director either by death, retirement, resignation or termination by the board, the managing director stops being a director of the Co-operative.

(f) The managing director is not entitled to be present or to vote at a meeting of directors on a motion concerning the conditions of their own appointment, conditions of service or termination of service.

(g) A rule 43.1 managing director cannot be required to be an active member of the Co-operative.

(h) A rule 43.1 managing director is classified as an independent director under the Act.

43.2 Member director

(a) The board may, if it considers appropriate, appoint a member director to hold concurrently the office of an executive director of the Co-operative under whatever title and may from time to time remove the person from that office.

(b) The conditions and the period of appointment under this rule 43.2 must be decided by the board.

(c) The director appointed an executive director under this rule 43.2 is counted as a member director for the purposes of rule 39.1.

(d) On removal from office under paragraph (a) the director remains a member director of the Co-operative.

(f) The member director is not entitled to be present at the time a meeting of directors is determining –

(i) the salary and other conditions of their appointment as an executive director; or

(ii) their possible removal from the position of an executive director.

(g) A rule 43.2 executive director is required to be an active member of the Co-operative, failing which their position as a director is terminated on cancellation of their membership.

(h) A member director whose position is terminated under paragraph (g) is eligible for appointment under rule 43.1.

44. FIRST AND SUBSEQUENT MEMBER DIRECTORS

44.1 First member directors

(a) The first member directors and their respective term of office are as follows -

(i) Melanie Shane Bainbridge - whose term of office ends at the conclusion of tenth annual general meeting of the Co-operative; and

(ii) Kerry Anne Mullen - whose term of office ends at the conclusion of the ninth annual general meeting of the Co-operative; and

(iii) Josephine Hacking - whose term of office ends at the conclusion of the sixth annual general meeting of the Co-operative; and

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(iv) Jayne Patricia Bryant - whose term of office ends at the conclusion of the fifth annual general meeting of the Co-operative; and

(v) Pippa Deanne Bainbridge - whose term of office ends at the conclusion of the sixth annual general meeting of the Co-operative; and

(vi) Jed Douglas Handmer - whose term of office ends at the conclusion of the seventh annual general meeting of the Co-operative; and

(vii) Casual vacancy #1 - whose term of office ends at the conclusion of the eighth annual general meeting of the Co-operative; and

(viii) Casual vacancy #2 - whose term of office ends at the conclusion of the ninth annual general meeting of the Co-operative; and

(ix) Casual vacancy #3 - whose term of office ends at the conclusion of the tenth annual general meeting of the Co-operative; and

(x) Casual vacancy #4 - whose term of office ends at the conclusion of the eleventh annual general meeting of the Co-operative.

(b) A retiring member director is eligible for re-election.

44.2 Term of office of subsequent directors

The term of office of a member director, not being a director filling a casual vacancy, elected after the registration of the Co-operative ends at the conclusion of the fifth annual general meeting following their election.

44.3 Election procedures

The following procedures apply to the election of member directors -

(i) director vacancies are to be filled at a general meeting of the Co-operative;

(ii) if the number of eligible candidates is equal to, or less than the number of positions to be filled, then a separate ordinary resolution for each candidate is to be voted on at the annual general meeting to determine if the candidate is appointed to the board;

(iii) if the number of eligible candidates exceeds the number of positions to be filled then a first-past-the-post ballot is to be conducted as a single poll in which case -

(A) the full name of each candidate shall appear in an identical order, as determined by the drawing of lots by the returning officer, on the notice of meeting, a rule 36.6 direct voting form if applicable and a single ballot paper;

(B) for a vote to be valid a voter must mark their rule 36.6 direct voting form or ballot paper, as the case might be, to clearly cast a vote for the exact number of candidates as there are vacancies to be filled; and

(C) if the poll is being held to fill one vacancy the candidate receiving the highest number of votes shall be elected;

(D) if the poll is being held to fill more than one vacancy then -

(i) the candidate receiving the highest number of votes shall be elected first; and

(ii) the candidate receiving the next highest number of votes shall be elected next and so on until all vacancies are filled;

(iv) the term of office of the successful candidate commences at the conclusion of the meeting at which they were elected;

(v) a director vacancy remaining unfilled at the close of a general meeting at which it ought to have been filled, shall be treated as a casual vacancy;

(vi) in the absence of a board decision to the contrary, the secretary is the returning officer for director elections; and

(vii) the returning officer shall have carriage of all director election procedures and can appoint and delegate any and all functions to one or more assistant returning officers.

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44.4 Nomination

(a) No person (not being a retiring director) shall be eligible for election to the office of member director at any general meeting unless –

(i) at least 28 days before the meeting their signed written notice of their candidature has been lodged at the office of the Co-operative; or

(ii) their nomination has been recommended by the directors and their signed written notice of their candidature has been lodged at the office of the Co-operative at least 21 days before the meeting.

(b) A retiring member director shall be deemed nominated for a further term unless they have formally advised the secretary otherwise.

(c) Nomination papers, if required, must -

(i) include details of the qualifications and experience of the person nominated;

(ii) be in such form as may be prescribed by the directors;

(iii) warrant that the candidate is not a disqualified person within the meaning of Part 9 Division 2A of the Act; and

(iv) be signed by the candidate as being true and correct.

(d) Notice of the ballot or the resolution required for the appointment of member director must be served on members at least 14 days prior to the date on which the vote is to take place.

[Note: Refer Co-operatives Act 2009 Part 9 Division 2A for circumstances in which a person is disqualified from acting as a director. Board should insist on persons offering themselves for office to warrant they are not a disqualified person.]

45. REMOVAL FROM OFFICE OF MEMBER DIRECTOR

The members of the Co-operative can remove a member director before the end of the member director's term of office by passing an ordinary resolution in accordance with section 206A of the Act, provided -

(i) if removal of the director would cause the number of directors to fall below the minimum number required under rule 39.1, the same resolution must propose a qualified replacement director; or

(ii) if removal of the director would not cause the number of directors to fall below the minimum number required under rule 39.1, the meeting may by a separate simple majority resolution, notice of which was given as if it was a special resolution, appoint another person in place of the removed member director; and

(iii) any person appointed must retire when the removed member director would otherwise have retired.

[Note: Refer Co-operatives Act 2009 section 206A.]

46. VACATION OF OFFICE OF DIRECTOR

A director vacates office if -

(i) the director dies or is permanently incapacitated;

(ii) the director is disqualified or otherwise unable to be a director under Part 9 Division 2A of the Act; or

(iii) the director is absent from 3 consecutive ordinary meetings of the board without its leave; or

(iv) the director resigns from the office of director by written notice given by the director to the Co-operative; or

(v) the member director is removed from office in accordance with rule 45;

(vi) the member director's appointment to fill a casual vacancy is not ratified as required by rule 47.1(c) or

(vii) an independent director is removed from office in accordance with rule 42.4(c); or

(viii) the person ceases to hold a qualification that qualified the person to be a director; or

(ix) an administrator of the Co-operative's affairs is appointed under Part 12 Division 5 of the Act.

[Note: Refer Co-operatives Act 2009 section 205(2).]

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47. FILLING OF CASUAL VACANCIES

47.1 Member director

(a) For the purposes of this rule, a casual vacancy arises if the office of a member director is vacated under rule 46 or a permitted member director position has never been filled.

(b) The board may appoint a qualified person to fill a casual vacancy in the office of a member director –

(i) for the balance of the term of office the former member director would have served had there not been a casual vacancy; or

(ii) if there was no former member then for one of the terms of office set out in rule 44.1(a).

(c) The appointment of a director under paragraph (b) must be ratified by an ordinary resolution passed at the annual general meeting immediately following their appointment.

(d) If an appointment made under paragraph (b) is not ratified –

(i) anything done by the director since their appointment and up to that time is taken to have been validly done; and

(ii) the office of member director remains vacant and can be dealt with as a casual vacancy.

47.2 Independent director

A casual vacancy in the office of an independent director can be filled by the board making an appointment in accordance with rule 42.

[Note: Refer Co-operatives Act 2009 section 198(3).]

48. REMUNERATION

(a) 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.

[Note: Refer Co-operatives Act 2009 section 215.]

(b) 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

(a) Meetings of the board (including meetings conducted under rule 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.

[Note: Refer Co-operatives Act 2009 section 201(2).]

(b) 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.

[Note: Refer Co-operatives Act 2009 section 201(4).]

(c) Questions arising at a meeting must be decided by a majority of votes.

(d) If votes are equal, the chairperson, if a member director, has a second or casting vote.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(l).]

(e) A meeting of the board of directors may be called by a director giving notice individually to every other director.

[Note: Refer Co-operatives Act 2009 section 201(3).]

(f) Other than in special circumstances decided by the chairperson, at least 48 hours' (Saturdays, Sundays and Public Holidays in Western Australia excluded) notice must be given to the directors of all meetings of the board, without which the meeting cannot be held.

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50. TRANSACTION OF BUSINESS OUTSIDE BOARD MEETINGS

(a) The board may transact any of its business by the circulation of papers among all the members of the board, and a resolution in writing approved in writing by a majority of the directors is taken to be a decision of the board.

[Note: Refer Co-operatives Act 2009 section 202(2) and Schedule 1 clause 1(l).]

(b) Separate copies of a resolution of the board may be signed by the directors if the wording of the resolution and approval is identical in each copy.

[Note: Refer Co-operatives Act 2009 section 202(3)]

(c) For the purposes of this rule the chairperson of the board and each member of the board have the voting rights they have at an ordinary meeting of the board.

[Note: Refer Co-operatives Act 2009 section 202(4) and Schedule 1 clause 1(l).]

(d) A resolution approved under paragraph (a) is to be recorded in the minutes of the meetings of the board.

[Note: Refer Co-operatives Act 2009 section 202(2) and Schedule 1 clause 1(l).]

(e) The secretary may circulate papers among members of the board for subparagraph (a) by fax or other transmission of the information in the papers concerned.

[Note: Refer Co-operatives Act 2009 section 202(7) and Schedule 1 clause 1(l).]

51. DUTIES AND LIABILITIES OF DIRECTORS

The minimum duties and liabilities of directors are those duties and liabilities set out in Part 9 Division 3 of the Act.

52. DECLARATION OF INTEREST BY DIRECTORS

(a) A director who is or becomes in any way, whether directly or indirectly, interested in a contract or a proposed contract with the Co-operative must declare the nature and extent of the interest to the board in accordance with Part 9 Division 5 of the Act.

[Note: Refer Co-operatives Act 2009 sections 220 to 223. Directors and the board secretary must be fully conversant with the requirements of Part 9 Division 5 of the Act. Serious financial and imprisonment penalties apply for breaches of the Division.]

(b) Every declaration under paragraph (a) is to be recorded in the minutes of the meeting at which it was made.

[Note: Refer Co-operatives Act 2009 section 221.]

(c) The interest in a contract or proposed contract that a director is required to declare does not include an interest in -

(i) a contract or proposed contract for a purchase of goods and services by the director from the Co-operative; or

(ii) a lease of land to the director by the Co-operative; or

(iii) a contract or proposed contract for the sale of commodities or animals by the director to the Co-operative; or

(iv) a contract or proposed contract that, under these rules, may be made between the Co-operative and a member; or

(v) a contract or proposed contract of a class of contracts prescribed by the regulations,

but only if the contract is made in good faith, in the ordinary course of the business of the Co-operative, and on the terms that are usual and proper in similar dealings between the Co-operative and its members.

[Note: Refer Co-operatives Act 2009 section 223.]

(d) If a director has made a declaration under this rule, then unless the board determines otherwise, the director cannot -

(i) be present during any deliberation of the board in relation to the matter; or

(ii) take part in any decision of the board in relation to the matter.

[Note: Refer Co-operatives Act 2009 section 220(7). Directors, and the board secretary, need to be fully conversant with the requirements of Part 9 Division 5 of the Act. Serious financial and imprisonment penalties apply to breaches of the Division.]

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53. QUORUM FOR BOARD MEETINGS

(a) 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).

(b) The number of independent directors must be fewer than the number of member directors present at a meeting of the board.

54. CHAIRPERSON OF BOARD

(a) The chairperson of the board is to be elected by the board.

(b) 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.

(c) The chairperson may be removed, and a new chairperson elected by ordinary resolution of the board.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(l). Board can fill and re-fill a position of deputy chairperson to have first call on filling any absence of the chairperson.]

55. DELEGATION AND BOARD COMMITTEES

55.1 Delegation by board

The board may by resolution delegate to -

(i) a director; or

(ii) a committee of 2 or more directors; or

(iii) a committee of members of the Co-operative; or

(iv) a committee of members of the Co-operative and other persons if members form the majority of persons on the committee; or

(v) 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.

[Note: Refer Co-operatives Act 2009 sections 204.]

55.2 Delegation within terms of delegation

(a) A power delegated under this rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.

[Note: Refer Co-operatives Act 2009 section 204(3).]

(b) A delegation under this rule may be made subject to conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance.

[Note: Refer Co-operatives Act 2009 section 204(4).]

55.3 Board's powers on delegation

Despite any delegation under this rule 55, the board may continue to exercise the power delegated.

[Note: Refer Co-operatives Act 2009 section 204(5).]

55.4 Delegation to a director

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 their own name on behalf of the board, the power is taken to have been exercised by the board.

55.5 Chairperson of committees

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 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.

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55.6 Meetings of committees

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.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(l).]

55.7 Committee minutes

Minutes of each meeting of a committee to which a board function has been delegated must be entered in the appropriate records within one month after the meeting and confirmed at, and signed by the chairperson of, the next meeting.

[Note: Refer Co-operatives Act 2009 section 196(1)(c).]

56. OTHER COMMITTEES

(a) 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.

(b) Rules 55.5 and 55.6 apply to committees appointed under this rule, with any board changes.

(c) The quorum for a meeting of the committee is a majority of the committee.

57. SECRETARY

57.1 Appointment

(a) The Co-operative must have a secretary.

(b) The board of the Co-operative is to appoint the secretary.

(c) The board may appoint a person to act as the secretary during the absence or incapacity of the secretary.

(d) A person is not qualified to be appointed as, or to act as, the secretary unless the person is an adult who ordinarily lives in Australia and is not a disqualified person within the meaning of Part 9 Division 2A of the Act.

57.2 Responsibility of secretary

The secretary of the Co-operative must take all reasonable steps to ensure that the Co-operative does not contravene a provision of the Act that is prescribed by the regulations for the purposes of section 207A of the Act.

[Note: Refer Co-operatives Act 2009 Part 9 Division 2A for circumstances in which a person is disqualified from acting as an officer of a co-operative. The board should insist on any person offering themselves for appointment to the office of secretary, warranting that they are not a disqualified person within the meaning of the Act.]

58. MINUTES

(a) The board must cause to be entered in the appropriate books, within one month after the meeting, minutes of -

  (i) each general meeting; and

  (ii) each meeting of the board; and

  (iii) each meeting of a committee to which a board function has been delegated under section 204(1).

(b) Minutes must be kept in the English language and signed within a reasonable time after the meeting by either -

  (i) the chairperson of the meeting; or

  (ii) the chairperson of the next meeting.

(c) The minutes of each general meeting must be available for inspection by members.

[Note: Refer Co-operatives Act 2009 section 196.]

59. FINANCIAL YEAR

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

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[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(q).]

60. SEAL

60.1 Authentication of document or proceeding

This rule applies if the Co-operative chooses to authenticate a document under the common seal of the Co-operative.

60.2 Description of seal

The name of the Co-operative and any Australian Business Number allocated to the Co-operative, must appear in legible characters on its common seal and any official seal.

[Note: Refer Co-operatives Act 2009 sections 46 and 47 and Schedule 1 clause 1(m).]

60.3 Custody of seal

The common seal must be kept at the registered office in such custody that the board directs.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(m).]

60.4 Official seal

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.

[Note: Refer Co-operatives Act 2009 section 47.]

60.5 Restrictions on affixing seal

The seal of the Co-operative must not be affixed to any instrument other than under a resolution of the board. Two directors, or one director and the secretary must be present and must sign all instruments sealed while they are present.

60.6 Authentication need not be under seal

A document or proceeding requiring authentication by the Co-operative may be authenticated by the signature of two people, one of whom is a director of the Co-operative and one of whom is a director or the secretary of the Co-operative and need not be authenticated under the seal of the Co-operative.

[Note: Refer Co-operatives Act 2009 section 48.]

61. CUSTODY AND INSPECTION OF RECORDS AND REGISTERS

61.1 Inspection of registers etc.

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 -

(i) a copy of the Act and the regulations;

(ii) a copy of the rules of the Co-operative and any attachments under section 345 of the Act;

(iii) Co-operative's most recent annual return under section 244ZB of the Act;

(iv) a copy of the most recent financial information reported to members under Part 10A of the Act;

(v) the register of directors and members;

(vi) the register of names of persons who have given loans or deposits to or hold securities or debentures or CCUs by whatever name, given or issued by the Co-operative;

(vii) the register of memberships cancelled under rule 19 (Inactive Members) and required to be kept under section 230(1)(g) of the Act;

(viii) the register of notifiable interests required to be kept under section 284 of the Act;

(ix) a copy of the minutes of each general meeting; and

(x) the other registers required under the Act or the regulations to be open for inspection.

[Note: Refer Co-operatives Act 2009 section 232.]

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61.2 Copying registers

A member may make a copy of the entries in a register mentioned in rule 61.1 during normal office hours for a fee of $11.60 GST inclusive, for the first page and $1.50 GST inclusive, for each additional page, up to a maximum of $86.60 GST inclusive, or such lesser fee as the board may set from time to time.

[Note: Refer Co-operatives Act 2009 section 232(4).]

61.3 Use of information on registers

(a) A person must not -

(i) use information about a person obtained from a register kept under the Act to contact or send material to the person; or

(ii) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person,

unless that use or disclosure of the information is -

(iii) relevant to the holding of the directorship, membership, loans, securities, debentures, co-operative capital units or deposits concerned or the exercise of the rights attaching to them; or

(iv) approved by the board; or

(v) necessary to comply with a requirement of the Act.

(b) A person who contravenes paragraph (a) is liable to compensate anyone else who suffers loss or damage because of the contravention.

(c) A person who makes a profit from a contravention of paragraph (a) of this rule owes a debt to the Co-operative.

(d) The amount of the debt is the amount of the profit.

[Note: Refer Co-operatives Act 2009 section 233.]

62. FINANCIAL INSTITUTION ACCOUNTS

62.1 Bank accounts

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 practicable after receipt.

62.2 Signatories

(a) 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 any 2 persons authorised by the board.

(b) The board is authorised to make suitable arrangements to enable the Co-operative to initiate and manage the inflow and outflow of cash electronically.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(n).]

63. SAFE KEEPING OF SECURITIES

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 the board directs.

[Note: Refer Co-operatives Act 2009 Schedule 1 clause 1(o).]

64. TERMS OF APPOINTMENT, REMUNERATION AND REMOVAL OF AUDITORS

(a) The appointment, remuneration, protection and removal of auditors must comply with Part 10A Division 12 of the Act.

(b) If the Co-operative qualifies as a small co-operative -

(i) the board may appoint an auditor for the Co-operative if an auditor has not been appointed by the Co-operative in general meeting; and

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(ii) an auditor appointed under subparagraph (i) above holds office, subject to Part 10A of the Act, until the Co-operative's next annual general meeting.

65. ACCOUNTING AND AUDITING STANDARDS

The accounting and auditing standards of the Co-operative are to be in accordance with Part 10A Division 13 of the Act.

66. FINANCIAL REPORTS DIRECTOR REPORTS AND AUDIT

66.1 Reports

(a) Financial and other reporting shall be in accordance with Part 10A of the Act.

(b) If the Co-operative qualifies as a small co-operative -

(i) preparation of the reports under Part 10A of the Act will only apply if a direction under section 244I or section 244J exist; and

(ii) if no direction under section 244I or section 244J exists the Co-operative must comply with the requirements (if any) of the regulations regarding the preparation and provision of reports to members.

[Note: Refer Co-operatives Act 2009 section 244H(3). Refer to section 244V for detail on communication options for annual reporting to members.]

66.2 Member choice

(a) A member may in accordance with section 244X(1) of the Act, request that the Co-operative -

(i) not send to them the material required by rule 66.1; or

(ii) to send them a full financial report and the directors' report and auditor's report.

(b) A request under paragraph (a) may be a standing request or for a particular financial year.

(c) A member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.

(d) The Co-operative must comply with a request under this rule 66.2 by the later of -

(i) the day that is 7 days after the request; or

(ii) the day by which the Co-operative is required to report to members under rule 66.1.

(e) When sending a full financial report, directors' report and auditor's report, the Co-operative must do so free of charge unless the member has already received a copy of them free of charge.

(f) A member can choose to receive financial reports and the directors' reports and auditor's reports electronically in accordance with section 244V(5) of the Act.

67. CO-OPERATIVE FUNDS

(a) 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.

(b) 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 a member of the Co-operative solely on the basis of being a member.

(c) The surplus arising in any year from the business of the Co-operative may be applied to the objects and primary activities of the Co-operative.

(d) In this rule —

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 including potential asset maintenance and replacement.

[Note: Refer Co-operatives Act 2009 sections 268 to 272.]

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68. ACQUISITION AND DISPOSAL OF ASSETS THAT REQUIRE SPECIAL POSTAL BALLOTS

(a) Any acquisition and disposal of assets, other than assets bought and sold in the ordinary course of business, to be in accordance with Part 10 Division 6 of the Act.

(b) For the purposes of the Act section 273(2)(a)(ii), the prescribed percentage is 50%.

(c) For the purposes of the Act section 273(2)(b), the prescribed percentage is 5%.

(d) For the purposes of the Act section 273(2)(c), the prescribed percentage is 50%.

[Note: Refer Co-operatives Act 2009 section 273 and Co-operatives Regulations 2010 clause 25. Section 273(2)(a)(ii) relates to selling or leasing as a going concern all or part of the assets of the Co-operative that relates to its primary activities. Section 273(2)(b) relates to acquiring from or disposing of to a director or employee of the Co-operative or certain related parties property that relates to its primary activities. Section 273(2)(c) relates to the acquisition of assets if the acquisition would result in the Co-operative starting to carry on an activity that is not one of its primary activities.]

69. PROVISION FOR LOSS

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

70. NOTICES

(a) 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 -

(i) personally; or

(ii) by leaving it with a person who appears to be 16 years of age or more at the member's address; or

(iii) by post; or

(iv) by faxing it to a fax number or by emailing it to an email address provided by the member; or

(v) by sending it to the member by other electronic means (if any) nominated by the member; or

(vi) by publishing the notice in a newspaper circulating generally in this State or in the area served by the Co-operative, if -

(A) the member's whereabouts are unknown to the Co-operative; or

(B) the Registrar permits notice to be given to members of the Co-operative in that way.

(b) A document may be served on the Co-operative -

(i) by post addressed to the registered office of the Co-operative; or

(ii) by leaving it at the registered office of the Co-operative with a person who appears to be 16 years old or older.

(c) 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 36 hours (Saturdays, Sundays and Public Holidays in Western Australia excluded) 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.

(d) 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.

(e) 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.

(f) A notice may be given by the Co-operative to the person entitled to an interest because of the death, incapacity or bankruptcy 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

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address has been given, the notice can be given in the way it could have been given if the death, incapacity or bankruptcy had not happened.

(g) Notice of every general meeting must be given in the same way as authorised in this rule to -

(i) 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

(ii) every person entitled to an interest because of the death, incapacity or bankruptcy of a member, who, but for the member's death, incapacity or bankruptcy, would be entitled to receive notice of the meeting; and

(iii) every independent director.

(h) Except as provided in this rule and in rule 32.1(b) no other person is entitled to receive notices of general meetings.

71. WINDING UP

(a) The winding up of the Co-operative must be in accordance with Part 12 of the Act.

(b) If on the winding-up or dissolution there remains any property after the satisfaction of all its debts and liabilities, including the repayment of any co-operative capital units on issue, this must not be paid to or distributed among the members of the Co-operative but must be given or transferred to any philanthropic entity established by the Co-operative to build sustainable localised geo-fenced music industry hubs or otherwise given to one or more institutions -

(i) with objects similar to the Co-operative;

(ii) whose constitution prohibits the distribution of its property among its members; and

(iii) where possible were chosen by the members of the Co-operative at or before the dissolution.

72. SCHEDULE OF CHARGES

Copy book of rules	Rule 2.4(b)
Copying entries in register	Rule 61.2
Transfer/register of debenture	Rule 27(d)(i)

END

Certification

We the undersigned, certify that this is a copy of the rules voted on at a Formation Meeting held in Perth on the 9th day of September 2021 for the formation of a co-operative to be known as -

The Pack Music Co-operative Limited

M Bainbridge ..... Chairperson of Formation Meeting

Dated 24/09/2021

..... Secretary of Formation Meeting

Dated 24/09/2021

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