

# CO-OPERATIVES: GOOD BUSINESS GUIDE



This guide is designed to help Western Australian co-operatives meet the requirements of the *Co-operatives Act 2009* and the *Co-operatives Regulations 2010*.

It is helpful for newly registered co-operatives, existing co-operatives and also for those considering forming a co-operative.



Government of Western Australia  
Department of Commerce

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## **Disclaimer**

This publication provides a basic guide to Western Australia's *Co-operatives Act 2009* and the *Co-operatives Regulations 2010*. It is not a comprehensive statement of the Act or Regulations.

This guide will be useful in ensuring the structure, rules and operations of new and existing co-operatives comply with the legislation.

In all cases where there is a variation between the wording in this guide and the wording in the Act, the wording of the Act applies.

If you are unsure how the Act or Regulations apply, you should seek assistance and if need be take independent legal advice.

The Act and/or Regulations may have changed since publication of this guide. To view the most current Act or Regulations go to [www.slp.wa.gov.au](http://www.slp.wa.gov.au) or contact the Department of Commerce Co-operatives Registry to ensure you have up to date information (see page 41 for contact details).

Please note, examples contained in this guide are for illustration purposes only.

## **Feedback**

Your feedback can help us improve future editions of this guide. Please make a comment by writing or emailing to:

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# Introduction

## Purpose of this guide

This guide is designed to lift the understanding around the rights and responsibilities of those involved, or considering becoming involved, in a co-operative in Western Australia. The guide addresses the key issues of structure rules and operations and compliance with the *Co-operatives Act 2009* (the Act) and the *Co-operatives Regulations 2010* (the Regulations).

Co-operatives play an important role in our community and economy. They operate in industries as diverse as fishing, dairy production, water distribution, taxi operation and retailing. Currently co-operatives in Western Australia report annual revenues in billions of dollars.

Co-operatives enable members to pool resources in order to achieve greater benefits than they could as individuals. Co-operatives belong to, and are operated for the benefit of, members – who generally share investment and operational risks, benefits gained, or losses incurred.

Co-operatives are based on values of self-help, self-responsibility, democracy and equality. The nature and extent of a co-operative's operations depend on member support such as the amount of capital contributed, the personal efforts of directors and officers and members' patronage of their co-operative.

The Government of Western Australia through the Consumer Protection Division of the Department of Commerce:

- provides information on legislative and practical matters relating to the formation, operation, merger or winding-up of a co-operative;
- maintains a Register of Co-operatives which contains for each registered co-operative, the rules of the co-operative (including any alterations), special resolutions, financial reports, directors' reports, lists of directors and officers, and details of certain charges given over assets to secure borrowings;
- provides facilities for people wishing to search registers or documents or obtain copies of available documents; and
- in relation to distributing co-operatives, approves the disclosure statement that will ensure prospective members can be adequately informed of the nature and extent of their financial involvement or liability as a member of a particular co-operative.

It is recommended that this guide be read in conjunction with the Act and Regulations. These can be downloaded from the State Law Publisher website at [www.slp.wa.gov.au](http://www.slp.wa.gov.au) or purchased from the State Law Publisher, telephone 9426 0000.

A copy of the Act and Regulations must be kept at the registered office of every co-operative and made available for inspection by members free of charge.

## Overview of Act and Regulations

The Act was designed to provide co-operatives with appropriate tools for their formation and day-to-day operation.

Specifically, the Act:

- makes provision for the formation, registration and operation of co-operatives;
- promotes internationally recognised principles, practices and objectives for co-operatives;
- protects the interests of co-operatives, their members and the public in the operations and activities of co-operatives;
- makes directors of co-operatives accountable to members for their actions and decisions;
- encourages and helps co-operatives to manage themselves at all levels of the organisation; and
- provides a framework for the development of the co-operative sector at local, regional, national and international levels.

## Is becoming a co-operative the right choice?

If you belong to a group with a common interest, deciding which legal structure to use in pursuit of your goals is a very important decision.

There are a number of options available, including:

- forming a partnership and operating under a registered business name;
- incorporating as an association;
- forming a co-operative; or
- forming a limited liability company.

The Department of Commerce can provide information on registering a business name, incorporating an association or forming a co-operative to help your organisation make the right choice. See page 41 for contact details.

If starting up a limited liability company go to [www.asic.gov.au](http://www.asic.gov.au) for further information.

## What is a co-operative?

A co-operative is an autonomous association of persons who voluntarily join together to meet common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. It may be formed to provide goods or services to its members or to supply goods or services to the public.

Under the Act, the term 'persons' is taken to mean individuals and bodies corporate, so a member of a co-operative can be an incorporated association or a company as well as an individual. Most co-operatives also allow for two or more individuals to be joint members.

Distributing co-operatives are unique. They differ from incorporated associations primarily because they can be formed to conduct a business that makes a profit for the benefit of individual members. Unlike proprietary limited companies, co-operatives do not have a limit on membership numbers. In addition, the 'one member, one vote' system differs from mainstream investors-owned companies where voting rights are directly linked to share ownership.

A co-operative is a corporation which may sue and be sued (section 35 of the Act).

A co-operative has, both within and outside the State, the legal capacity of an individual (section 39 of the Act).

Members of a co-operative have limited liability for the debts of the co-operative. In return, however, there are legal and reporting obligations placed on the co-operative, its directors and officers.

A member of a co-operative is not, as a member, under any personal liability to the co-operative except for any unpaid amount on shares and any charges payable under the co-operative's rules (section 67 of the Act).

## **Types of co-operatives**

Two types of co-operatives operate in Western Australia – **distributing co-operatives** and **non-distributing co-operatives**. A distributing co-operative must have share capital; a non-distributing co-operative can choose whether or not to have share capital.

The rules of a distributing co-operative allow returns or distributions to members on surplus or share capital. This type of co-operative aims to maximise returns to individual members by undertaking commercial functions beyond the capacity of an individual.

The rules of a non-distributing co-operative must prohibit the return or distribution on surplus or share capital (if applicable) to members, other than the nominal value of any shares at winding-up. The nominal value of shares is the value assigned to each share in the co-operative's rules. A non-distributing co-operative can still trade and make a profit, but the profits cannot be distributed to members and can only be used to further the primary activities of the co-operative. These co-operatives enable members to carry out functions collectively, thereby reducing the costs to individuals. The main difference between a non-distributing co-operative without share capital and a non-distributing co-operative with share capital, is that the latter will have additional rules that set out the administrative requirements for having shares.

A co-operative's membership must consist of five or more members. However co-operatives can form a "co-operative group" in which case membership can be as few as two co-operatives.

## **Co-operative principles**

The following seven guiding principles distinguish a co-operative from other business structures. These are set out in section 6 of the Act.

### **1. Voluntary and open membership**

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

### **2. Democratic member control**

Co-operatives are democratic organisations controlled by their members who actively participate in setting policies and making decisions. Those serving as elected representatives are accountable to the membership. In a co-operative, members have equal voting rights (one member, one vote).

### **3. Economic participation**

Members contribute and control the capital of their co-operative in an equitable, democratic way. At least part of the capital contributed by members is usually the common property of the co-operative. Limited compensation, if any, is received on capital contributed as a condition of membership. Members allocate surplus funds for purposes such as:

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

### **4. Autonomy and independence**

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

### **5. Education, training and information**

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

### **6. Co-operation among co-operatives**

By serving their members effectively, co-operatives strengthen the co-operative movement by working through local, national, regional and international structures.



## 7. Concern for the community

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

## How Department of Commerce can help you

The Department of Commerce is responsible for administering the legislation governing co-operatives. Department staff:

- maintain the **Register of Co-operatives** (the Register) which includes information such as rules, alterations, special resolutions and certain charges over assets;
- produce materials to assist co-operatives and the public;
- assist with searches of the Register for information about co-operatives including rules, documents, and annual reports;
- manage a legislative framework for the operation and development of co-operatives in Western Australia;
- provide information on policy, legislative and practical matters, particularly about the formation, operation, merging or winding-up of co-operatives;
- develop strategies and programs to ensure co-operatives comply with their statutory obligations; and
- monitor and analyse the performance of the sector.

The Registrar of Co-operatives is, under the Act, the Commissioner for Consumer Protection at the Department of Commerce.

Co-operatives need to lodge forms with the Registrar on a regular basis, including when their circumstances change. These forms are referred to throughout this guide with information about the most commonly used forms provided at page 36.

## Who can search the Register of Co-operatives?

Anyone interested in becoming members of a co-operative, as well as people planning to do business with a co-operative can (on payment of a fee) get certain information about the co-operative or obtain copies from the Register. Information available to the general public includes the names of directors, the address of the registered office, the rules of the co-operative and its financial reports. A co-operative's list of members is not available for public inspection.

It is important that co-operatives provide accurate and up-to-date information to the Registrar. Potential members, financiers, clients or suppliers may search the Register and base their decisions on the information recorded.

Arrangements to inspect the Register or request copies can be made by contacting the Co-operatives Unit or attending the Perth office of Consumer Protection.

## How to register a co-operative

*Sections 18 to 20 of the Act*

By law, all co-operatives trading in Western Australia must register with the Department of Commerce.

The flow chart (Appendix A) lists the steps involved in registering a co-operative (see page 42). Many of the steps contain a page reference, showing where detailed information can be found in this guide.

All forms mentioned in this guide are available from the Department of Commerce – phone (08) 6364 3070, email [cooperatives@commerce.wa.gov.au](mailto:cooperatives@commerce.wa.gov.au) or at [www.commerce.wa.gov.au/co-ops](http://www.commerce.wa.gov.au/co-ops).

## The rules

The rules are one of the most important documents any co-operative will create. The rules form the basis of everything a co-operative does, so taking time to be thorough, thinking them through and getting them right will pay dividends.

The rules form a binding contract between the co-operative and its members. All members and office holders of the co-operative must agree to follow the rules. It is therefore recommended that this be acknowledged on the membership application form.

It is a good idea to have as many potential members as possible discuss and agree on the rules before submitting them to the Registrar for approval (page 11). If the rules are not passed at the formation meeting, i.e. a two-thirds majority vote, they will need to be redrafted and resubmitted to the Registrar for approval prior to holding another meeting of eligible members.

Rules that have been passed by special resolution must be lodged with the Registrar as part of applying for registration of the co-operative. Once registered a co-operative cannot change its rules without first obtaining the Registrar's approval under section 103 of the Act. Therefore, while it is possible to make changes to the rules at a later date getting them right first up will save money, time and trouble.

The rules provide the foundation for the way in which a co-operative is to operate. They include information on (but are not limited to):

- primary activity or activities;
- active membership requirements;
- qualifications for membership and directors;
- procedures to admit new members;
- how shares and fundraising will be handled (if any);
- any fines for breaking the rules;
- voting procedures;
- how surplus funds can be dealt with; and
- financial reporting and auditing requirements.

## Using the model rules

The Regulations include **model rules**, which are intended to help with drafting rules that comply with the legislation. A set of model rules exists for each type of co-operative, i.e. distributing; non-distributing with share capital and non-distributing without share capital.

The model rules are a great starting point to creating rules that meet the needs of a particular co-operative. The flow chart (Appendix B) provides a step-by-step guide to using the model rules (see page 43).

It is not mandatory to use the model rules set out in the regulations, but writing rules from scratch may prove time consuming and complicated as all rules must comply with the legislation. In particular, the rules **must** cover all matters listed in Schedule 1 of the Act.

## Submitting rules for Registrar's approval

The Registrar must approve the rules of a co-operative to make sure they comply with the Act. The rules need to be submitted to the Registrar at least 35 days before the required formation meeting. When submitting draft rules for approval, *Co-operatives Form 01 – Application for Approval of Proposed Rules for a Co-operative* must be used.

The Registrar can approve the rules as submitted, approve different rules to those submitted, or refuse to approve the rules altogether. The person who submitted the rules will be notified in writing of the Registrar's decision.

Rules approved by the Registrar are referred to as **approved rules**. Once adopted at a formation meeting, and officially registered by the Registrar they become **registered rules**.

## Rules can differ

As the rules cover all aspects of a co-operative's operations, the rules of one co-operative can differ from another.

For example, the qualification for membership and active membership requirements can differ depending on the type of co-operative. The way directors are elected and proxy voting arrangements are two areas likely to differ from one co-operative to another.

## Drafting disclosure statement (distributing co-operatives only)

### *Section 16 of the Act*

When considering whether to form or join a distributing co-operative, people need to know how much they will need to commit financially and whether they will be liable for any debts of the co-operative. For this reason a distributing co-operative must present a disclosure statement (approved by the Registrar) at its formation meeting.

A disclosure statement must include the following information:

- the estimated costs of formation;
- the active membership provisions of the proposed co-operative including details of the type and minimum level of activity required of a member;
- the rights and liabilities that attach to holding shares in the co-operative;
- the capital required for the co-operative at the time of formation;
- the projected income and expenditure of the co-operative for the first 12 months of its operation, for a small co-operative an estimate of cash flow would be sufficient; and
- information about any pre-registration contractual obligations entered into under Part 3 Division 5 of the Act.

The draft disclosure statement must be submitted to the Registrar at least 35 days before the date planned for the formation meeting, using *Co-operatives Form 02 – Application for Approval of Draft Disclosure Statement for a Proposed Distributing Co-operative*.

## Formation meeting – new co-operatives

### *Section 15 of the Act*

Once approval of the co-operative's rules is received from the Registrar, and in the case of a distributing co-operative the disclosure statement has been approved, the formation meeting can be held. The step-by-step process is outlined in the flow chart (Appendix A) on page 42.

The formation meeting is an important step in having a co-operative registered. During this meeting, the rules, the single most important document on which activities of the co-operative will be based, is officially adopted by the inaugural members.

The first board of directors is also elected at this meeting. Electing the board of directors is an important task. In order to get the best result for the co-operative this matter should be given due consideration before the meeting. For more information on electing the board of directors see page 18.

Before submitting rules for the Registrar's approval, it is a good idea to approach a cross-section of eligible members to ensure the draft rules, including the active membership provisions, are acceptable. A two-thirds majority vote of eligible members attending the formation meeting is required to adopt the **approved rules** and authorise the application for registration of the co-operative.

Keep in mind, approved rules cannot be changed at a formation meeting. If changes are needed to get the required majority new rules must be submitted to the Registrar for approval before the formation meeting can reconvene

## Statement of primary activity

*Sections 113 and 115 of the Act*

Every co-operative must include in its rules, one or more primary activity.

The Act defines a primary activity as “an activity stated in the rules of the co-operative to be a primary activity of the co-operative.” There are examples of primary activities on the next page.

Section 115 explains further: “the primary activity or, if more than one, the primary activities taken together must form the **basic purpose** for which the co-operative exists and a **significant contribution to the business** of the co-operative” (highlights added).

Regulation 7(2) states that an activity makes a significant contribution to the business of a co-operative if it contributes at least:

- *10% of the co-operative's turnover; or*
- *10% of the co-operative's income; or*
- *10% of the co-operative's expenses; or*
- *10% of the co-operative's surplus.*
- *If, in the Registrar's opinion, failure by co-operative to conduct the activity would reduce business conducted by the co-operative by 10%.*

Not every activity of a co-operative's business is necessarily a primary activity. As a starting point to identifying the primary activities of a co-operative, it would be useful to focus on the items highlighted above as a basic test; i.e. look for those aspects of the business that underpin its *basic purpose* and at the same time, make a *significant contribution* to the co-operative's activities.

Some co-operatives will have more than one primary activity. This is not to say co-operatives should strive to identify more primary activities than are needed to satisfy the requirements of the Act. Be aware that section 273 (in conjunction with regulation 25) could impose provisions relating to the acquisition and disposal of certain assets and is best taken into account when determining what should be a primary activity.

The rules must also define “active membership” which must be measurable / quantifiable in relation to a primary activity. As such active membership provisions need to be considered in conjunction with defining one or more primary activity.

#### Examples of primary activities:

- For a consumer focused co-operative operating a retail trading store its primary activity might be:  
“the operation of a retail outlet providing a wide range of goods and services to its members”.
- For an orchardists’ co-operative a primary activity might be:  
“the acquisition of fruit from its members and the packing and marketing of fruit”.
- If that orchardists’ co-operative also processes fruit which is not marketable as table quality, another primary activity might be:  
“the manufacture of associated fruit products”.

## **Active membership provisions**

### *Sections 114 and 115 of the Act*

A significant feature of the Act is the requirement for members to have dealings with their co-operative i.e. members are required to participate in the activities of their co-operative, failing which their membership is liable to cancellation. As such the rules must contain an “active membership provision” that sets out what level of membership participation is required, and over what period.

For the purposes of the Act (section 111), a member is an active member if the member

“uses or supports an activity of, or maintains a relationship or an arrangement with, the co-operative, for carrying on a primary activity of the co-operative, in the way and to the extent that the rules of the co-operative provide is sufficient to establish active membership”.

In the case of the consumer focused retail trading co-operative cited earlier, which set its primary activity as “...providing a wide range of goods and services to its members”, its active membership provision might be simply:

In order to establish active membership, a member shall purchase goods and/or services from the co-op store to the minimum value of \$x per annum.

Importantly membership provisions need to relate to a primary activity and be easily measurable.

The Act does not require an active membership provision for every primary activity in the rules. In the earlier example of an orchardists' co-operative with two primary activities it would be sufficient for its active membership provision to be:

A member must provide a minimum of X tonnes of table quality fruit to the co-operative in each financial year in order to remain a member of the co-operative.

Although the processing component of the business could be quite large and defined as a "primary activity", the rules could exclude from being a member, someone who only supports that activity.

## **Non-distributing co-operative**

For a non-distributing co-operative it is possible for the active membership rule to require simply the payment of a regular subscription that would be applied to a primary activity of the co-operative.

### **Additional examples**

To help explain "primary activity" and "active membership", the following examples show how the two fit together.

#### **The fit for a distributing co-operative within the hardware industry could be:**

**Primary activity:** The operation of a trading business providing goods and services to its members.

**Active membership provision:** A member must purchase a minimum of \$500 of goods or services from the co-operative in each financial year.

#### **The fit for a distributing co-operative within the agricultural industry could be:**

**Primary activity:** To sell farm produce of members.

**Active membership provision:** A member must supply no less than 20 cartons of produce of marketable quality in each financial year.

#### **The fit for a non-distributing co-operative providing housing and other community services could be:**

**Primary activity:** The provision of rental housing accommodation and other community services to members.

**Active membership provision:** A member must reside within the state electorate(s) of .....and pay an annual subscription under rule xx.

## Role of board

The board of directors oversees management of the co-operative. Directors are defined as 'officers' with their powers and duties coming from a combination of the rules and the Act.

The number of directors can vary depending on the size of the co-operative and its activities. The legal minimum number of directors is two, but the rules of each co-operative must specify how many director positions can exist and how they are to be filled.

The majority of directors must be **member directors**. If the rules allow, an employee of the co-operative or another person qualified according to the rules, can be appointed as a director (**known as an independent director**). Member directors must be elected by members of the co-operative in accordance with the rules. Independent directors will usually be appointed by the board.

Section 200 of the Act describes the categories of people who are disqualified from acting as a director or taking part in the management of a co-operative. The auditor of the co-operative and any employer, employee or partner of the auditor, cannot be a director. A person who has been convicted of a criminal offence or an offence under the *Corporations Act 2001* may also be disqualified.

## Directors' responsibilities

Not all directors' responsibilities are specified in the Act. The following lists provide an insight into the role of a director. It is therefore important that well-credentialed candidates are encouraged to stand for election. Along with being an active member, members should also take seriously the matter of electing directors as it is the directors who will manage the business on their behalf

**Business responsibilities** of directors include the following:

- develop basic guidelines for the control of business activities;
- appoint, supervise and remove the CEO as needed;
- call special meetings when necessary or when requested under the Act;
- approve general business arrangements such as entering into contracts;
- settle arrangements for handling funds and determine signatories for cheque accounts;
- ensure an adequate bookkeeping system is maintained and that financial reports and audits are undertaken as required by the Act (see section 225 of the Act);
- ensure that complete minutes are kept of general meetings, meetings of the board and board committees;
- exercise prudent decision making regarding debt levels;
- be honest and act in good faith (see section 208 of the Act);
- not use information acquired as an officer for personal gain or make improper use of their position for personal advantage (see section 210 of the Act);



- declare any interest in proposed contracts (see section 220 of the Act); and
- exercise a reasonable degree of care and diligence (see section 209 of the Act).

To meet their responsibilities to members, Directors **must**:

- serve to the best of their ability and capacity;
- represent the interests of members on an impartial basis;
- be accountable for the financial management of the co-operative;
- adopt policies and procedures along sound business lines based on available information and in line with the objectives of the co-operative;
- undertake adequate checks to ensure that board policies are communicated to and implemented by management;
- review operating results and determine whether existing policies are relevant and effective;
- ensure members are appropriately informed of the co-operative's activities without disclosing confidential matters; and
- provide high-quality reliable service and put members' interests first.

In the same way members are encouraged to take an active and informed role in electing directors, candidates standing for office should ensure they are in a position to fulfil the role adequately.

The success or failure of a co-operative can often be attributed to the performance of its directors. Potential directors should not take lightly the responsibilities of office with penalties applying to directors who breach their obligations.

## Penalties

Penalties may apply to directors and officers who fail to carry out their duties in accordance with the Act. The Act contains offence provisions with penalties of a fine of up to \$24,000 or two years' imprisonment for individuals and a fine of up to \$50,000 for co-operatives.

## Day-to-day management

Everyday management of a co-operative is usually the responsibility of a single person such as a general manager, CEO or the board secretary. Regardless of the size of the co-operative, it is vital that this person takes a professional approach to their duties whether in a voluntary or paid capacity.

Day-to-day management of a co-operative is not the role of the board, it is an administration function involving:

- serving the co-operative in accordance with the business plan, strategies and policies as determined by the board of directors from time to time;
- knowing the organisation's objectives and complying with all policies designed to achieve them;

- providing the board of directors with information and suggestions for developing new objectives, changing established ones and controlling operations;
- selecting, training, supervising and assisting in the development of personnel; and
- operating the organisation on a sound financial basis.

## **Election of directors**

The rules of the co-operative describe the process for filling board positions. When electing members to the board, consideration should be given to the directors' duties and whether the member standing for election is capable of performing them.

The co-operative's rules determine how the Chair is elected, holds office, retires or is removed from office. Rules normally provide for the directors to elect one of their own to be Chairman, however in some rare cases the position is filled at a general meeting of members.

The co-operative must notify the Registrar within 28 days of the appointment, resignation or removal from office of a director, the chief executive officer or the secretary of the co-operative.

## **Meetings of board of directors**

### *Section 201 of the Act*

Meetings of the board must be held at least once every three months and may be held as often as necessary.

A board meeting can be called by a single board member giving notice individually to every other board member. Meetings may occur in person or by any other means that would allow members to communicate (such as a teleconference). To obtain a quorum for board meetings, at least half the number of directors must be present, or a greater number if specified in the rules. Member directors must always outnumber independent directors when a board vote is taken.

From time to time, the board may also conduct business outside of meetings in accordance with the rules and section 202 of the Act.

## Removing a director

### *Section 205 of the Act*

The rules of the co-operative determine how directors can be removed from or vacate office.

Directors must vacate office according to the rules, or if:

- they are disqualified under section 200;
- they fail to attend three consecutive ordinary meetings of the board without its leave;
- they resign in writing;
- they are removed from office by special resolution;
- they are no longer qualified; and/or
- an administrator of the co-operative's affairs is appointed under Part 12 Division 5 of the Act.

Within 28 days of a director being appointed or leaving office, the co-operative must complete and submit to the Registrar *Co-operatives Form 13 – Notice of Appointment or Cessation of Appointment of Directors and Officers*.

## Ongoing operation of a co-operative

The Act is designed to make it easier for co-operatives to be set up and conduct business. It is in the co-operative's best interests to follow the processes set out in the Act and Regulations. Even though there are penalties for breaching the Act, the main reason co-operatives should adopt the processes in the Act is because they are good for business. The rules are designed to be fair, to uphold co-operative principles, and to provide guidelines for day-to-day operation. The Act promotes best practice in business.

While the Act and Regulations have been written to assist co-operatives, it is recognised that the legislation is very detailed. A governance system therefore exists to help co-operatives stay on track for success by complying with the law. As part of this good governance process, the Registrar requires co-operatives to submit key information annually or other data, when relevant.

Many matters, such as the preparation of annual accounts and lodgement of annual returns as well as the holding of the annual general meeting, are once a year events. They should be diarised as agenda items for a board meeting well before the end of the co-operative's financial year.

The Act contains a lot of information, not all of which can be included in this guide, so the following section is designed to highlight:

- the main things co-operatives need to do under the Act;

- the information co-operatives are most likely to lodge with the Department of Commerce; and
- how the Department can help co-operatives.

## **Financial management**

Regardless of the primary activity of a co-operative, managing the organisation's money properly is an important part of staying in business and staying out of trouble.

This section contains guidelines on:

- payment and loans for directors and officers;
- declaration of financial and other interests;
- management contracts;
- shares in co-operatives;
- fundraising; and
- dealing with charges over assets.

### **Payment and loans for directors and officers**

Restrictions on financial benefits to directors and officers of a co-operative are covered in the Act in Part 9 Division 4. The following information, like all the information in this guide, should only be used as a general guide. Co-operatives should seek independent professional legal advice if in doubt.

#### **Payments to directors**

##### *Section 215 of the Act*

A director must not receive any payment for services as a director other than fees, concessions or other benefits approved at a general meeting of the co-operative. The maximum penalty for breaching this section of the Act is a fine of \$24,000 or two years' imprisonment.

#### **Financial accommodation to officers**

##### *Section 216 of the Act*

An officer who is not a director must not obtain financial accommodation from the co-operative unless it is approved by a majority of the directors. Any scheme under which officers are eligible for loans or other financial benefits must be approved by the majority of the board.

These restrictions also apply to any companies or trusts for which the officer of the co-operative is a director, trustee or beneficiary.

The maximum penalty for breaching this section of the Act is a fine of \$24,000 or two years' imprisonment.

A co-operative giving financial accommodation in contravention of this section commits a breach and is liable to a maximum fine of \$50,000.

### **Financial accommodation to directors and associates**

#### *Section 217 of the Act*

Directors or their associates can only receive financial accommodation from the co-operative if specifically approved by a resolution passed at a general meeting or given pursuant to a scheme approved at a general meeting or provided on terms no more favourable than the terms on which it is reasonable to expect the co-operative would give if dealing with the director or associate at arm's length in the same circumstances. The maximum penalty for providing unauthorised financial accommodation to a director or an associate of a director is a fine of \$50,000.

### **Declaration of financial and other interest(s)**

#### *Section 220 to 223 of the Act*

A director of a co-operative must declare to the board the nature and extent of any direct or indirect interest he/she has in a contract which is being considered by the co-operative. The maximum penalty for failure to declare an interest is \$24,000 or two years' imprisonment.

A director would have to declare any interest in another organisation which is looking to enter into an agreement or business relationship with the co-operative. For example, where the co-operative is considering using a supplier of which the director is part owner.

To declare this interest, it is sufficient for the director to advise the board in writing that he/she is involved with the organisation in question and that he/she should be regarded as having an interest, financial or otherwise, in any contract made.

The interest should be declared at the board meeting where the contract is first discussed, or, if the director develops an interest at a later date, it must be brought to the board's attention at the next board meeting. If a director becomes interested in a contract with the co-operative after it is in place, he/she must declare the interest at the next board meeting.

Once an interest has been declared then except where the board determines otherwise (without the involvement of the declaring directors) the director cannot be present during any deliberation of the board in relation to the matter or take part in any decision in relation to the matter.

There are exceptions. A director is not required to declare an interest in contracts for the purpose of:

- purchase of goods and services by the director from the co-operative;
- lease of land to the director by the co-operative;

- the sale of commodities or animals by the director to the co-operative; or
- dealings which under the rules of the co-operative may be made between the co-operative and a member.

In each case, however, the contract must be made in good faith, in the ordinary course of business of the co-operative and on usual and proper terms between the co-operative and its members.

## **Management contracts**

*Section 219 of the Act*

A management contract is a contract or other type of arrangement by which a:

- person who is not an officer of the co-operative agrees to perform a major part of the co-operative's business; or
- co-operative agrees to perform a major part of its business in a particular way, or according to the directions of any person, or subject to stated conditions or restrictions.

In simple terms, it is the co-operative entering into an agreement to have its business managed by someone else. Management contracts must be approved by special resolution.

## **Financial records, reports and audits**

*Section 224 to 229 of the Act*

All co-operatives are required by law to keep financial records that correctly record and explain the transactions and financial position of the co-operative. The records must be retained for at least seven years.

### **Small co-operatives**

Distributing co-operatives with:

- revenue of not more than \$8 million per annum;
- assets of not more than \$4 million; and
- not more than 30 full time employees at financial year end

and non-distributing co-operatives with:

- turnover of not more than \$200,000 per annum; and
- assets of not more than \$500,000

are classed as 'small co-operatives'. They are not required to prepare audited financial reports or directors reports, unless they are directed to prepare the reports by the Registrar or by members who are capable of casting at least 5 per cent of votes at a meeting of members. Small co-operatives should note that under the Regulations,

their rules must make provision for members to be given an unaudited financial report 14 days prior to the co-operative's annual general meeting.

### **Other co-operatives**

All co-operatives that are not classified as small co-operatives must prepare annual financial reports and directors reports which must be audited and included in the annual report submitted to the Registrar by the co-operative.

The rules of a co-operative may contain additional requirements for reporting to members. The financial year of the co-operative ends on the day in each year as specified in the rules of the co-operative.

### **Changing auditors**

Because the role of auditor is so important, and is required under the legislation, any change to audit arrangements must be discussed with the Department of Commerce before it goes ahead.

If an auditor wishes to resign, he or she needs to seek approval from the Registrar by submitting *Co-operatives Form 25 – Application for Consent to Resign as Auditor*.

If a co-operative wants to replace its auditor, a notice of intention to move a resolution to remove the auditor must be given to the co-operative by a member at least two months before the general meeting is to be held. The notice of intention must be given to the auditor and to the Registrar by submitting *Co-operatives Form 7 – Application or Request to Registrar*.

The removal resolution must be an ordinary resolution at a general meeting, and **21 days' notice** of the meeting must be given to members and to the auditor. Notice of nomination of a new auditor must be given to members, the existing auditor and the proposed auditor at least **seven days** before the meeting. The Registrar must be advised of the removal within **14 days** by submission of *Co-operatives Form 24 – Notice of Resignation, Removal or Cessation of Auditor*.

### **Keeping registers**

*Sections 230 to 233 and clause 41 of Schedule 3 of the Act*

Registers are a record of information and can be kept on a range of subjects. The Act requires certain information to be kept on a register, and even specifies that some registers must be available for inspection by members and the public.

The following registers must be kept:

- members, directors and shares (if any);
- loans to, securities given by, debentures and co-operative capital units (CCUs) issued by, and deposits received by the co-operative;

- loans made or guaranteed by the co-operative and of any securities taken;
- the holders of CCUs;
- cancelled memberships;
- notifiable interests (section 284); and
- undertakings.

The following registers and other documents must be available for inspection by members:

- the Act and Regulations;
- current registered rules of the co-operative;
- minutes of each general meeting;
- the last annual report filed with the Department of Commerce;
- register of directors, members and shares; and
- register of charges.

These documents may be inspected by members for free, but if a copy of entries in a register is required, the co-operative can charge members a fee per page as specified in the rules. Use and disclosure of the information obtained from the registers is restricted by section 233 of the Act.

If a register is being kept at a place other than the registered office, or if a register is being moved to a new location, the co-operative must advise the Registrar of the address of the registers within 28 days.

## **Co-operative capital units**

*Sections 257 to 266 of the Act*

A CCU is an interest issued by a co-operative in the capital, but not the share capital, of the co-operative. CCUs enable the co-operative to obtain financial accommodation from non-members, while retaining member control in accordance with co-operative principles.

The terms of issue of certain CCUs must be approved by a special resolution of members and by the Registrar, and a disclosure statement approved by the Registrar, setting out the terms of the issue, the rights of holders of CCUs, the terms of redemption and the manner of transferability must be included with the offer.

There are also a number of general provisions within the Act that grant qualified approval for a board to issue CCUs in satisfaction of moneys payable to past members.



## **Other fundraising**

Co-operatives may also raise money to fund activities or to purchase equipment by the following means:

### **Shares**

*Part 7, sections 136 to 165 of the Act*

Rules of a co-operative with share capital must state the minimum shareholding of members. Shares cannot be issued at a discount to their nominal value. However, the board of a distributing co-operative can issue shares at a premium to their nominal value. Shares in a distributing co-operative can be issued to new members as part of the joining process in accordance with section 137 of the Act. The disclosure statement must be lodged with the Registrar and maintained in a current state, using *Co-operatives Form 11 – Application or Request to the Registrar*.

A distributing co-operative may require members to take up or subscribe for additional shares if authorised by its rules, and if passed by special resolution. This proposal must be accompanied by a disclosure statement approved by the Registrar that explains the purpose for which the funds are being raised. If a member does not wish to participate he or she can resign from the co-operative.

### **Debentures**

*Sections 250 to 254 of the Act*

A co-operative may issue debentures to members and employees of the co-operative after providing a disclosure statement approved by the Registrar and containing the information that is reasonably necessary to enable a person to make an informed assessment of the financial prospects of the co-operative.

A co-operative may alternatively issue debentures to persons other than members and employees if the requirements of the *Corporations Act 2001* with regard to the issue of debentures are met. The Australian Securities and Investments Commission (ASIC) can provide further information on the requirements.

There are also a number of general provisions within the Act that grant qualified approval for a board to issue debentures in satisfaction of moneys payable to past members.

### **Loans**

*Sections 255 and 256 of the Act*

If the rules allow, the co-operative may require its members to lend money, with or without security, to the co-operative in accordance with a proposal approved by special resolution of the co-operative. The proposal must not require a loan to be for a term greater than permitted under the Act or the Regulations, with the notice of the

special resolution to be accompanied by a disclosure statement approved by the Registrar explaining the purpose for which the money is being raised.

## Dealing with charges

### *Section 267 and Schedule 3 of the Act*

If a co-operative is seeking to borrow funds a security charge over the property of the co-operative may be required.

A charge is a form of security that has priority over unsecured debts.

Having charges registered over the property of the co-operative means that if the co-operative goes into liquidation, its debts will be paid in the order of priority of those charges. In the case of a mortgage over land a mortgagee can take possession of the property and apply the proceeds of the sale to settle their claim. Unsecured debts are only settled once all secured debt has been paid out.

A creditor is the organisation or person which lends money or provides credit to a co-operative. If a prospective creditor is concerned that they may not be paid in the event of the co-operative experiencing financial difficulties, they may insist on being given a charge over property of the co-operative that they can register with the Department of Commerce and become a secured creditor.

A charge may be registered by the creditor or by another interested party using *Co-operatives Form 21 – Notification of Details of a Charge* and lodging with the Registrar within 45 days of the creation of the charge.

If the charge's details change, for example, the creditor passes the charge on to another entity, *Co-operatives Form 22 – Notice of Assignment or Change to Details of a Charge* must be completed by the creditor and lodged with the Registrar within 45 days of the change.

On repayment of the debt the co-operative should insist on the creditor completing *Co-operatives Form 23 – Notification of Discharge or Release of Property from a Charge* so it can be lodged with the Registrar.

For more information, see Schedule 3 of the Act and, if necessary, seek independent professional legal advice.

## Non-financial management

This section of the guide provides an overview of a co-operative's responsibilities in conducting its day-to-day operations and reporting to the Department of Commerce. This section covers:

- altering rules;
- annual reports;
- membership;

- voting and resolutions;
- conducting meetings; and
- dispute resolution.

## **Altering rules**

*Sections 102 to 109 of the Act*

### **Why change rules?**

There are various reasons a co-operative may decide to change its rules, for example:

- in practice, the rules are not working;
- the rules are out of date; or
- the co-operative or its membership has changed.

### **How to change rules**

Because the rules form the foundation of a co-operative, any proposed changes must first be approved by the Registrar to make sure they comply with the Act.

An application to change the rules of a co-operative must be lodged with the Registrar, using *Co-operatives Form 30 – Application for Approval of Proposed Alteration to Rules*, at least 21 days before:

- notice is given to members of the proposed special resolution; or
- in the case of changes required under the Act, the resolution is passed by the board of directors.

The Registrar will notify the co-operative in writing whether the alteration is approved. If the alteration is not approved, the notification will give reasons for refusal.

If the alteration is approved, a copy of *Co-operatives Form 32 – Application for Registration of Alteration of Rules* and *Co-operatives Form 33*, a statutory declaration in support of the application, will be sent to the co-operative for completion.

Once approved by the Registrar, a co-operative can officially adopt new rules by passing the appropriate resolution as required under the Act and having them registered by submitting *Co-operatives Form 32 – Application for Registration of Alteration of Rules* and *Co-operatives Form 33*.

Because the alteration to the rules needs to be passed by a vote, it is recommended that you discuss the proposed changes with members before sending the draft rules for approval.

## **Final stage of altering rules**

When approved rule alterations have been passed and the appropriate forms submitted to the Department of Commerce, you will receive a certificate of registration for the altered rules.

In the case of alteration by board resolution, members of the co-operative must be notified of the alteration to the rules in writing as soon as possible after the change has taken effect (and no later than the date notice is given of the next annual general meeting).

## **Justification for approval or rejection of proposed alteration**

The Registrar will register the proposed alteration to the rules unless:

- the alteration is contrary to the Act; or
- there is other reasonable cause to refuse registration, for example, the procedure for alteration has not been correctly carried out.

In the unlikely event of the Registrar not approving a request to alter rules or refusing to register an alteration, there are defined appeal provisions in the Act.

## **Annual reporting**

### *Section 235 of the Act*

One of the most important tasks for a co-operative is submitting the annual report to the Registrar. To make sure the report is completed correctly and lodged on time, responsibility for the task is best given to one officer, such as the secretary.

The co-operative must file an annual report within 28 days of its annual general meeting by completing and lodging *Co-operatives Form 10 – Annual Report to Registrar*.

The minimum requirements of the annual report to the Registrar are:

- the number of shares (if applicable), number of employees and members;
- the address of principal place of operation and other contact details;
- a list of the persons occupying the positions of secretary, directors and principal executive officer;
- an audited financial report for its most recently ended financial year, if the co-operative is required to prepare one;
- a director's report for the most recently ended financial year, if the co-operative is required to prepare one;
- an audited financial report for any subsidiaries; and
- a copy of reports (if any) prepared by the auditor on the co-operative's financial statements.

## **Annual general meetings**

### *Section 190 of the Act*

Co-operatives must report to members by holding an annual general meeting. The first annual general meeting of a new co-operative must be held within **18 months** after registration. After that, annual general meetings must be held within **five months** of the close of the co-operative's financial year unless an extension of time has been obtained from the Registrar.

The rules of the co-operative will specify what information the co-operative needs to provide to members at the meeting. The rules must make provision for financial reporting to members.

Special general meetings may be held at other times as required. The board must give each member at least 14 days' notice of each general meeting.

## **Membership**

### *Sections 56 to 73 of the Act*

The Act sets out comprehensive guidelines for membership. If you have a specific question about membership which is not covered in this guide please refer to Part 4 of the Act or contact the Co-operatives Unit at the Department of Commerce on (08) 6364 3070 or by emailing [cooperatives@commerce.wa.gov.au](mailto:cooperatives@commerce.wa.gov.au).

## **Getting started**

### *Sections 56, 57 and 58 of the Act*

A person is qualified to be a member of a co-operative if they are eligible under the rules of the co-operative and there are reasonable grounds for believing that they will meet the active membership provisions.

Unless specifically prohibited, joint membership is allowed, that is, a single membership may be shared by two or more persons.

Proposed members should complete an application form and submit it to the co-operative. The Department of Commerce can provide an example. If the co-operative has adopted the model rules, those rules provide that every application must be considered by the board. If the board decides to reject the application, it is not necessary for reasons to be provided. However the Board must be mindful of the co-operative principles set out in section 6 of the Act and its obligations under the *Equal Opportunity Act 1984*. If in doubt, the board should consider the need for legal advice.

## **Information for proposed members**

### *Section 68 of the Act*

Each person considering becoming a member of a co-operative must be given access to information about the co-operative, including a copy of:

- the current registered rules of the co-operative;
- all special resolutions applicable to the member and passed by members of the co-operative since its last annual general meeting (except those altering the rules); and
- the last annual report of the co-operative.

The proposed member may request that copies of these documents be sent to him/her, or may elect to inspect the documents at the co-operative's office.

### **Minimum number of members**

Co-operatives exist for and rely heavily on the support of its members to be successful. The Act stipulates the minimum number of members for a co-operative to be five, or 2 in the case of a co-operative group.

Co-operatives must also have rules covering the minimum level of activity required of members to remain members.

It is important to ensure that a co-operative has the minimum number of members in order to operate. Directors who allow a co-operative to operate with too few members for more than 28 days face serious legal and financial consequences.

### **When membership ceases**

*Sections 63 and 64 of the Act*

A person's membership of any co-operative ceases if the:

- active membership provisions set out in the rules are not met and membership is cancelled under part 6 of the Act;
- member is expelled or resigns in accordance with the rules;
- member becomes bankrupt or control over the member's property vests in an administrator under the law of bankruptcy (unless the rules specifically say otherwise);
- member dies;
- contract of membership is rescinded on the ground of misrepresentation or mistake; or
- member is a corporation that becomes deregistered.

In addition, a person's membership of **a co-operative with share capital** ceases if the:

- member's total shareholding is transferred according to the rules and if the person to whom the share(s) has been transferred is registered as a member in their place;
- member's total shareholding is forfeited according to the Act or the rules of the co-operative;
- member's total shareholding is sold by the co-operative under the rules and the purchaser is registered in their place;
- member's total shareholding is purchased by the co-operative as allowed under the Act; or
- amount paid up on the member's shares is repaid to the member according to the rules.

## Voting and resolutions

### *Section 166 to 189 of the Act*

The right to vote attaches to membership and not shareholding. A decision made by a vote of members is a **resolution**. There are two types of resolution – special and ordinary.

An **ordinary resolution** is a decision passed by a simple majority (i.e. 50% of valid votes cast plus 1 vote) of voting members at a general meeting or by a postal ballot. If a postal ballot is to be conducted, it must be conducted in accordance with the rules of the co-operative. For example, directors might hold a postal ballot if they are concerned that they may not get a quorum at a general meeting.

A **special resolution** is a decision passed by a:

- two-thirds majority at a general meeting;
- two-thirds majority in a postal ballot; or
- three-quarters majority in a **special postal ballot**.

A **special postal ballot** differs from a postal ballot in that it is required for passing special resolutions relating to specific matters set out in section 187 of the Act. When holding a special postal ballot, the co-operative must send a disclosure statement approved by the Registrar to each member setting out particulars of the financial position of the co-operative, the interests of the directors in the proposal and any compensation or consideration payable to officers or members in connection with the proposal.

Members must be given at least 21 days' notice of an upcoming vote on a special resolution including the reasons for proposing the resolution and the effect it is likely to have if passed.

If the special resolution is passed, two copies must be filed with the Registrar within 28 days using *Co-operatives Form 35 – Application for Registration of a Special Resolution* and *Co-operatives Form 36 – Statutory Declaration in Support of Special Resolution*.

These forms must be signed by a director and the secretary of the co-operative and accompanied by the required fee. If the Registrar is satisfied the co-operative has complied with the Act, the special resolution will be registered and a certificate of registration issued (if not, an explanation will be provided).

## **Making decisions at general meetings**

### *Section 194 of the Act*

Depending on the rules of the co-operative, decisions at meetings can be passed by a majority of members voting. The vote can be passed by a show of hands, unless at least five members or the meeting Chairman calls for a poll instead. Where a vote is tied, the meeting's Chair, if a member, may cast the deciding vote (unless otherwise stated in the rules).

## **Conducting meetings of members**

### *Sections 190 to 196 of the Act*

The board of directors must give members at least **14 days'** notice of each general meeting called, and the board may call a special general meeting at any time. If members will be asked to vote on a special resolution at the meeting, then at least **21 days'** notice of the special resolution must be given. It is good practice to distribute an agenda for the meeting at the same time.

In addition to meetings called by the board, members can also request a general meeting. The board of directors must call a general meeting if at least 20 per cent of the co-operative's members submit a written request (or a lower percentage if specified in the rules).

The request must:

- state the reason(s) for the meeting;
- be signed by the members requesting the meeting; and
- be filed at the registered office of the co-operative.

If the above criteria are met, the board of directors must hold a meeting as soon as possible, and no later than **two months** after the request.

## **Quorum**

### *Section 193 of the Act*

The quorum is the number of members of the co-operative that must be present for a meeting to be held. The quorum must be specified in the rules.

No item of business can be voted on at a meeting unless a quorum is present.



## **Minutes**

### *Section 196 of the Act*

Minutes of each general meeting, board meeting and subcommittee meeting (if functions of the board have been delegated to a subcommittee) must be entered into the appropriate records within one month after the meeting and confirmed and signed by the Chair at the next meeting. It is usually the responsibility of the secretary to make sure this happens

Minutes of general meetings must be available for inspection by members.

Minutes must be kept in the English language.

## **Dispute resolution**

### *Sections 79 and 80 of the Act*

Even in the friendliest co-operative, there could be disputes from time to time.

The co-operative's rules must contain procedures for dealing with any dispute under the rules between a member and:

- another member; or
- the co-operative.

It is also good practice for a co-operative to have a code of conduct that outlines the kind of behaviour expected of members.

A member may appoint any person to act on their behalf in the dispute process, and the process must allow for natural justice to be applied. This means all parties involved in the dispute should:

- know the full facts of the situation;
- have the case heard by an unbiased party; and
- be allowed the right of reply to any accusation.

The Department may be able to assist co-operatives when disputes arise, but it is important to note that the Department has no jurisdiction to enter into a dispute resolution process.

## **Checklist of good practice**

This section provides a summary of the key things co-operatives need to do to comply with the Act, including information required to be sent to the Registrar at the Department of Commerce, or kept on record at the registered office.

By following this checklist, a co-operative is more likely to achieve good governance outcomes.

A co-operative has a number of statutory obligations under various Acts of Parliament. This publication provides a general guide to the requirements of the *Co-operatives Act 2009* only. It does not deal with other matters such as taxation and industrial relations obligations. It may be necessary to seek appropriate professional advice if you are unsure of your obligations in these areas. A list of useful contacts is provided at page 41.

## Want to start a co-operative in Western Australia?

- ✓ Register with the Department of Commerce. See page 10 for information on registering a co-operative.

## Documents to be sent to the Registrar by a registered co-operative

- ✓ **Annual report** – Within 28 days of the annual general meeting submit *Co-operatives Form 10 – Annual Report to the Registrar*.
- ✓ **Change of registered office** – Within 28 days submit *Co-operatives Form 14 – Notice of Change of Registered Office*
- ✓ If **directors or officers change** – Within 28 days submit *Co-operatives Form 13 – Notice of Appointment or Cessation of Appointment of Directors and Officers*.
- ✓ To **alter the registered rules**, submit *Co-operatives Form 30 – Application for Approval of Proposed Alterations of the Rules*, then *Co-operatives Form 32 – Application for Registration of Alteration of Rules* and *Co-operatives Form 33 – Statutory Declaration in Support of an Alteration of Rules* once the special/board resolution is passed.
- ✓ If there are **charges** registered against the property of the co-operative and any circumstances change, one or more of the following forms must be submitted:
  - *Co-operatives Form 22 – Notice of Assignment or Change to Details of a Charge*
  - *Co-operatives Form 23 – Notice of Discharge or Release of Property from a Charge*
- ✓ Want to **change auditors**? Give notice to the Department of Commerce of an intention to remove an auditor by ordinary resolution. Attach the notice to *Co-operatives Form 11 – Application or Request to Registrar*.
- ✓ When a **special resolution** is passed two copies must be filed with the Registrar within 28 days by completing *Co-operatives Form 35 – Application for*

## **Registers which must be kept by co-operatives**

The following must be kept by co-operatives. A register of:

- ✓ members, directors and shares (if any);
- ✓ loans to, securities given by, debentures and CCUs issued by, and deposits received by the co-operative;
- ✓ loans made or guaranteed by the co-operative and of any securities taken;
- ✓ the holders of CCUs;
- ✓ cancelled memberships;
- ✓ notifiable interests (section 284); and
- ✓ undertakings.

A number of records, registers and other documents must be available for inspection by members. These include a copy of the:

- ✓ Act and Regulations;
- ✓ current registered rules of the co-operative;
- ✓ minutes of each general meeting;
- ✓ last annual report filed with the Department of Commerce;
- ✓ register of directors, members and shares; and
- ✓ register of charges.

These documents may be inspected by members for free, but if a copy of entries in a register is required, the co-operative can charge members a fee per page as specified in the rules. Use and disclosure of the information obtained from the registers is restricted by section 233.

## **Winding-up and deregistration**

*Sections 313-322 and 336 of the Act*

A co-operative may be wound-up voluntarily, or involuntarily by the Registrar or the Supreme Court.

The Registrar can wind up a co-operative if:

- there are not enough members;
- it has not started business within one year of registration or suspends business for more than six months;
- registration was obtained by mistake or fraud;
- the co-operative exists for an illegal purpose;
- the co-operative has wilfully, and after notice from the Department of Commerce, violated the Act or its registered rules;
- the board has, after notice from the Department of Commerce, failed to ensure that the rules contain active membership provisions;

- there are, and have been for at least one month, insufficient directors to form a quorum at a board meeting in accordance with the rules of the co-operative;
- after inquiry, the Registrar deems it in the interests of members, creditors or the public that the co-operative be wound up; or
- the co-operative was formed for a fixed time or event specified in its rules and the duration has ended or the event has occurred.

Should the Registrar decide to wind up a co-operative, a liquidator would be appointed and a winding-up certificate issued.

A co-operative can only be wound-up voluntarily:

- by a creditor's voluntary winding-up; or
- if a special resolution to wind-up is passed by the members in a special postal ballot.

When members elect to wind-up the co-operative in a special postal ballot they may appoint a liquidator as part of the same ballot.

When the winding-up process is complete, the Department of Commerce de-registers the co-operative which means the co-operative can no longer operate in Western Australia.

A co-operative may be deregistered in the same way, and in the same circumstances, as a company under the *Commonwealth Corporations Act 2001*.

## List of forms

The following lists the key Department of Commerce forms for co-operatives and their uses. Some of these forms are available to download from [www.commerce.wa.gov.au/co-ops](http://www.commerce.wa.gov.au/co-ops)

If you need a form that is not listed you can contact the Co-operatives Unit on (08) 6364 3070 or by emailing [cooperatives@commerce.wa.gov.au](mailto:cooperatives@commerce.wa.gov.au)

### **Co-operatives Form 02 – Application for Approval of Draft Disclosure Statement for a Proposed Distributing Co-operative**

For approval of a draft disclosure statement for a proposed distributing co-operative (section 16 of the Act)

### **Co-operatives Form 01 – Application for Approval of Proposed Rules for a Co-operative**

To seek approval of draft rules for a proposed co-operative (section 17 of the Act). A fee applies.

### **Co-operatives Form 30 – Application for Approval of Proposed Alteration of the Rules**

To seek approval of a proposed alteration to the rules (section 103 of the Act). A fee applies.

### **Co-operatives Form 11 – Application for Request to Registrar**

A co-operative must use this form to file something with the Department of Commerce Co-operatives Unit, for example, to make an application or request to the Registrar to exercise a power under the Act. Fees apply, and vary depending on the application.

### **Co-operatives Form 10 – Annual Report to the Registrar**

A co-operative must file an annual report (section 235 of the Act) within 28 days of the holding of its annual general meeting.

### **Co-operatives Form 14 – Notice of Change of Registered Office.**

The form must be filed within 28 days to notify the Registrar that the address of the co-operative's registered office has changed.

### **Co-operatives Form 35 – Application for Registration of a Special Resolution**

This form is used to apply for registration of a special resolution. The form must be submitted within 28 days of the passing of the resolution by the members. A fee applies.

### **Co-operatives Form 36 – Statutory Declaration in Support of a Special Resolution**

This form is submitted along with Form 35 in support of an application for registration of a special resolution. It confirms that the correct procedures have been followed.

### **Co-operatives Form 13 – Notice of Appointment or Cessation of Appointment of Directors and Officers.**

This form is submitted by the co-operative to notify the Registrar of the appointment or cessation of a person as a director, principal executive officer or secretary of the co-operative in accordance with the requirements of section 239. The form must be submitted within 28 days after the date of appointment or cessation.

### **Co-operatives Form 12 – Application for Extension or Abridgement of Time**

To seek approval for variation where the co-operative is unable to comply with the time limits set by the Act for performance of its obligations. The Registrar may, pursuant to section 449, authorise extension or abridgement of time.

### **Co-operatives Form 60 – Application for Approval of Draft Disclosure Statement**

When a co-operative proposes that members pass a special resolution by postal ballot a disclosure statement must be provided to members. Section 186(3) of the Act describes the information which must be included in the disclosure statement. This form is used to submit a proposed disclosure statement to the Registrar for approval.

### **Co-operatives Form 21 – Notification of Details of a Charge**

This form is needed when a charge over the property of a co-operative needs to be registered. The form must be lodged within 45 days of creation of the charge. Schedule 3 contains a detailed description of the requirements with regard to charges. A fee applies.

### **Co-operatives Form 22 – Notification of Assignment or Change to Details of a Charge**

To notify Consumer Protection if the co-operative has made an assignment or change to the details of a charge. This form must be lodged within 45 days of the change occurring. A fee applies.

### **Co-operatives Form 23 – Notification of Discharge or Release of Property from a Charge.**

To notify the Registrar of discharge or release of a property from a charge registered with Consumer Protection.

Completed forms and other co-operatives documents should be submitted by mail to:

Co-operatives Unit  
Department of Commerce  
Locked Bag 14  
Cloisters Square  
Perth WA 6000

or in person to our office at:

Unit 4/321 Selby Street North  
Osborne Park WA 6017

## Glossary of Terms

**Active membership provisions** – Forming part of the rules, these provisions describe the minimum amount of support members need to provide to the co-operative in order to be an active member and keep their voting rights.

**Charge** – A charge is a form of security for a debt of the co-operative that has priority over other unsecured debts.

**Debentures** – This is a document issued by the co-operative which states that the co-operative owes money (does not include a cheque or a promissory note).

**Deregistration** – A process whereby a co-operative ceases to exist and is removed from the Register of Co-operatives, whether it is wound-up or transfers its incorporation.

**Director** – A member of the board of directors.

**Fixed assets** – Tangible property owned by the co-operative such as buildings, cars or machinery.

**Formation meeting** – The first formal meeting of the co-operative as part of its registration process. During the meeting the rules are passed by members, the board of directors is elected and, in the case of a trading co-operative, the disclosure statement is also presented.

**Independent director** – A person holding a position on the board of directors who is not a member of the co-operative and is an employee or other person qualified under the rules.

**Model rules** – The model rules are a template for drafting rules of the co-operative in accordance with the Act. Consumer Protection recommends the use of the model rules by co-operatives.

**Nominal value of a share** – The nominal value is the dollar value of a share as set out in the rules of the co-operative.

**Nominal value of share capital** – The number of shares issued multiplied by the nominal value of each share.

**Non-distributing co-operative without share capital** – The rules do not allow returns or distributions to members. This type of co-operative can trade and make a profit, but the profits can only be used to further the primary activity. These co-operatives enable their members to carry out functions collectively thereby reducing the costs to individuals.

**Non-distributing co-operative with share capital** - The rules do not allow returns or distributions on surplus or share capital to members, other than the nominal value of shares at winding-up, which is the monetary value placed on them according to the co-operative's rules. This type of co-operative can trade and make a profit, but the profits can only be used to further the primary activity. These co-operatives enable their members to carry out functions collectively thereby reducing the costs to individuals.

**Officer** – An officer holds a position of responsibility in managing the activities of the co-operative and may be a director, secretary or employee.

**Ordinary resolution** – An ordinary resolution is a decision passed by a simple majority of voting members at a general meeting or by a postal ballot.

**Persons** – Individuals or corporate bodies.

**Quorum** – The minimum number of people eligible to vote that must be present at a meeting before the meeting can go ahead, specified in the rules of the co-operative.

**Registered rules** – A co-operative's rules which have been approved by Consumer Protection, accepted by a vote of members and registered by Consumer Protection.

**Resolution** – A resolution is a decision made by a co-operative. There are two types of resolution – special and ordinary.

**Share** – A share in the capital of a co-operative.

**Secretary** – The board must appoint a secretary, which is a position of responsibility in the co-operative. The secretary is not necessarily a member of the board.

**Special resolution** – A special resolution is a decision passed by the co-operative by a two-thirds majority vote at a general meeting or postal ballot or by a three-quarters majority in a special postal ballot.

**Subordinated debt** – a debt which on winding-up, ranks after the claims of other creditors and before repayment of share capital.

**The Act** – The *Co-operatives Act 2009*

**The Regulations** – The Co-operatives Regulations 2010

**Distributing co-operative** – Has share capital and its rules allow returns or distributions of surplus or share capital. This type of co-operative aims to maximise returns to its members by undertaking functions that would be beyond their capacity as individuals.



## Useful Contacts

This section gives contact details for government and industry organisations relevant to co-operatives.

### **GOVERNMENT OF WESTERN AUSTRALIA**

#### **Department of Commerce**

#### **Consumer Protection Division**

The Department's administrative offices are located at:

The Forrest Centre  
219 St Georges Terrace  
Perth WA 6000

Telephone: 1300 30 40 54

National Relay Service: 13 36 77 (for the hearing impaired)

The **Registrar** and our specialist **Co-operatives Unit** are located at:

Unit 4/321 Selby Street North  
Osborne Park WA 6017

And can be contacted by:

Telephone: (08) 6364 3070

Email: [cooperatives@commerce.wa.gov.au](mailto:cooperatives@commerce.wa.gov.au)

### **FEDERAL GOVERNMENT**

#### **Australian Competition and Consumer Commission (ACCC)**

An independent statutory authority

Telephone: 1300 302 502

[www.accc.gov.au](http://www.accc.gov.au)

#### **Australian Securities and Investments Commission (ASIC)**

An independent statutory authority

Telephone: 1300 300 630

[www.asic.gov.au](http://www.asic.gov.au)

#### **Australian Taxation Office**

Information and assistance with regard to federal taxation and GST obligations.

Telephone: 13 28 66

[www.ato.gov.au](http://www.ato.gov.au)

### **INDUSTRY AND OTHER ORGANISATIONS**

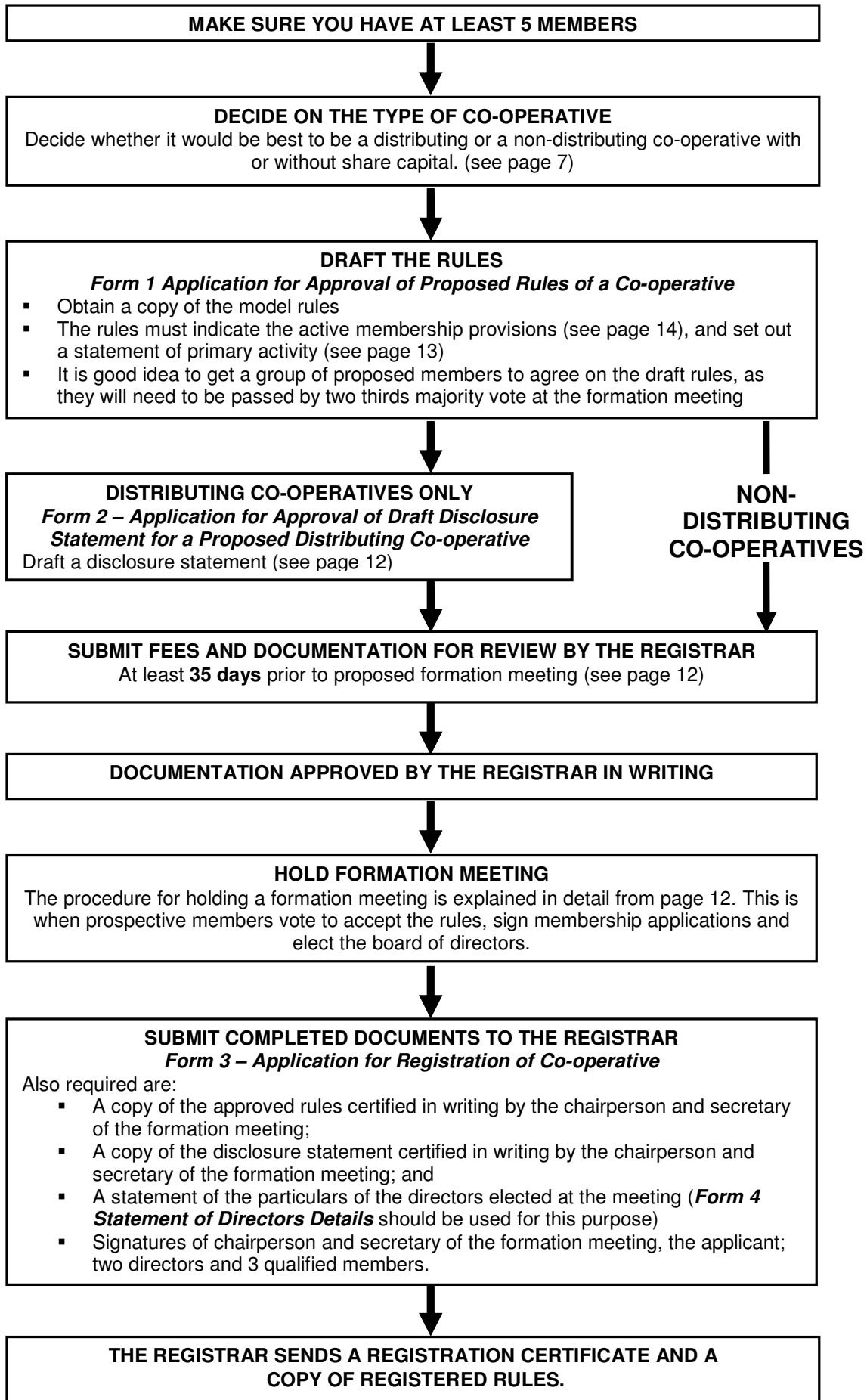
#### **Co-operatives WA**

Co-operatives WA is the industry representative body for the promotion and development of the co-operative movement in Western Australia. It acts as a forum for consideration of legislative and policy development. It provides an annual conference, training and development activities, professional advice, practical support and preliminary assistance to co-operatives and potential co-operatives.

Telephone: (08) 9368 5155

[www.cooperativeswa.org.au](http://www.cooperativeswa.org.au)

## Appendix A - How to Register a Co-operative



## Appendix B - A step-by-step guide to the rules

