

CO-OPERATIVES NATIONAL LAW



RULES OF

GUNDITJMARA ABORIGINAL CO-OPERATIVE LIMITED

A non-distributing co-operative with share capital

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1. Definitions

In these rules -

"**Act**" means the Victorian *Co-operatives National Law Application Act* 2013;

"**Appendix**" means Appendices 1 – 4 to these rules;

"**board**" means the board of the co-operative;

"**CNL (Vic)**" means the Co-operatives National Law (Victoria) applying as a law of Victoria by virtue of section 4(1) of the Act;

"**de facto spouse**" means any person who is living with but is not married to a person of Australian Aboriginal or Torres Strait Islander descent for a period of reasonable duration in a relationship one with the other as that of man and wife;

"**general meeting**" means any annual or special general meeting;

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

"**month**" means calendar month;

"**Registrar**" means the person for the time being holding the office of Registrar of Co-operatives under the Act;

"**regulations**" means the Co-operatives National Regulations (Victoria) applying by virtue of section 4(2) of the Act;.

2. Members to abide by co-operative principles

The co-operative and its members must comply with the co-operative principles to the extent that they apply to them.

3. Alteration of the rules

(1) These rules may be altered by a special resolution in accordance with section 61 of the CNL (Vic) or by a resolution of the board in accordance with section 62 of the CNL (Vic). (2)

(2) An alteration of these rules does not take effect unless and until it is registered by the Registrar under section 63 of the CNL (Vic).

(3) Any member is entitled to obtain from the co-operative a copy of these rules on payment of the amount set out in Appendix 1.

4. Name

(1) The name of the co-operative is the name specified in Part 1 of Appendix

(2) The co-operative may change its name in accordance with section 224 of the CNL (Vic).

(3) The co-operative may abbreviate its name in accordance with section 222 of the CNL (Vic).

5. Active membership provisions

(1) The primary activity of the co-operative is the activity set out in Part 2 of Appendix 2.

(2) In order to establish active membership of the co-operative a member must comply with the requirements set out in Part 3 of Appendix 2.

(3) All members must be active members of the co-operative.

(4) If a member fails or ceases to be an active member, the board must in accordance with Division 4 of Part 2.6 of the CNL (Vic) -

- a. (a) declare the membership of the member cancelled; and
- b. (b) declare the shares of the member forfeit.

6. Qualifications and shareholding required for membership

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

(2) Every member must hold a share.

7. Membership and shares

(1) An application for membership or shares in the co-operative must -

- (a) be in a form approved by the board; and
- (b) be lodged at the registered office of the co-operative; and
- (c) be accompanied by the relevant fee or amount set out in Part 2 of Appendix 3.

(2) An application for membership must include an application for a share in the co-operative.

(3) The board must consider each application.

(a) Membership in the Co-operative shall be restricted to persons who:

- (i) are not under the age of 18 years;
- (ii) are of Australian Aboriginal or Torres Strait Islander descent or who is the spouse, de facto spouse, or parent of a person who is of Australian Aboriginal or Torres Strait Islander descent or legal guardian of a person who is of Australian Aboriginal or Torres Strait Islander descent; and

(b) No formal proof of Australian Aboriginal or Torres Strait Islander descent shall be required from any applicant for membership but subject thereto a person shall be prima facie be deemed to be of Australian Aboriginal or Torres Strait Islander descent if he or she considers him or herself to be so and is recognised by the community in which he or she lives so to be.

(4) The board at its sole discretion may accept or reject an application for membership or shares and need not give any reason for its decision.

(5) If the board approves an application for membership or shares -

(a) the relevant shares must be allotted to the applicant; and

(b) the board must ensure that the name of the person and the number of shares allotted is entered in the register of members, directors and shares in accordance with sections 120 and 212 of the CNL (Vic); and

(c) the board must notify the applicant in writing of allotment of the shares and of the entry in the register; and

(d) the applicant for membership becomes entitled to exercise the rights of membership when -

(i) the member's name appears in the register of members; and

(ii) the member has paid to the co-operative the relevant fees and amounts set out in Part 2 of Appendix 3.

(6) If the board rejects an application, the whole of the money lodged in respect of the application must be refunded to the applicant without interest.

8. Ceasing membership

A person ceases to be a member in each of the following circumstances -

(a) if the member's membership is cancelled under Part 2.6 of the CNL (Vic);

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

(c) if the member becomes bankrupt and

(i) the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the co-operative or

(ii) the bankrupt member or trustee is unable to pay monies due to the co-operative by the member or the trustee in his/her capacity as trustee;

(d) on the death of the member;

- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) if the member's share is transferred to another person and the transferee is registered as the holder of the share;
- (g) if the member's share is forfeited in accordance with the provisions of the CNL (Vic) or the provisions of these rules;
- (h) if the member's share is purchased by the co-operative in accordance with the provisions of these rules;
- (i) if a members share is sold by the co-operative pursuant to any power in these rules and the purchaser is registered as holder in the member's place;
- (j) if the amount paid up on the member's share is repaid to the member in accordance with the provisions of these rules;
- (k) on notice in writing given by the member to the Secretary, of the member's resignation from membership; or
- (l) on confirmation of acts of violence or financial deceit against the organisation:
 - (1) the member has been convicted by a court of an offense of dishonesty, violence or unlawful damage relating to the co- operative its staff or assets; or
 - (2) the member has admitted that he has acted dishonestly, has engaged in acts of violence or unlawful damage affecting the co-operative its staff or assets.

9. Expulsion of members

- (1) A member may be expelled from the co-operative if the co-operative by special resolution determines that the member should be expelled on the ground that:
- (a) the member has failed to discharge the member's obligations to the co-operative under the CNL (Vic) or these rules;
 - (b) the member has acted in a manner that has –
 - (i) prevented or hindered the co-operative in carrying out any of its primary activities; or
 - (ii) brought the co-operative into disrepute; or
 - (c) the member has acted in a manner contrary to any of the co-operative principles and in so acting caused the co-operative harm.

(2) The member must be given at least 28 days written notice of the proposed resolution and of the date, time and place of the meeting at which the resolution will be moved.

(3) The procedure at the general meeting to consider the proposed resolution is as follows -

(a) the member must be given a reasonable opportunity to be heard at the meeting;

(b) the member is entitled to call witnesses and to cross examine witnesses called against the member;

(c) if the member fails, without reasonable excuse, to attend at the time and place of which notice has been given, the co-operative may consider the matter in the absence of the member;

(d) after considering the matter, the co-operative may by special resolution determine to expel the member.

(4) The expulsion of the member does not take effect until the special resolution is registered with the Registrar.

(5) When a member is expelled, the co-operative must, in accordance with section 163 of the CNL (Vic), repay to the member an amount determined in accordance with that section in respect of the member's shares and cancel the member's shares.

10. Suspension of members

(1) A member may be suspended from membership of the co-operative for a period not exceeding one year if the co-operative by special resolution determines that the member should be so suspended on the ground that -

(a) the member has contravened these rules; or

(b) the member has failed to discharge the member's obligations to the co-operative under these rules; or

(c) the member has acted in a manner detrimental to the co-operative.

(2) The member must be given at least 28 days written notice of the proposed resolution and of the date, time and place of the meeting at which the resolution will be moved.

(3) The procedure at the general meeting to consider the proposed resolution is as follows -

(a) the member must be given a reasonable opportunity to be heard at the meeting;

(b) the member is entitled to call witnesses and to cross examine witnesses called against the member;

(c) if the member fails, without reasonable cause, to attend at the time and place of which notice has been given, the co-operative may consider the matter in the absence of member;

(d) after considering the matter, the co-operative may by special resolution determine to suspend the member.

(4) A member who is suspended ceases during the suspension to have the rights of a member except as otherwise provided in the CNL(Vic) or these rules.

11. Disputes

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

(a) a member and another member; or

(b) a member and the co-operative.

(2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.

(3) If the parties are unable to resolve the dispute at the meeting under sub-rule (2) or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.

(4) The mediator must be -

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

(b) in the absence of agreement -

(i) in the case of a dispute between a member and another member, by the board of the co-operative; or

(ii) in the case of a dispute between a member and the co-operative, a person who is a member of the Dispute

Settlement Centre of Victoria (Department of Justice and Regulation).

(5) A member of the co-operative can be a mediator.

(6) The mediator cannot be a member who:

(a) has a personal interest in the dispute; or

(b) is biased in favour of or against any party to the dispute.

(7) The mediator to the dispute, in conducting the mediation must:

- (a) give each party every opportunity to be heard; and
- (b) allow due consideration by all parties of any written statement submitted by any party; and
- (c) ensure that natural justice is accorded to the parties throughout the mediation process.

(8) The mediator must not determine the dispute.

** This Rule provides for the mediation of a dispute. Note that section 130 of the CNL (Vic) provides another procedure whereby application may be made to the Magistrates' Court for an order declaring and enforcing rights or obligations of members between themselves, or of the co-operative and a member between themselves. The Court may refuse to make an order, or may make an order for costs, if the Court is of the opinion that the application is unreasonable or the issue trivial.*

12. Fines

The co-operative may not impose a fine on a member for any infringement of these rules.

13. Capital and shares

The capital of the co-operative is to be raised by the issue of shares which are to have a nominal value as described in Part 2 of Appendix 3 provided that no member shall hold shares exceeding the nominal value of \$2.00 nor shall any member be beneficially entitled to more than one-tenth of the shares in the Co- operative.

14. Liability of members

(1) A member is not, as a member, under any personal liability to the co-operative except for the amount, if any, unpaid on the shares held by the member together with any charges payable by the member to the co-operative as required by these rules.

(2) On the death of a member, the member's estate remains liable as the member until the member's personal representative or some other person is registered in the member's place.

15. Calls on shares

(1) The board may make calls on the members in respect of any money
unpaid on their shares.

(2) Sub-rule (1) does not apply if the terms of issue of the shares provide for the money unpaid on the shares to be paid at fixed times.

(3) A call must not -

(a) exceed one-quarter of the sum of the nominal value of the shares; or

(b) be payable earlier than one month after the day fixed for the payment of the last preceding call.

(4) A member must be given at least 14 days notice specifying the time or times and place of payment of the call.

(5) A member who receives notice of a call must pay the amount of the call on the member's shares to the co-operative at the time or times and at the place specified in the notice.

(6) The board may revoke or postpone a call.

(7) A sum that becomes payable on a share under the terms of issue of the share is deemed for the purposes of these rules to be an amount payable on a call notified under this rule as if the time and place for payment specified in the terms of issue were the time and place for payment of the call.

(8) The board may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.

16. Forfeiture of shares

(1) If a member fails to pay a call on any day appointed for the payment of the call, the board may serve a notice on the member requiring payment of so much of the call as is unpaid.

(2) The notice must -

(a) specify a day (being not less than 28 days after the date of service of the notice) on or before which the payment required by the notice is to be paid; and

(b) state that if the payment is not so paid, the shares in respect of which the call was made are liable to be forfeited.

(3) If the payment is not made in accordance with the notice, the board may, by resolution, declare that the shares are forfeited.

(4) The board's declaration has the effect of forfeiting the shares concerned.

17. Share certificates

(1) The board, on the application of a person holding shares in the co-operative, must issue to that person, without payment, a certificate under the seal of the co-operative specifying the shares held by that person and the amount paid up on those shares.

(2) However, if shares are held jointly -

(a) the board is not required to issue more than one share certificate in respect of those shares and

(b) the delivery of the share certificate to one joint shareholder is sufficient delivery to all.

(3) If the board is satisfied that a share certificate issued by the co-operative is defaced, lost or destroyed, the board may issue a duplicate certificate on payment of a fee (not exceeding \$10) determined by the board.

18. Sale of members' shares

Subject to section Division 7 of Part 2.4 of the CNL (Vic), the co-operative may sell a member's shares at the request of the member.

19. Transfer and transmission of shares

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

(2) The transferor remains the holder of the share until the name of the transferee is entered in the register of members in respect of the share.

(3) A transfer of shares is to be in the form of Appendix 4 or in a form approved by the board.

(4) A share cannot be sold or transferred except -

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

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

(5) The board may refuse to register a transfer of shares -

(a) to a person who is not eligible to be a member; or

(b) to a person whom the board does not approve; or

(c) if the co-operative has a lien or charge over the shares.

(6) If the board refuses to register a transfer of shares, it must send written notice of its decision to the proposed transferee within 14 days after making that decision.

(7) The board may decline to recognise any instrument of transfer unless –

(a) a fee in accordance with Appendix 1 is paid by the member to the co-operative for the transfer; and

(b) the instrument of transfer is accompanied by the certificate (if any) of the shares to which it relates, and such other evidence as the

board may reasonably require to show the right of the transferor to make the transfer.

(8) The board may suspend the registration of transfers during the 14 days immediately preceding the annual general meeting in each year.

20. Forfeitures and cancellations - Inactive members

(1) In accordance with section 156 of the CNL (Vic), the board, after giving any notice required under section 161 of the CNL (Vic), must declare the membership of a member cancelled if –

(a) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for a period of at least 3 months before that time; or

(b) the member is not presently an active member of the co-operative and has not been an active member of the co-operative at any time during the period of 12 months immediately before that time.

(2) Sub-rule (1) applies to a member only if he or she was a member of the co-operative throughout the period referred to in paragraph (a) or (b), as the case requires.

(3) In accordance with section 157 of the CNL (Vic), the board must declare shares of a member to be forfeited at the same time member's membership is cancelled under section 156 of the CNL (Vic).

(4) The board's declaration has the effect of forfeiting the shares concerned.

(5) If the membership of a member is cancelled any amount due to the member in respect of the cancellation must be dealt with in accordance with section 163 of the CNL (Vic).

21. Forfeited shares

A person whose shares have been forfeited under the CNL(Vic) or these rules remains liable to the co-operative for any amount still unpaid at the date of forfeiture in respect of those shares.

22. Death of a member

(1) Subject to section 103 of the CNL (Vic), on the death of the member, the board must transfer the deceased member's share or interest in the co-operative to -

(a) the executor or administrator of the deceased member; or

(b) with the consent of the board, to a person -

(i) who is specified by the personal representative of the deceased member in an application under section 103(1) of the CNL (Vic); and

(ii) who is qualified to be a member in accordance with the CNL (Vic) and these rules.

(2) The board may transfer the shares or interest of a deceased member to a person entitled in accordance with section 104 of the CNL (Vic) if -

(a) the total value of the shares or interest is less than \$10,000 (or such other amount as may be prescribed by the regulations); and

(b) there has not been a grant of administration of the estate, or probate of the will of the deceased member.

23. Registration as trustee, executor or administrator

(1) In accordance with sections 93, 94 and 95 of the CNL (Vic), the following persons may be registered as the holder of a share in the co-operative -

(a) the trustee, executor or administrator of the estate of a dead person, if the dead person was the holder of that share or was entitled in equity to that share;

(b) the administrator of the estate of an incapable person, if the incapable person was the holder of that share or was entitled in equity to that share;

(c) the Official Trustee in Bankruptcy, if a bankrupt was the holder of that share or was entitled in equity to that share.

(2) If a person is entitled in equity to a share in the co-operative, the consent of the co-operative and the holder of the share must be obtained before a person can be registered in respect of that share pursuant to sub-rule (1).

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

Subject to the CNL (Vic), a person registered pursuant to section 93, 94 or 95 of the CNL (Vic) and rule 23 is, while so registered -

(a) entitled to the same dividends and other benefits; and

(b) in accordance with section 96 of the CNL (Vic), subject to the same liabilities and only those liabilities -

in respect of the share as those to which the person would have been subject if the share had remained, or had been, registered in the name of the dead person, the incapable person or the bankrupt.

25. Transfer and transmission of debentures

(1) The instrument of transfer of a debenture must be executed by the (the giver) and the transferee (the receiver).

(2) The transferor remains the holder of the debenture until the board consents to the transfer and the name of the transferee is entered in the registers of debentures in respect of the debenture.

(3) A transfer of debentures must be in the form of Appendix 4 or in a form approved by the board.

(4) The board may decline to recognise any instrument of transfer of a debenture and may decline to register the transfer unless -

(a) a fee in accordance with Appendix 1 is paid to the co-operative for transfer; and

(b) the instrument of transfer is accompanied by the debenture and such other evidence as the board may reasonably require to show the right of the transferor to make the transfer; and

(c) any stamp duty payable in respect of the instrument of transfer has been paid.

(5) If the board refuses to register a transfer of debenture, it must send written notice of its decision to the proposed transferee within 28 days after making that decision.

26. Annual general meetings

(1) In accordance with section 252 of the CNL (Vic), the first annual general meeting of the co-operative must be held at any time within 18 months after the incorporation of the co-operative.

(2) The second or any subsequent annual general meeting of the co-operative must be held within -

(a) 5 months after the close of the financial year of the co-operative; or

(b) any further time that may be allowed by the Registrar under section 609 of the CNL (Vic).

(3) The board may determine the date, time and place of the annual general meeting.

(4) All general meetings of the co-operative other than the annual general shall be special general meetings.

(5) If the board does not hold an annual general meeting within the required time, the members may requisition the meeting in accordance with section 257 of the CNL (Vic).

27. Special general meetings

(1) A special general meeting of the co-operative may be convened at any the board of directors..

(2) In accordance with section 257 of the CNL (Vic), the board must convene meeting of the co-operative on the written requisition of the number of active members of the co-operative who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the co-operative.

28. Notice of general meetings

(1) The board must give each member at least 14 days notice of each general meeting.

(2) The notice may be given in accordance with section 611 of the CNL (Vic).

(3) The notice must specify the place, the day and the time of the meeting and if special business is to be transacted, set out generally the nature of the special business.

(4) If a special resolution is to be proposed at the meeting at least 21 days notice of that special resolution must be given to the members of the co-operative in accordance with section 239 of the CNL (Vic).

(5) A member of the co-operative who wishes to propose a resolution at a general must give the co-operative written notice of the general resolution.

(6) If notice of an ordinary resolution is given under sub-rule (5) at least 14 days before the board gives notice of the meeting, the board must include details of that resolution in the notice of the meeting.

29. Business at general meetings

(1) The ordinary business of the annual general meeting shall be -

(a) to confirm minutes of the last preceding general meeting (whether annual or special);

(b) to receive from the board, auditors, or any officers of the co-operative reports upon the transactions of the co-operative during the financial year, including balance sheet, trading account, profit and loss account, statement of cash flows, and the state of affairs at the end of that year; and

(c) to elect and determine the remuneration (if any) of directors.

(2) The annual general meeting may also transact special business of which notice has been given to members in accordance with these rules.

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

30. Quorum at general meetings

(1) An item of business must not be transacted at a meeting of a co-operative unless a quorum of members entitled to vote is present during the transaction of that item.

(2) Subject to sub-rule (3) the quorum of the co-operative is twenty (20) members.

(3) If within half an hour after the appointed time for the meeting a quorum is present, the meeting -

(a) if convened upon the requisition of members, is abandoned; and

(b) in any other case is to be adjourned to the same day and time in the next week at the same place.

(4) If at an adjourned meeting, under sub-rule (3)(b), a quorum is not present within half an hour after the time appointed for the meeting the members present and entitled to vote shall constitute a quorum, provided there are no fewer than ten (10) such members present.

31. Presiding at general meetings

(1) Subject to this rule, the chairperson of the board presides at every general meeting of the co-operative.

(2) If the chairperson of the board is unable or unwilling to preside or is not present within 15 minutes after the time appointed for the meeting, the members present must select one of their numbers to preside.

(3) The person selected under sub-rule (2) presides at that meeting until the time that the chairperson attends and is willing to act.

32. Adjournment of meetings

(1) The person presiding may, with the consent of a majority of members present at the meeting, adjourn the meeting from time to time and from place to place.

(2) The person presiding must, if directed by a majority of members present at meeting, adjourn the meeting to a date and time agreed.

(3) No business may be transacted at an adjourned meeting other than unfinished at the meeting which was adjourned.

(4) This rule only applies if there is a quorum at the meeting to be adjourned.

33. Standing orders at meetings

(1) Subject to sub-rule (3), the following standing orders must be observed at general meetings of the co-operative -

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

(b) If an amendment to an original proposition is proposed, no second amendment may be considered until the first amendment is disposed of.

(c) If an amendment is carried, the proposition as so amended displaces the original proposition and may itself be amended.

(d) If an amendment is defeated, then a further amendment may be to the original proposition. However, only one amendment may be submitted to the meeting for discussion at one time.

(e) The mover of every original proposition, but not of an amendment, has the right to reply. Immediately after the exercise of such a right of reply, the question must be put from the chair. No other member may speak more than once on the same question, unless permission is given for an explanation, or the attention of the chairperson is called to a point of order.

(f) Propositions and amendments must be submitted in writing, if requested by the chairperson.

(g) Any discussion may be closed by a resolution "that the question be now put" being moved seconded, and carried. That resolution must be put to the meeting without debate.

(2) Any member, or visitor invited to attend the meeting by the board, may speak on any issue at a meeting with the permission of the chairperson subject to any conditions imposed by the chairperson.

(3) The standing orders may be suspended for any period by ordinary resolution.

34. Attendance and voting at general meetings

(1) The right to vote attaches to membership and not shareholding.

(2) A member of the co-operative is not entitled to vote at a meeting of the co-operative unless that person is an active member of the co-operative.

(3) Subject to the CNL (Vic) and this rule, every member of the co-operative has only one vote at a meeting of the co-operative.

(4) A member of a co-operative who is under 18 years of age is not entitled to vote.

(5) In the case of joint membership -

(a) the joint members have only one vote between them; and

(b) that vote may be exercised by the member whose name appears first in the register of members unless the other joint members otherwise direct.

(6) Subject to the CNL (Vic) and these rules, a question for decision at a general meeting, other than a special resolution, must be determined by a majority of members present at the meeting and voting.

(7) In accordance with section 256 of the CNL (Vic), unless a poll is demanded by at least 5 members, a question for decision at a general meeting must be determined by a show of hands.

(8) In the case of an equality of votes at a meeting of the co-operative, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded may exercise a second or casting vote.

35. Postal ballot

(1) The manner of voting shall be in accordance with the regulations.

(2) A special postal ballot or a postal ballot must be held -

(a) when required by the CNL (Vic); or

(b) in accordance with section 250 of the CNL (Vic), on the written requisition of the number of active members of the co-operative who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the co-operative; or

(c) if approved by the members by ordinary resolution.

36. Poll at general meetings

(1) If a poll (or ballot) is demanded by at least 5 members, it must be conducted in a manner specified by the person presiding and the result of the poll is the resolution of the meeting on that question.

(2) A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.

37. Special and ordinary resolutions

(1) A special resolution is a resolution which is passed in accordance with sections 239 and 240 of the CNL (Vic) -

(a) by a two-thirds majority at a general meeting of members; or

(b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members; or

(c) by a three-quarters majority in a special postal ballot of members.

(2) An ordinary resolution is a resolution passed by a simple majority at a general meeting or in a postal ballot by members.

(3) A special resolution has effect from the date that it is passed unless it is required to be registered under section 242(2) of the CNL (Vic).

38. Board of directors

(1) There shall be a board of seven (7) directors.

(2) A director must be -

(a) a natural person; and

(b) not less than 18 years of age.

39. Qualifications of directors

(1) A person is not qualified to be a director unless he or she is either -

(a) an active member of the co-operative; or

(b) not an active member but who possesses special skills in management or other technical areas of benefit to the co-operative as specified by the board from time to time.

(2) A person qualified to be a director under sub-rule (1)(a) is known as a "member director". A person qualified under sub-rule (1)(b) is known as a "non- member director".

(3) The board of directors must have a majority of member directors.

(4) A person must not act as a director if the person is disqualified under Division 2 of Part 3.1 of the CNL (Vic).

(5) In addition to the other requirements a Director must:

(a) Not be a declared bankrupt.

(b) have completed, or commit to completing within 6 months of their appointment or election as a director, formal directors governance training as approved by the Registrar.

(c) have a current criminal record check issued no more than 6 months prior to the date of their nomination or appointment as a director.

40. Retirement of directors

(1) At the 2015/16 general meeting of GAC, three of the directors must retire and at each of the next two annual general meeting, two of the directors must retire and this pattern of rotation is to continue in ensuing years.

(2) A retiring director retains office until the close of the meeting at which his or her successor is elected.

(3) The directors to retire in any one year are, subject to the provisions as to the filling of casual vacancies, those that have been longest in office since

their last election and if there are 2 or more directors who became directors on the same day, those who retire must be determined by lot unless they otherwise agree among themselves.

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

41. Election of directors

(1) At least 6 weeks before an annual general meeting, the board must -

- (a) notify all members of the number of directors retiring at the annual general meeting; and
- (b) advise the members of -
 - (i) their eligibility to nominate as a director; and
 - (ii) the duties and responsibilities of a director; and
 - (iii) the anticipated remuneration (if any); and
 - (iv) the nomination and election procedures.

(2) Not less than 6 weeks before the annual general meeting, a notice must be displayed at the registered office of the co-operative inviting nominations of candidates for election as directors.

(3) A nomination must -

- (a) be signed by 2 or more members; and
- (b) provide details of the qualifications and experience of the person nominated; and
- (c) be accompanied by a notice in writing signed by the candidate agreeing to his or her nomination.

(4) The nomination and the notice referred to in the sub-rule (3) must be lodged at the registered office of the co-operative at least 21 days before the annual general meeting.

(5) Details of each person who has been nominated must be given to members with the notice of the annual general meeting by the secretary or an officer nominated by the board.

(6) Details to be provided to members must include the candidate's -

- (a) name; and
- (b) age; and
- (c) qualifications and experience; and

- (d) length of any previous service as a director of the co-operative or with any other co-operative or corporation.

42. Manner of election

(1) If the number of nominees equals the number of vacancies, the nominees must be declared elected at the annual general meeting.

(2) If there are insufficient nominees to fill all vacancies, the nominees are to be declared elected at the annual general meeting and nominations for people to fill the remaining vacancies are to be called from the floor and a ballot held if required.

(3) If the number of nominees exceeds the number of vacancies, the election of directors must be conducted at the meeting by ballot as follows:

- (a) a returning officer is elected at the meeting. The directors, the secretary and anyone who has a conflict of interest in the election are not eligible to be the returning officer.
- (b) all nominees are to be listed on the ballot form in alphabetical order.
- (c) the returning officer is responsible for determining the validity of an counting of the votes.
- (d) if there is an equality of votes, the outcome must be determined by lot.
- (e) the returning officer is to declare the election results.

(4) If any vacancies remain at the end of the meeting, the vacancies are to be casual vacancies and must be filled in accordance with rule 43.

43. Casual vacancy

If there is a casual vacancy in the office of director under section 179 of the CNL (Vic), the board may appoint a person to fill that vacancy but the person appointed must retire at the next annual general meeting.

44. Removal from the office of director

The co-operative may by ordinary resolution in accordance with section 180 of the CNL (Vic) remove any director from office before the end of the director's period of office.

45. Vacation from office of director

A director vacates office in the circumstances provided for in section 179 of the CNL (Vic) and in addition a director vacates office if the director becomes indebted to the co-operative to the sum of \$590 or more.

46. Remuneration

In accordance with section 203 of the CNL (Vic) a director of a co-operative must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the co-operative.

47. Deputy directors

The co-operative will not appoint deputy-directors.

48. Proceedings of the board

- (1) Meetings of the board, including meetings conducted outside board meetings under section 176 of the CNL (Vic), are to be held as often as may be necessary for properly conducting the business of the co-operative and must in any case be held at least every three months.
- (2) Questions arising at any meeting shall be decided by a majority of votes.
- (3) In the case of an equality of votes, the chairperson has a second or casting vote.
- (4) A director may call a meeting of the board of directors by giving not less than 48 hours written notice individually to every other director.
- (5) Except in special circumstances determined by the chairperson, at least 48 hours notice shall be given to the directors of all meetings of the board.

49. Quorum for board meetings

The quorum for a meeting of the board is four (4) of which at least three (3) must be member directors.

50. Chairperson of board

- (1) The chairperson of the board shall be elected by the board.
- (2) If the chairperson of the board is unable or unwilling to preside or is not present within 15 minutes after the time appointed for meetings of the board, the members present must select one of their numbers to preside.
- (3) The person selected under sub-rule (2) presides at the board meeting until the time that the chairperson attends and is willing to act.
- (4) The board may by ordinary resolution remove the chairperson from office.
- (5) A chairperson shall be elected at the first meeting of the board following each Annual general meeting.

51. Minutes of board meetings

- (1) The board must keep minutes of meetings and, in particular, of:
 - (a) All appointments of officers and employees made by directors; and

- (b) The name of the directors present at each meeting of the board and of a committee of the board; and
 - (c) Any declaration of interests or conflict of interest made by a director; and
 - (d) All resolutions and proceedings at all meetings of the board.
- (2) Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate.
 - (3) The minutes are to be signed within a reasonable time after the meeting to which they relate either by the chairperson of that meeting or the chairperson of the next meeting.

52. Chief executive officer

- (1) The board may, if it considers it appropriate, appoint a person to be responsible for the day to day management of the co-operative. The person may be a director or the secretary or a member of the co-operative or some other person.
- (2) The appointed person is the chief executive officer of the co-operative, and may be called the chief executive officer or (if a director of the board) the managing director.
- (3) The conditions and the period of appointment including termination, must be decided by the board.
- (4) The chief executive officer is not entitled to be present or to vote at a meeting of directors on a motion concerning the conditions of his or her own appointment, conditions of service or termination of service.
- (5) The chief executive officer cannot be required to be an active member of the co-operative.
- (6) In the event of any conflict between the terms of appointment of a person as chief executive officer and that person's obligations or privileges under the CNL (Vic) the terms of the CNL (Vic) prevail over the terms of appointment.

53. Financial year

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

54. Seal

- (1) In accordance with section 223 of the CNL (Vic), the co-operative must ensure that the name of the co-operative appears in legible characters on its common seal and official seals.
- (2) The common seal must be kept at the registered office of the co-operative in such custody as the board directs.

- (3) The co-operative must have, for use in place of its common seal outside the State where its common seal is kept, one or more official seals, each of which must be a facsimile of the common seal of the co-operative with the addition on its face of the name of every place where it is to be used.
- (4) The seal of the co-operative must not be affixed to any instrument except in accordance with a resolution of the board.
- (5) Two directors must be present when the common or official seal is affixed to an instrument by another person and must sign and date the instrument so sealed.

55. Custody and inspection of records

A person is entitled to have free access to and to make a copy of entries in a register specified in section 214 of the CNL (Vic) -

- (a) if the copy is a photocopy or electronic copy, on payment of a fee of \$1 per page to a maximum of \$20; and
- (b) in any other case, free of charge.

56. Banking

- (1) The board must ensure that -
 - (a) a banking account or accounts are kept in the name of the co-operative; and
 - (b) all money received by the co-operative is paid into that account or those accounts as soon as possible after it is received.
- (2) All cheques drawn on the Co-operatives bank account shall be signed by any three of the following persons: The directors and the Chief Executive Officer.

57. Safekeeping of securities

The co-operative must keep the securities of the co-operative safely in the manner and with the provision for their safety that the board directs.

58. Audit

- (1) The accounts of the co-operative must be audited in accordance with section 283 of the CNL (Vic).
- (2) Auditors must be appointed in accordance with the provisions of the Commonwealth Corporations Act 2000 as applied by section 283 of the CNL (Vic).

59. Co-operative funds

- (1) the income and property of the Co-operative when so ever derived, shall be applied solely towards the promotion of its primary activities and no portion

thereof shall be paid directly or indirectly by way of dividend, bonus or otherwise how so ever by way of profit or gain to members: provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant or to any member in return for any services actually rendered to the Co-operative nor prevent the payment for out-of-pocket expenses interest on money lent or reasonable and proper rent for premises demised or let by any officer, servant or member of the Co-operative.

- (2) there must be no return or distribution on surplus or share capital to members other than any entitlement they have to the nominal value of shares at winding up.

60. Provision for loss

- (1) The board must make appropriate provision for losses in the co-operative's accounts and when reporting to members is to indicate whether the loss is expected to continue and whether there is any real prejudice to the co-operative's solvency.
- (2) Subject to section 355 of the CNL (Vic), the board may resolve to retain part of the surplus arising from the business of the co-operative in any year to be applied to meet any loss on the transactions of the co-operative.

61. Notices to members

- (1) This rule applies in addition to section 611 of the CNL (Vic) regarding how a notice or other document may be given to a member of the co-operative.
- (2) A notice or other document required to be given to a member of the co-operative may be given by the co-operative to any member by any form of technology (for example, by email), where the member has given consent and notified the co-operative of their relevant contact details.
- (3) If a notice is sent by post, service is taken to be effected at the time at which the properly addressed and prepaid letter would be delivered in the ordinary course of post. In proving service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (4) A notice forwarded by some other form of technology is taken to have been served, unless the sender is notified of a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.

- (5) A notice may be given by the co-operative to joint members by giving the notice to the joint member named first in the register of members.
- (6) A notice may be given by the co-operative to the person entitled to a share in consequence of the death, incapacity or bankruptcy of a member by sending it through the post in a prepaid letter addressed to that person by name. Alternatively, it can be addressed to the person by the title of representative of the deceased or incapacitated person, or trustee of the bankrupt, or by any like description, and:
- (a) the address should be that supplied for the purpose by the person claiming to be entitled; or
 - (b) if no such address has been supplied, the notice can be given in the manner in which it could have been given if the death, incapacity or bankruptcy had not occurred.

62. Financial reports to members

The co-operative must prepare financial reports and statements in accordance with the CNL (Vic), the Regulations and these rules.

63. Winding up

- (1) The winding up of the co-operative shall be in accordance with Part 4.5 of the CNL (Vic).
- (2) If, on the winding up or dissolution of the co-operative, any property remains after the satisfaction of all its debts and liabilities and the costs, expenses and charges of the winding up, that property:
 - (a) must not be paid to or distributed among the members; and
 - (b) must be given or transferred to an entity:
 - (i) which has objects similar to those of the co-operative; and
 - (ii) whose constitution prohibits the distribution of property among its members; and
 - (iii) which has been chosen by the members of the co-operative at or before the time of dissolution.

Appendix 1

Schedule of charges -

Copies of entry in register	refer to rule 52
Duplicate share certificate	\$10 (maximum)
Transfer of shares	\$10
Transfer of charge (inclusive of transfer of debenture)	\$10
Copy of rules	\$5 plus \$1 for each page after the first page to a maximum of \$10.

Appendix 2

Part 1

Name of co-operative -

Gunditjmara Aboriginal Co-Operative Limited

Part 2

Primary activity -

The primal activities of the Co-operative are to provide, and/or facilitate the provision of:

1. Health and related services;
2. Cultural and educational activities;
3. Crisis accommodation;
4. Aged and Child care;
5. Employment, training and education; and
6. A Juvenile Justice Program

Part 3

Active membership requirements -

A member of the co-operative will be an active member if he or she does any one of the following:

- (a) utilises or facilitates the use of the health or related services provided by the co-operative;
- (b) be involved in the delivery of cultural and educational facilities;
- (c) be a recipient of Aged care or be involved in the provision of Aged or Childcare;
- (d) in undertaking any employment training or educational programs approved by the board;
- (e) is involved in the provision of the Juvenile Justice Program;
- (f) is involved in the provision of or participating in any other activity approved by the board, i.e. anyone who assists or participates in the running or management of the co-operative

However, the performance of any of the above does not constitute active membership when the performance is a necessary part of the members paid employment.

Appendix 3

Part 1

The nominal value of a share and amount payable per share is - \$1.

In addition to the amount required to be paid in respect of the allotment of shares in the Co-operative (being \$1.00 per share as per Part 2 of Appendix 3), the following fees, charges and subscriptions are payable by a person seeking membership of the Co-operative.

Fees - Nil

Charges - Nil

Appendix 4

This form can be used either for a transfer of shares or debentures.

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

in consideration of the sum of \$

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

transfer to the transferee **the share (or shares)/debenture or debentures**
numbered.....

in the[Name of co-operative]

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

and I, the transferee, agree to take **the share (or shares)/debenture or
debentures** subject to the conditions previously referred to in this
document.

Dated this day of 19.....

Signed by

.....transferor.

In the presence ofwitness.

.....witness address

Signed by

.....transferee.

In the presence ofwitness.

.....witness address