

A GUIDE TO DEVELOPING COMPLIANT RULES FOR YOUR CO-OPERATIVE

Co-operatives Act (2009)

INTRODUCTION

Members of a co-operative must decide the rules which will apply to the co-operative, the board of management and to themselves. The rules must be approved by the Registrar of Co-operatives. Additionally, the *Co-operatives Act 2009* (“the Act”) sets out the requirements with which all co-operatives registered in WA must comply. The rules **must** make provision for all the matters set out in Schedule 1 to the Act.

Deciding what type of co-operative you are is an important first step to establishing appropriate rules. The Act recognises two types of co-operatives: **distributing** co-operatives and **non-distributing** co-operatives. Distributing co-operatives always have share capital while non-distributing co-operatives may or may not have share capital. The rules for each of these types of co-operative will have some differences.

ACT & REGULATIONS

The *Co-operatives Act 2009* and the *Co-operatives Regulations 2010* can be purchased from the State Law Publisher (telephone 9321 7688) or downloaded, free of charge, from their website at www.slp.wa.gov.au.

OTHER PUBLICATIONS:

This guide is intended to be used with either the **Co-operatives: Transfer Guide** (for transferring co-operatives registered under the *Companies (Co-operatives) Act 1943* or the **Co-operatives: Good Business Guide** (for proposed co-operatives wishing to register under the new Act).

These guides offer a wide range of information to assist co-operatives.

DEVELOPING COMPLIANT RULES

Co-operatives have the following options when it comes to developing a set of rules that comply with the requirements of the new legislation. They can:

- modify their existing rules (or Articles) to comply with the Act;
- modify the model rules to suit the particular needs of the co-operative;
- use some of their existing rules as well as some of the model rules – provided that all the Schedule 1 requirements are met; or
- develop a set of compliant rules from scratch (this option is not recommended unless appropriate legal resources are available)

The Registrar must approve the new rules before they can be formally put to the members for their vote. The more complex the rules, the longer the time frame for approval will be and Directors should take this into account when meeting dates.

It is important to note that any rules which are developed for the transfer can be changed after registration, but only after the proposed change has been approved by the Registrar and passed by the required special resolution of members.

THE MODEL RULES

There are three sets of model rules available as schedules to the Regulations:

Schedule 1 for non distributing co-operatives without share capital;
Schedule 2 for non distributing co-operatives with share capital; and
Schedule 3 for distributing co-operatives.

The model rules have been developed to ensure that, once modified in accordance with these instructions to meet the needs of specific co-operatives, they will comply with the requirements of the Act. They specifically address the requirements of Schedule 1 to the Act which sets out the list of matters that must be addressed in the rules of co-operatives.

Like the model rules, Schedule 1 to the Act is divided into three parts to provide for the three different types of Co-operative.

Clause 1 lists requirements for all co-operatives;
Clause 2 lists additional requirements for co-operatives with share capital; and
Clause 3 lists additional requirements for non-distributing co-operatives.

The Schedule 1 requirements are set out in Instruction Sheet 2 (attached). Alternatively, a copy of Schedule 1 can be downloaded from www.commerce.wa.gov.au.

Section 98 of the Act provides some further information on the content of rules. For convenience, s98 is reproduced here:

- (1) The rules of a co-operative must state or otherwise make provision for the matters specified in Schedule 1.
- (2) The rules must be divided into paragraphs numbered consecutively.
- (3) The rules may state the objects of the co-operative.
- (4) The rules may incorporate any provision of the model rules.
- (5) The rules may provide for the co-operative to impose a fine, payable to the co-operative, on a member for an infringement of the rules.
- (6) If the rules provide for the imposition of a fine, the rules must specify the maximum fine that may be imposed on a member.
- (7) The maximum fine fixed by the rules must not be more than an amount prescribed by the regulations as the maximum fine. The amount currently prescribed in the Regulations is \$1000.

The rules may contain other provisions not inconsistent with this Act.

As indicated, while the model rules incorporate most of the requirements of Schedule 1 of the Act they do require some additions and adaptation to suit the circumstances of your co-operative*; The model rules also include provisions for the imposition of fines as set out in section 98, clauses 5-7 above.

*The requirements are detailed in Instruction Sheet 1: "How to adapt the model rules for your co-operative" (attached)

APPROVAL BY THE REGISTRAR

Once you have drafted the set of rules that will govern your co-operative, Section 17 of the Act requires that these draft rules be approved by the Registrar. This is to ensure that when the members are formally asked to pass a special resolution to adopt the rules, they can be sure that the rules are acceptable under the Act.

The draft rules need to be lodged with the Registrar at least 35 days ahead of the date of the meeting called to adopt the rules, referred to as the formation meeting. When lodging draft rules for approval use *Co-operatives Form 1 – Application for Approval of Proposed Rules for a Co-operative* – taking particular note of the requirement to complete Annexure A.

The Registrar will generally notify the lodging party of what decision has been taken in respect of the draft rules at least 5 days prior to the meeting.

Section 17 provides that when the draft rules are submitted for approval they must be accompanied by a written statement specifying the date on which the formation meeting is due to be held. The rules can be submitted well in advance of the formation meeting and the date of the meeting can subsequently be altered, provided the new meeting date is more than 35 days after submitting the rules to the Department. The rules will not become effective until an application for registration of the co-operative has been lodged with, and approved by the Registrar.

Instruction Sheet 1:

How to adapt the model rules to suit your co-operative

A copy of the model rules can be obtained from the Department's website at www.commerce.wa.gov.au/co-ops. Make sure you select the correct model rules for your proposed co-operative type.

1. Fee for copy of rules

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	2(6)	2(6)	2(6)

Insert the fee for a copy of the rules. The regulations state a maximum of \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60. If no fee is fixed in the rules, the maximum fee is \$5.

2. The name of the co-operative

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	4	4	4

Insert the co-operative's name. The Act requires that the name of a co-operative must include the word "Co-operative", "Cooperative" or the abbreviation "Co-op".

Additionally, the word "Limited" or the abbreviation "Ltd" must be the last word of the name. In a very limited range of circumstances, the Registrar may approve the registration of a co-operative without "Limited" in the name. See Section 238(4) for further information.

3. Active Membership Provisions

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	5	5	5

Insert the co-operative's active membership provisions which are made up of its primary activity(s) and active membership requirements. Please see the Co-operatives Transfer Guide or the Co-operatives Good Business Guide for detailed information on primary activities and active membership requirements.

4. Minimum Shareholding

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	-	6(1)	6(1)

Insert the minimum number of shares a member must hold.

5. Partly paid shares

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	-	7(2)	7(2)

Insert the amount of deposit required for partly paid shares. In the case of a newly formed co-operative the amount must be not less than 10% of the nominal value of the share. For co-operatives transferring from the *Companies (Co-operative) Act 1943* shares can be issued at zero paid-up value.

6. Fines payable by members

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	14(1)	14(1)	14(1)

Insert the maximum fine that the board may impose on a member for contravening the rules. Note that this must not be more than maximum fine prescribed by the Regulations, currently \$1000.

7. Nominal value of shares

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	-	15(1)	15(1)

Insert the nominal value of each share type.

8. Maximum Share Holding

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	-	15(2)	15(2)

The model rules provide a default limit. Each co-operative should consider whether a lower limit is more appropriate for their circumstances.

9. Instruments of transfer (shares)

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	-	19(7)	19(7)

Insert the fee for recognising an instrument of transfer (shares).

10. Inactive Members

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	16	21	21

The Act requires that the board take steps to cancel the membership of any member who ceases to be an active member of the co-operative. Each co-operative must determine the length of time (“required period”) to allow before cancelling the membership of a member whose whereabouts is unknown or who has not fulfilled the active member requirements within this required period. This can be no more than 3 years as stated in Section 120 of the Act.

You will need to:

- insert the required period (can be expressed as days, months, years) for whereabouts unknown (16/21(1)(a));
- insert the required period (can be expressed as days, months, years) for years inactive (16/21(1)(b));
- insert the required period (can be expressed as days, months, years) for purposes of (a) and (b) (16/21(2))

11. Instrument of transfer (debentures/CCU)

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	22(4)	31(4)	31(4)

Insert the fee for recognising an instrument of transfer (debentures/CCUs).

12. General meetings

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	26(2)	35(2)	35(2)

The rules provide for members to be able to request the board call a general meeting of members. You will need to determine the percentage of members (to a maximum of 20%) required to do this and state it in the rules.

13. Special Resolutions

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	27(5)	36(5)	36(5)

The rules provide for members to be able to put a special resolution to members. You will need to determine the percentage of members (to a maximum of 20%) required to do this and state it in the rules.

14. Quorum

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	30(2)	39(2)	39(2)

Insert the quorum for general meetings.

15. Proxies

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	36(3)/36(4)	45(2)/45(3)	45(2)/45(3)

You will need to decide whether a proxy must be a member or not and delete whichever clause does not apply.

Additionally, co-operatives need to decide whether they want to limit the number of members for whom a proxy may act and if so insert a rule to that affect in clause 36/45 and review clause 33(d)/42(d).

16. Member Directors

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	39(2)	48(2)	48(2)

Insert the number of member directors to be on the board of directors.

17. Elections

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	43	52	52

The co-operative needs to decide the conduct of elections and how they are to be conducted and document the process in the rules.

18. Alternate Directors

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	46	55	55

Co-operatives need to decide whether they want to insert a clause for alternate directors.

19. Chairperson

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	51	60	60

Co-operatives may want to insert an alternate clause for the Chairperson to be elected by members at a general meeting.

20. Financial Year

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	55	64	64

Insert the day and month on which the financial year ends.

21. Copy of Registers

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	57(2)	66(2)	66(2)

Insert the fee for copy of an entry in a register.

22. Charitable purposes

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	63(3)	72(3)	72(6)

Insert the percentage of funds that can be applied by the board to charitable purposes.

23. Winding Up

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	-	75(2)	75(2)

Schedule 2 – state who residual property must be paid to.

Schedule 3 – insert the number of years for which members must have contributed.

24. Postal Ballots

Co-operative type:	Non-distributing without shares	Non-distributing with shares	Distributing
Regulation:	Schedule 1	Schedule 2	Schedule 3
Model Rule:	37(2)	46(2)	46 (2)

The model rules state that:

Subject to sections 185 and 186 of the Act and this clause, a postal ballot or special postal ballot is to be conducted using such method, in such form and returnable in such manner, as the board decides”

If this rule is included, the Board of the co-operative will decide the method by which postal ballots will be conducted and it is not necessary to include further information in the rules. Alternately, the rules may detail the method to be used.

25. Procedure at meetings

Schedule 1(u) requires “The procedure at meetings of the co-operative, including the rights of members in voting at meetings, the manner of voting, and the majority necessary for carrying resolutions” to be included in the rules. Many of these issues are addressed in the model rules. The model rules do not make provision for standing orders governing meeting procedure. Depending on the needs of your co-operative, the model rules may be amended to include standing orders for meetings.

26. Notes

The model rules also contain notes which have been included to assist in the adaptation of the model rules. It is recommended that these notes are removed when creating the set of rules for the co-operative.

27. Drafting Issues

In addition to modifying the model rules to address the needs of the co-operative, several changes to the text may be needed to address drafting issues in the Regulations. The following table shows the items which have been found to contain potential drafting errors. If your co-operative is using these clauses in the model rules, you need to ensure that the final form of the clause meets the needs of your co-operative and corrects the drafting error where necessary. If you have any questions – please contact the Co-operatives Unit for assistance.

Schedule and Clause Number:	Issue in Model Rules	Changes to rules
Schedule 2, Clause 1	Inaccurate cross-reference to the whole of clause 47	When drafting clause 1 of your rules please note that you will need to refer specifically to clauses 47(1), (2) and (3).
Schedule 2, Clause 31	Inconsistent use of terminology	When drafting clause 31 of your rules please note that you will need to ensure that the clause consistently refers to “the giver” and “the receiver” as defined in clause 31(1).
Schedule 2, Clause 75	Reference to incorrect provision	When drafting clause 75, amend clause 75(3)(d) to reference “Division 50” instead of “Section 50” of the <i>Income Tax Assessment Act 1997 (Cth)</i> .
Schedule 3, Clause 1	Inaccurate cross-reference to the whole of clause 47	When drafting clause 1 of your rules you will need to refer specifically to clauses 47(1), (2) and (3).
Schedule 3, Clause 31	Inconsistent use of terminology	When drafting clause 31 of your rules you will need to ensure that the clause consistently refers to “the giver” and “the receiver” as defined in clause 31(1)
Schedule 3, Clause 61	Typographical error	When drafting clause 61(6) change the reference from 15 minutes to five minutes for consistency with equivalent clauses in the rules of non-distributing co-operatives.
Schedule 3, clauses 74(7) and (8)(b)	Typographical error	When drafting clauses 74(7) and 74(8)(b) change the reference to “an interest” to “a share” for consistency with the equivalent clause for non-distributing co-operatives with share capital.

Instruction Sheet 2: Creating your own rules.

If your co-operative intends to modify its existing rules or create new rules from scratch, Section 98 requires that the rules of a co-operative must state or otherwise make provision for the matters specified in Schedule 1. For your convenience, Schedule 1 has been reproduced below.

You will need to ensure that the rules contain all of the provisions listed.

Sch. #	Item	Rule #
1(a)	Name of the co-operative	
1(b)	Active membership provisions (within the meaning of Part 6 of the Act)	
1(c)	The mode and conditions of admission to membership, and the payment to be made, or the share or interest to be acquired, before rights of membership are exercised	
1(d)	The rights and liabilities of members, of the estates of deceased members, and of representatives of members under bankruptcy or mental incapacity	
1(e)	The circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled and suspended members	
1(f)	The circumstances in which membership ceases	
1(g)	The charges or subscriptions payable by a member to the co-operative	
1(h)	The circumstances in which fines and forfeitures may be imposed on members of the co-operative, and the amount of the fines (being not more than the maximum amount prescribed by the regulations)	
1(i)	The grievance procedures for settling disputes under the rules between the co-operative and any of its members as defined in section 79(4), or between a member and another member	
1(j)	The restrictions, if any, on the powers of the co-operative and the board	
1(k)	The number of directors, the qualification of directors, the way of electing, remunerating and removing directors and filling a vacancy, the period for which directors are to hold office, whether directors are to retire by rotation or otherwise, and the holding of annual elections	
1(l)	The quorum for, and the procedure of, meetings of the board	
1(m)	The device, custody and use of the seal of the co-operative	
1(n)	The manner in which funds of the cooperative are to be managed, and in particular the mode of drawing and signing cheques, draft, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the co-operative	
1(o)	The custody of securities belonging to the co-operative	
1(p)	The way in which debentures are to be transferred	
1(q)	The date on which the financial year of the co-operative ends	
1(r)	The auditing of the financial records of the co-operative, and the appointing of an auditor	

Sch. #	Item	Rule #
1(s)	The way in which a loss that results from the transactions of the co-operative is to be dealt with	
1(t)	The procedure for calling general and special meetings, the requisite notices of meetings, and the quorum for meetings, of the co-operative	
1(u)	The procedure at meetings of the co-operative, including the rights of members in voting at meetings, the manner of voting, and the majority necessary for carrying resolutions	
1(v)	The method of conducting postal ballots, including special postal ballots, and the sending and lodgement of information and votes by facsimile or electronic means	
1(w)	The way of altering the rules	
1(x)	The way in which the co-operative may be wound-up	
Additional matters – co-operatives with share capital		
2(a)	The nominal value of each share in the co-operative	
2(b)	The amount of the contingent liability, if any, attaching to shares	
2(c)	The terms on which shares, not including bonus shares but including shares, if any, with a contingent liability attached to them, are to be issued	
2(d)	The periodic subscriptions by which or the way in which shares are to be paid for	
2(e)	In the case of a distributing co-operative, the manner in which a surplus may be distributed	
2(f)	The allocation of a deficiency on the winding-up of a co-operative	
2(g)	The forfeiture of share on expulsion or on failure to pay any subscription or call, the extent to which members whose shares have been forfeited are to remain liable for an amount still unpaid for them, and the sale or cancellation of forfeited shares	
2(h)	The way in which shares are to be transferred	
Additional matters - non-distributing co-operatives		
3 (1)(a)	That there must be no return or distribution on surplus or share capital to members other than the nominal value of shares, if any, at winding-up	
3(1)(b)	For the way of distribution of the surplus property at winding-up	
These additional matters <i>may</i> be included: Non-distributing co-operative that has operated as a mutual		
3(2)(a)	Surplus funds are payable only to members who have paid contributions to the co-operative and have a credit balance in the member's ledger	
3(2)(b)	The payment of surplus funds is limited to the return of the contributions paid by the members to the co-operative and the nominal paid up value of the shares, if any	