

Dated: 20 November 2018

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Secretary Bronwyn Vearing



**CIMCL**

COLEAMBALLY IRRIGATION MUTUAL  
CO-OPERATIVE LIMITED

**RULES**

**OF**

**COLEAMBALLY IRRIGATION MUTUAL  
CO-OPERATIVE LIMITED**

**Registered under the Co-operatives National Law**

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# 1 DEFINITIONS

1.1 In these Rules, unless the context otherwise requires:

**Access Fee** is the ongoing Contributions payable to the Mutual for the continuing right to access the irrigation water delivery assets that reflects the renewals annuity associated with those assets.

**Active Member** means a Member who is in Active Membership within the provisions of **Rule 13** and **Active Membership** means the state of being an Active Member of the Mutual.

**alter** or similar word or expression used in relation to an amendment includes "add to", "substitute", and "rescind".

**Auditor** means an auditor or auditors for the time being of the Mutual appointed in accordance with **Rule 71**.

**Banking Account** includes an account with a credit union or building society into which the Mutual's monies may be paid.

**Board** means the whole or any number of the Directors assembled at a meeting of the Directors or transacting business in accordance with **Rule 54**, being not less than a quorum or a majority, as the case may be.

**Business Day** means a day that is not a Saturday or Sunday or a public holiday or bank holiday in New South Wales.

**By-laws** are those by laws made by the Board in accordance with **Rule 19A**.

**CICL** means Coleambally Irrigation Co-operative Limited.

**Coleambally Irrigation Infrastructure** means the assets of CICL.

**Contribution** means an amount of money determined by the Board under **Rule 20**.

**Co-operatives National Law** means the Co-operatives National Law contained in the *Co-operatives (Adoption of National Law) Act 2012* (NSW).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Delivery Entitlement** is the entitlement to have water delivered by CICL at specified times, rates and locations under specified circumstances, and upon which the Contributions to be paid to the Mutual by each Member, other than CICL, shall be calculated.

**Director** means any director of the Mutual for the time being and any alternate director acting in the absence of a nominating director under **Rule 62**.

**Disputes Committee** has the meaning it is given in **Rule 77.3**.

**Financial Year** means the financial year of the Mutual as specified in **Rule 68**.

**Lien** includes a lien over any form of property.

**may** or a similar word or expression used in relation to a power of the Board indicates that the power may be exercised or not exercised at the Board's discretion.

**Member** means a member of the Mutual.

**Month** means calendar month.

**Mutual** means Coleambally Irrigation Mutual Co-operative Limited.

**Non-member Funds** are funds that have not been raised from Members and are non-mutual funds.

**Postal Ballot** includes a special postal ballot.

**Prescribed** means prescribed by the Co-operatives National Law or by the Regulations.

**Provision** in relation to the Co-operatives National Law, means words or other matter that form or forms part of the Co-operatives National Law, and includes:

- (a) a chapter, part, division, subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or schedule of or to the Co-operatives National Law;
- (b) a section, clause, subclause, item, column, table or form of or in a schedule to the Co-operatives National Law; and
- (c) the long title and any preamble to the Co-operatives National Law.

**Registrar** means the Registrar of Co-operatives or any person delegated the Registrar's functions.

**Regulations** means the regulations made under the Co-operatives National Law, and any regulations that apply to a co-operative by way of a transitional regulation made under the Co-operatives National Law.

**Relevant Interest** has the same meaning as given in Schedule 2 of the Co-operatives National Law.

**Rules** mean the registered Rules of the Mutual as amended from time to time and reference to particular Rules has a corresponding meaning.

**Secretary** means any person appointed by the Board as Secretary of the Mutual pursuant to **Rule 66**.

**shall** or a similar word or expression used in relation to a power of the Board indicates that the power must be exercised, subject to the Co-operatives National Law or the Rule granting the power.

**Sinking Fund** means the Fund established under **Rule 20.4(b)(i)**.

**Sinking Fund Levy** means the levy raised for the Sinking Fund.

**Special Resolution** means a resolution which is passed in accordance with **Rule 43**.

**State** means the State of New South Wales.

**Termination Fee** means a fee payable to the Mutual for or in respect of the termination or surrender of the whole or a part of a right of access to Coleambally Irrigation Infrastructure or of services provided in relation to that right or a part of that right, in accordance with the *Water Charge (Termination Fees) Rules 2009* (Cth).

**Writing** includes printing, typing and other modes of representing or reproducing words in a visible form (including facsimile and email) and **written** has a corresponding meaning.

**Year** means the Financial Year of the Mutual.

1.2 Words:

- (a) importing one gender include the other genders;
- (b) importing persons include corporations or other incorporated associations;
- (c) in the singular include the plural, and vice versa; and
- (d) or expressions used have the same meanings as those given to them by the Co-operatives National Law.

1.3 A reference in these Rules to an Act includes a reference to:

- (a) the Act as originally enacted, and as amended from time to time since its original enactment; and
- (b) if the Act has been repealed since the inclusion of the reference in these Rules - the legislation enacted in substitution of the Act (whether legislation of the State or Federal Parliament) and as amended from time to time since its enactment.

1.4 References to the Corporations Act are as adopted by the Co-operatives National Law.

1.5 A reference in these Rules to a provision in an Act includes a reference to:

- (a) the provision as originally enacted, and as amended from time to time since the original enactment;
- (b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference - the provision as re-enacted and as amended from time to time since its re-enactment; and
- (c) if the provision has been omitted and replaced with a new provision dealing with the same area of law or procedure - the new provision as enacted and as amended from time to time since its enactment.

1.6 In the interpretation of a Rule, or paragraph of a Rule, the interpretation that will best achieve the purpose of the Rule is to be preferred to any other interpretation.

1.7 This provision applies whether or not the purpose is expressly stated in the Rule or paragraph of the Rule.

1.8 In these Rules, unless the context indicates a contrary intention, headings are for convenience and do not affect interpretation.

## **2 RULES**

2.1 The Rules of the Mutual have the effect of a contract under seal:

- (a) between the Mutual and each Member;
- (b) between the Mutual and each Director, the principal executive officer and the Secretary of the Mutual; and
- (c) between a Member and each other Member.

- 2.2 Under the contract, each of those persons agrees to observe and perform the provisions of the Rules as in force for the time being so far as those provisions are applicable to that person.
- 2.3 The Rules may be altered by a special resolution, by a resolution of the Board in accordance with Section 62 of the Co-operatives National Law or as otherwise permitted by the Co-operatives National Law. No alteration to these Rules takes effect until the alteration is registered by the Registrar.
- 2.4 Where any Rule is altered, by way of a Board resolution under Section 62 of the Co-operatives National Law, the Mutual must cause the alteration to be notified, in writing, to Members as soon as practicable after the alteration is registered and, in any event, not later than the date on which notice is given to the Members of the next annual general meeting of the Mutual, following the registration of the alteration.
- 2.5 A person shall be entitled on demand to a copy of the Rules upon payment of a sum not exceeding \$20, or such other amount as the Board may from time to time determine.
- 2.6 A person may inspect a copy of these Rules free of charge at the office where the registers are kept, during all reasonable hours.
- 2.7 In these Rules, unless the context indicates a contrary intention, headings are for convenience and do not affect interpretation.
- 2.8 Amendments to these Rules do not affect:
- (a) the composition or rotation of the Board;
  - (b) the rights and obligations of Members which have accrued before the amendments take effect; or
  - (c) any contract, rights or obligations of the Mutual which have accrued before the amendments take effect.

### **3 NON-DISTRIBUTING CO-OPERATIVE**

- 3.1 The Mutual is a non-distributing co-operative within the meaning of Section 19 of the Co-operatives National Law.

### **4 NAME**

- 4.1 The name of the Mutual shall be:

#### **COLEAMBALLY IRRIGATION MUTUAL CO-OPERATIVE LIMITED**

- 4.2 The Mutual may, in accordance with Section 224 of the Co-operatives National Law, change its name by way of a special resolution to a name approved of by the Registrar.

### **5 CHANGE OF REGISTERED OFFICE**

- 5.1 The Board shall notify the Registrar of any change of address of the registered office of the Mutual within 28 days after the change, and in the form approved by the Registrar.

### **6 OBJECTS**

- 6.1 The objects of the Mutual shall be:



- (a) to replace and refurbish Coleambally Irrigation Infrastructure for the benefit of Members;
- (b) to protect the Coleambally Irrigation Infrastructure by providing financial security and a separate legal structure for the Sinking Fund and the assets acquired with the Sinking Fund;
- (c) to annually bill Members and collect the Sinking Fund Levy;
- (d) to provide Members with an annual report detailing the structure and security of investments and a summary of information relating to any major asset maintenance and renewal expenditure to be incurred;
- (e) to develop and implement a business plan and investment strategy that manages risk and sets financial investment objectives which provide future funding for the timely replacement and refurbishment of Coleambally Irrigation Infrastructure; and
- (f) to enter into agreements with CICL, or such other party as the Board thinks fit, for the collection of the Sinking Fund Levy and for the provision of an asset maintenance and renewal schedule and the implementation of the recommended works.

## **7 POWERS**

7.1 The Mutual has, both within and outside the State:

- (a) the legal capacity of a natural person; and
- (b) all the powers allowed by or under the Co-operatives National Law.

7.2 The powers of the Mutual to:

- (a) obtain financial accommodation; and
- (b) give security for the repayment of money,

shall be exercised subject to the Co-operatives National Law and **Rule 8**, but are otherwise unlimited by the Rules.

## **8 LOANS BY MEMBERS TO THE CO-OPERATIVE**

8.1 The Mutual may, in accordance with Section 343 of the Co-operatives National Law, require its Members to lend money to the Mutual, with or without security, in accordance with a proposal approved by the Members by special resolution.

8.2 The approved proposal shall be binding on all Members at the date of the passing of the special resolution, other than a Member who has given notice of their intention to cease Active Membership in accordance with Section 343(3)(c) of the Co-operatives National Law, and on all persons who become Members of the Mutual after that date and before the total amount of the loan to be raised has been raised.

## **9 DEALINGS OF MEMBERS WITH CO-OPERATIVES**

9.1 The Mutual may, in accordance with Section 125 of the Co-operatives National Law, make a contract with a Member requiring the Member to have specified dealings with the Mutual for a fixed period.

9.2 The provisions of the contract may require a Member:

- (a) to sell products through or to the Mutual;
- (b) to obtain supplies or services through or from the Mutual; or
- (c) to pay to the Mutual specified sums as liquidated damages for any failure to comply with a requirement authorised by this Rule.

9.3 The sum, if any, specified as liquidated damages is to be considered as a debt due to the Mutual and in respect of such debt, the Mutual has, pursuant to Section 127 of the Co-operatives National Law, a Lien on each of the following:

- (a) the credit balance and deposits of the Member or past Member; and
- (b) any entry fees, regular subscriptions and/or Contributions required to be repaid to a Member when the Member ceases to be a Member.

9.4 The Lien created pursuant to Section 127 of the Co-operatives National Law shall be enforced in accordance with that section.

9.5 Nothing in this Rule shall be interpreted as restricting the powers of the Mutual to enter into contracts with a Member or Members other than pursuant to the provisions of this Rule.

## **10 SEAL**

10.1 The name of the Mutual must appear in legible characters on its common seal and on any official seal. The common seal must be kept at the registered office in such custody as the Board shall direct.

10.2 The Mutual may have for use in place of its common seal outside the State, one or more official seals. Each of the additional seals must be a facsimile of the common seal with the addition on its face of the name of the place where it is to be used.

10.3 The common seal of the Mutual shall not be affixed to any instrument except by resolution of the Board. Two Directors or two persons authorised by the Board must be present and must sign all instruments sealed while they are present.

10.4 The person affixing the official seal must certify in writing on the instrument to which it is affixed, the date and place at which it is affixed.

## **11 MUTUAL MAY AUTHORISE AGENT OR ATTORNEY TO EXECUTE DEEDS**

11.1 The Mutual may, by writing under its common seal, empower its agent or attorney (either generally or in respect of a specified matter or specified matters) to execute deeds on its behalf.

11.2 A deed signed by such an agent or attorney on behalf of the Mutual and under the agent's or attorney's seal, or under the appropriate official seal of the Mutual, binds the Mutual and has effect as if it were under the common seal of the Mutual.

11.3 The authority of such an agent or attorney, as between the Mutual and a person dealing with the agent or attorney, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of the agent's or attorney's authority has been given to the person dealing with the agent or attorney.

11.4 Where an agent or attorney affixes an official seal to an instrument, the person must comply with **Rule 10.4**.

## **12 CUSTODY AND INSPECTION OF RECORDS AND REGISTERS**

- 12.1 The Mutual must have at the office where the registers are kept and available during all reasonable hours for inspection by any Member free of charge the following:
- (a) a copy of the Co-operatives National Law and the Regulations;
  - (b) a copy of the Rules of the Mutual;
  - (c) a copy of the minutes of each general meeting of the Mutual;
  - (d) a copy of the last annual report of the Mutual under Section 284 of the Co-operatives National Law;
  - (e) the register of Directors and Members;
  - (f) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the Mutual; and
  - (g) such other registers as the Regulations provide are to be open for inspection.
- 12.2 A Member is entitled to make a copy of entries in a register specified in **Rule 12.1** and to do so free of charge. The Mutual may charge an amount per page for photocopies to a maximum of \$50.
- 12.3 The Mutual must have at the place where the registers are kept and available during all reasonable hours for inspection by *any person*:
- (a) a copy of the Co-operatives National Law and the Regulations;
  - (b) a copy of the Rules of the Mutual; and
  - (c) a copy of the last annual report of the Mutual under Section 284 of the Co-operatives National Law.
- 12.4 Shares, debentures, charges and any other certificates or documents or duplicates of them pertaining to securities shall be safely kept by the Mutual in the way and with the provision for their security as the Board directs.

## **13 ACTIVE MEMBERSHIP PROVISIONS**

- 13.1 In accordance with Part 2.6 of the Co-operatives National Law, the replacement and refurbishment of Coleambally Irrigation infrastructure and the provision of a professional investment service that will collect, manage and report on the Sinking Fund Levies paid by each Member is a primary activity of the Mutual.
- 13.2 A Member shall:
- (a) except for CICL, be an Active Member of CICL; and
  - (b) pay a Contribution each Year of not less than \$1.00,
- in order to establish Active Membership of the Mutual.

## **14 CANCELLATIONS RELATING TO INACTIVE MEMBERS**

- 14.1 The Board shall, after giving notice in accordance with Section 161 of the Co-operatives National Law, declare the Membership of a Member cancelled if:

- (a) the whereabouts of the Member are not presently known to the Mutual and have not been known to the Mutual for a continuous period of at least two years before the date of cancellation; or
- (b) the Member is not presently an Active Member and has not been an Active Member at any time during the past two years immediately before the date of cancellation.

14.2 The Mutual shall, in a form approved of by the Registrar, keep a register of Memberships cancelled pursuant to **Rule 14.1** of this Rule, which shall specify the particulars prescribed in Clause 7 of Schedule 2 of the Regulations.

## **15 QUALIFICATIONS FOR MEMBERSHIP**

15.1 A person is not qualified to be admitted to Membership of the Mutual unless:

- (a) the Board has reasonable grounds for believing that the person will be an Active Member under **Rule 13**; and
- (b) a Contribution as determined by the Board has been paid.

## **16 APPLICANTS FOR MEMBERSHIP TO BE GIVEN NOTICE OF CONTRIBUTIONS**

16.1 The Mutual must supply, with each application for Membership, a written notice of Contributions that a person will be liable to pay on becoming a Member of the Mutual.

## **17 APPLICATION FOR MEMBERSHIP**

17.1 The Board must provide each person intending to become a Member of the Mutual with:

- (a) a consolidated copy of the Rules of the Mutual;
- (b) a copy of all special resolutions applicable to the Member passed by the Members of the Mutual, except special resolutions providing for an alteration of the Rules of the Mutual; and
- (c) a copy of the last annual report of the Mutual under Section 284 of the Co-operatives National Law.

17.2 The Board may comply with **Rule 17.1** by:

- (a) giving the person intending to become a Member notice that the documents referred to in that sub-Rule may be inspected by that person at the registered office of the Mutual; and
- (b) making those documents available for inspection.

17.3 Applications for Membership shall be lodged at the registered office, in or to the effect of the form approved by the Board and shall be accompanied by the payment of the Contributions referred to in **Rule 16**.

17.4 Every application shall be considered by the Board.

17.5 The Board may, at its discretion, refuse any application for Membership and should assign reasons for such refusal though the Board may choose to withhold reasons, if the Board considers it appropriate to do so. Upon refusal the applicant's deposit shall be refunded without interest.

- 17.6 In considering an application for Membership pursuant to this Rule, the Board must ensure that a person who is not qualified for Membership of the Mutual under **Rule 15** is not admitted as a Member.
- 17.7 If the application for Membership is approved by the Board, the applicant's name, date and any other information required by or under the Co-operatives National Law shall be entered in the register of members within 28 days after the Board's approval. The applicant shall be notified in writing of the entry in the register and shall then be entitled to the privileges attaching to Membership.

## **18 MEMBERS OF THE CO-OPERATIVE**

- 18.1 The Members of the Mutual are:
- (a) those persons who signed the application for registration of the Mutual; and
  - (b) those persons admitted to Membership in accordance with **Rule 17**; and
  - (c) those persons who become Members by:
    - (i) a transfer of engagements to the Mutual;
    - (ii) a scheme of arrangement; or
    - (iii) operation of law.

## **19 LIABILITY OF MEMBERS TO THE CO-OPERATIVE**

- 19.1 A Member shall not, as a Member of the Mutual, be under any personal liability to a creditor of the Mutual.
- 19.2 A Member shall, in accordance with Section 121 of the Co-operatives National Law, be liable to the Mutual for any Contributions or charges, including an annual Access Fee or a one off Termination Fee, payable by the Member to the Mutual as required by these Rules.
- 19.3 On the death of a Member, the Member's estate is subject to the same liability as the Member would have been until the Member's personal representative or some other person is registered in the Member's place.
- 19.4 Joint Members are jointly and severally liable in respect of any amount due to the Mutual in respect of that Membership.

## **19A BY-LAWS**

- 19A.1 The Board may make by-laws not inconsistent with these Rules, the Co-operatives National Law or the *Water Management Act 2000* (NSW), setting out the Board's policy in relation to its conduct and dealings with Members and third parties.

## **20 CONTRIBUTIONS**

- 20.1 The Board may determine Contributions due from applicants for Membership and Members of the Mutual.
- 20.2 The Board must in June of each Year determine the Contributions due from each Member and notify Members of that determination.
- 20.3 The Contributions due from each Member, other than CICL, shall be calculated on the basis of the number of Delivery Entitlements that Member has or, in the case of

Termination Fees, the number of Delivery Entitlements held by the Member that are terminated or surrendered.

- 20.4 In determining Contributions for a Year, the Board must calculate Contributions so as to cover costs and expenses and overheads of the Mutual in carrying out its primary activities, including, but not limited to:
- (a) costs of repairs, refurbishment, maintenance and construction in relation to the assets of the Mutual;
  - (b) amounts sufficient to allow accumulation of reserves at rates sufficient to meet anticipated expenses and liabilities of the Mutual in future Years, including:
    - (i) a fund to be known as the "Sinking Fund" to cover capital expenditure for the construction, refurbishment and replacement of future or existing irrigation assets in the area of operations of CICL (as defined in the operating licence held by CICL pursuant to section 122 of the *Water Management Act 2000* (NSW)); and
    - (ii) such other reserves as the Mutual may from time to time determine are prudent and reasonable to permit the Mutual to carry out its objects.

## **21 ESTABLISHMENT OF MANAGEMENT RESERVES**

- 21.1 The Board must cause separate accounts to be kept for the reserves established under **Rule 20.4(b)**.
- 21.2 Moneys to the credit of the reserves may only be utilised for the purposes stated (in respect of each particular reserve) in **Rule 20.4(b)**.
- 21.3 The Board must establish a separate fund for the purpose of separating Contributions from Non-member Funds. All Non-member Funds must be held in the Non-member Income Fund and must be identifiable in the Mutual's accounts.

## **22 ONE MEMBER ONE VOTE**

- 22.1 An Active Member of the Mutual shall have one vote only in respect of any question or motion arising at a general meeting of the Mutual.
- 22.2 In the case of joint Membership, the joint Members shall have one vote only between them and that vote may only be exercised (subject to the grant of any proxy in accordance with **Rule 23** or power of attorney) by the joint Member whose name appears first in the register of Members.

## **23 PROXY VOTES**

- 23.1 The instrument appointing a proxy shall be in writing under the hand of the appointer, or of the appointer's attorney, duly authorised in writing and in the form contained in Schedule 1 or otherwise approved by the Board.
- 23.2 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- 23.3 No person shall act as a proxy unless the person is an Active Member under **Rule 13**.
- 23.4 Subject to **Rule 23.7** no person shall act as proxy for more than two persons.

- 23.5 An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- 23.6 Where an instrument of proxy is signed by all of the joint Members, the vote of the proxy so appointed shall be accepted as the vote of the joint Member whose name appears first in the register of Members.
- 23.7 **Rule 23.4** of this Rule does not apply if the person acts under an instrument of proxy which specifies the manner in which the person is to vote in respect of a particular resolution.
- 23.8 An instrument appointing a proxy is not valid unless:
- (a) the instrument; and
  - (b) if the instrument is signed by the appointer's attorney - the authority under which the form was signed, or a notarially certified copy of the authority,
- is deposited at the registered office of the Mutual.
- 23.9 The documentation required to be given under this Rule must be deposited at the registered office:
- (a) at least 48 hours before the meeting at which the proxy may be used; or
  - (b) in the case of a poll - at least 24 hours before the taking of the poll.
- 23.10 A vote given in accordance with the terms of an instrument of proxy, or of a power of attorney, is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the Mutual at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## **24 RESTRICTION ON VOTING ENTITLEMENT UNDER POWER OF ATTORNEY**

- 24.1 A person is not entitled to exercise a Member's right to vote under a power of attorney, if that person has a power of attorney to vote in respect of another Member.

## **25 EFFECT OF RELEVANT SHARE AND VOTING INTEREST ON VOTING RIGHTS**

- 25.1 A Member is not entitled to vote if another person (whether or not a Member of the Mutual) has a Relevant Interest in the right to vote of a Member.
- 25.2 A Member who is not entitled to vote because of this Rule may apply to the Registrar of Co-operatives for a review of the matter.
- 25.3 Where the Registrar of Co-operatives orders that the Member is entitled to vote, the Member's right to vote shall be restored.

## **26 NOTICE TO BE GIVEN OF VOTING INTEREST**

- 26.1 A person (whether or not a Member of the Mutual) must give notice in writing to the Mutual within five business days of becoming aware that the person has, or has ceased to have, a Relevant Interest in the right to vote of a Member in the Mutual.
- 26.2 For the purposes of this Rule, "notice" means a notice which contains the prescribed particulars set out in Clause 3.21 of the Regulations.

## **27 EXPULSION OF MEMBERS**

- 27.1 Subject to Part 2.6, Division 4 of the Co-operatives National Law, a Member may be expelled from the Mutual by special resolution to the effect:
- (a) that the Member has failed to discharge the Member's obligations to the Mutual, whether prescribed by these Rules or arising out of any contract; or
  - (b) that the Member has been guilty of conduct detrimental to the Mutual.
- 27.2 In either case written notice of the proposed resolution shall be forwarded to the Member not less than 28 days before the date of the meeting at which the special resolution is to be moved, and the Member shall be given a reasonable opportunity of being heard at the meeting.
- 27.3 Expulsion of one joint Member means expulsion of all Members holding Membership jointly with the expelled Member
- 27.4 An expelled Member must not be re-admitted as a Member unless the re-admission is approved by special resolution.

## **28 CEASING MEMBERSHIP**

- 28.1 A person shall cease to be a Member in any of the following circumstances:
- (a) if the Member's Membership is cancelled under **Rule 14**;
  - (b) if the Member is expelled in accordance with **Rule 27**;
  - (c) if the Member ceases to be a Member of CICL;
  - (d) if the Member becomes bankrupt, or the Member's property becomes subject to control under the law relating to bankruptcy, and the Membership vote by special resolution that the Membership of the Member must cease on the passing of the resolution;
  - (e) on death of the Member;
  - (f) in the case of a Member that is a body corporate if the body is dissolved;
  - (g) if the contract of Membership is rescinded on the ground of misrepresentation or mistake; or
  - (h) on the expiration of one Month's notice in writing of the Member's intention to resign from Membership given by the Member, to the Secretary.
- 28.2 If a Member ceases to be a Member because of the circumstances outlined in **Rule 28.1**, all amounts owing by the former Member to the Mutual become immediately payable in full.
- 28.3 Subject to Sections 128 and 163 of the Co-operatives National Law (as applicable), payment to a former Member referred to in **Rule 28.2** of any amount owing by the Mutual to the former Member:
- (a) must be made at the time decided by the Board but within one year from the date on which the former Member ceased to be a Member; or
  - (b) may be applied at the time decided by the Board, but within one year from the date on which the former Member ceased to be a Member, in the manner set out in Section 128 or 163 of the Co-operatives National Law (as



applicable), if there is agreement by the Board and former Member or if the Board considers that repayment would adversely affect the financial position of the Mutual.

## **29 RIGHTS AND LIABILITIES OF MEMBERS ON BANKRUPTCY, MENTAL INCAPACITY OR DEATH**

- 29.1 If a person's Membership ceases because of bankruptcy, the value of the person's Membership interest calculated in accordance with **Rule 29.5** may be transferred to the Official Trustee in Bankruptcy in accordance with the *Bankruptcy Act 1966* (Cth).
- 29.2 A person appointed under a law of a State or Territory to administer the estate of a Member who, through mental or physical infirmity, is incapable of managing his or her affairs, may be registered as the holder of the Member's interest in the Mutual and the rights and liabilities of Membership vest in that person during the period of the appointment.
- 29.3 Upon application by a person appointed to manage the affairs of a Member referred to in **Rule 29.2**, the Board may decide to suspend some or all Active Membership obligations if there are grounds to believe that the Member's physical or mental infirmity is temporary.
- 29.4 The Board must transfer the deceased Member's interest in the Mutual to:
- (a) the personal representative of the deceased Member; or
  - (b) the person whom the deceased's personal representative specifies in an application made to the Mutual within three months after the death of the Member.
- 29.5 For the purposes of this Rule, the value of the interest of the bankrupt, mentally incapacitated or deceased Member's interest is the amount that would have been payable to the Member if the Member had resigned and includes any prepayments of regular subscriptions or other fees less any amounts owing to the Mutual by the Member.
- 29.6 A person registered pursuant to this Rule is, while so registered, subject to the same liabilities in respect of the Member's interest as those to which the Member would have been subject to if the Member had remained a Member with full legal capacity.

## **30 ANNUAL GENERAL MEETINGS**

- 30.1 A general meeting of the Mutual to be known as the "annual general meeting" shall, as provided in Section 252 of the Co-operatives National Law, be held each year on a date and a time determined by the Board as long as it is within five Months after the close of the Financial Year of the Mutual.
- 30.2 All general meetings of the Mutual other than the annual general meeting shall be special general meetings.
- 30.3 If an annual general meeting is not held in accordance with **Rule 30.1**, the Members may, in accordance with Section 257 of the Co-operatives National Law and **Rule 32**, requisition such a meeting.

## **31 CONVENING GENERAL MEETINGS**

- 31.1 The Board may, whenever it thinks fit, call a special general meeting of the Mutual.

## **32 REQUISITION OF GENERAL MEETINGS**

- 32.1 Subject to Section 257 of the Co-operatives National Law, the Board must call a general meeting of the Mutual on the requisition in writing by Active Members who together are able to cast at least 20% of the total number of votes to be cast at a meeting of the Mutual.
- 32.2 The requisition must:
- (a) state the objects of the meeting;
  - (b) be signed by the requisitioning Members (and may consist of several documents in like form each signed by one or more of the requisitioning Members); and
  - (c) be served on the Mutual by being lodged at the registered office of the Mutual.

## **33 REQUISITIONED MEETING MUST BE CALLED AS SOON AS PRACTICAL**

- 33.1 A meeting requisitioned by Members in accordance with **Rule 32** must be called and held as soon as practicable and, in any case, must be held within 63 days after the requisition is served.
- 33.2 Where the Board does not call the meeting 21 days after the requisition is served, the following provisions apply:
- (a) the requisitioning Members (or any of them representing at least half their aggregate voting rights) may call the meeting in the same manner as nearly as possible as meetings are called by the Board;
  - (b) for that purpose they may request the Mutual to supply a written statement setting out the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the Mutual;
  - (c) the Board must send the requested statement to the requisitioning Members within seven days after the request for the statement is made;
  - (d) the meeting called by the requisitioning Members must be held not later than 91 days after the requisition is served;
  - (e) any reasonable expenses incurred by the requisitioning Members because of the Board's failure to call the meeting must be paid by the Mutual; and
  - (f) any such amount required to be paid by the Mutual is to be retained by the Mutual out of any money due from the Mutual by way of fees or other remuneration in respect of their services to such of the Directors as were in default.

## **34 GENERAL MEETINGS – METHODS AND NOTICE**

- 34.1 The Mutual may hold a general meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 34.2 If one or more separate meeting venues, including any online platform, are linked to the main place of a general meeting by technology which, by itself or in conjunction with other arrangements:
- (a) gives the Members in the separate meeting venues a reasonable opportunity to participate in proceedings in the main place; and

(b) enables the Members in the separate meeting venues to vote,

a Member present at a separate meeting venue:

(c) is taken to be present at the general meeting and entitled to exercise all rights as if he or she were present at the main place; and

(d) may be counted toward the quorum for the general meeting.

34.3 If the technology used in accordance with **Rule 34.1** encounters a technical difficulty, whether before or during the meeting, which results in a Member not being able to participate in the meeting, the chairperson may:

(a) allow the meeting to be held or continue in the main place (and any separate meeting venues in which Members continue to have a reasonable opportunity to participate) and transact business, and no Member may object to the meeting being held or continuing; or

(b) adjourn the meeting either for such reasonable period as may be required to fix the technology or to such other time and location as the chairperson deems appropriate.

34.4 The chairperson of a general meeting:

(a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;

(b) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for the proper and orderly recording of votes at the general meeting,

and a decision by the chairperson under this **Rule 34.4** is final.

34.5 Subject to **Rule 35**, at least 14 days' notice (not including the day on which the notice is served or deemed to be served, but including the day for which notice is given) shall be given of any general meeting in the manner stipulated in **Rule 35**.

34.6 Notice must be given to those persons who are, under these Rules entitled to receive such notices from the Mutual, but the non-receipt of the notice by any Member shall not invalidate the proceedings at such general meeting.

34.7 The notice must:

(a) specify the place, the day and the hour of the meeting and, if the meeting is to be held in two or more venues, the technology that will be used to facilitate this;

(b) include ordinary business as specified in **Rule 36.1**; and

(c) in the case of special business, state the general nature of that business; and

(d) be served in the manner set out in **Rule 78**.

34.8 Any Member who has a resolution to submit to a general meeting must give written notice of the terms of the resolution to the Mutual not less than 28 days prior to the date of the meeting.

34.9 The Board shall have inserted in any notice convening a general meeting any business which a Member has notified their intention to move and for which notification has been given in accordance with this Rule.

- 34.10 Notice of every general meeting shall be given in same manner as authorised in **Rule 78** to:
- (a) every Member of the Mutual; and
  - (b) the auditor or auditors of the Mutual.

34.11 Except as provided in this Rule, no other persons shall be entitled to receive notices of general meetings.

### **35 NOTICE OF SPECIAL RESOLUTIONS**

35.1 Notice of a special resolution shall be given to those persons, entitled to receive notice under **Rule 34**, at least 21 days before the general meeting and shall specify the intention to propose the resolution as a special resolution at that meeting and specify the terms of the special resolution, the reasons for making the special resolution and the effect of the special resolution being passed.

### **36 BUSINESS OF GENERAL MEETINGS**

36.1 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 Mutual, the financial reports of the Mutual for the Financial Year, and a report on the state of affairs of the Mutual and the annual report specified in **Rule 6.1(d)**;
- (c) to elect and determine the remuneration of directors; and
- (d) to elect (if necessary) an auditor, or to determine the auditor's remuneration, or both.

36.2 The annual general meeting may also transact special business of which notice has been given to Members in accordance with these Rules.

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

### **37 QUORUM AT GENERAL MEETINGS**

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

37.2 Except where these Rules state otherwise, 15 Active Members present in person and entitled to vote constitute a quorum. In determining whether a quorum is present:

- (a) each individual attending as a proxy or attorney is to be counted, except that where an Active Member has appointed more than one proxy or attorney, only one is to be counted; and
- (b) count each Active Member who is to be counted toward the quorum under **Rule 34.2(d)**.

37.3 If within half an hour after the appointed time for the meeting a quorum is not present, the meeting:

- (a) if convened upon the requisition of Members, must be dissolved; or

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

37.4 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the Members present constitute a quorum, provided at least 10 Active Members are present.

### **38 CHAIRPERSON AT GENERAL MEETINGS**

38.1 The chairperson, if any, of the Board shall preside as chairperson at every general meeting of the Mutual.

38.2 If there is no such chairperson, or if at any meeting the chairperson is either not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, then the Members present shall choose someone from their number to be chairperson until such time as the chairperson attends or is willing to act.

38.3 The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place. The only business that can be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place. Where a meeting is adjourned for 14 days or more notice of the adjourned meeting shall be given just as in the case of the original meeting. Apart from this requirement it shall not be necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **39 STANDING ORDERS AT GENERAL MEETINGS**

39.1 The following standing orders shall be observed at the Mutual's meetings:

- (a) the mover of a motion shall not speak for more than 10 minutes. Subsequent speakers shall be allowed five minutes, and the mover of the proposition five minutes to reply. The meeting may however by simple majority extend in a particular instance the time permitted by this Rule;
- (b) whenever an amendment to an original motion is proposed, no second amendment shall be considered until the first amendment is disposed of;
- (c) if an amendment is carried, the motion as so amended shall displace the original motion and may itself be amended;
- (d) if an amendment is defeated, then a further amendment may be moved to the original motion. However, only one amendment shall be submitted to the meeting for discussion at one time;
- (e) the mover of every original motion, but not of an amendment, shall have the right to reply. Immediately after this the question shall be put from the chair. No other Member shall speak more than once on the same question, unless permission is given for an explanation, or where the attention of the chairperson is called to a point of order;
- (f) motions and amendments shall be submitted in writing, if requested by the chairperson;
- (g) any discussion on a motion or amendment may be closed by a resolution "that the question be now put" being moved seconded, and carried. Such resolution shall be put to the meeting without debate;

- (h) any Member, or visitor invited to attend the meeting by the Board, may speak on any issue at a meeting with the permission of the chairman provided that the permission may be conditional; and
- (i) standing orders may be suspended for any period by ordinary resolution.

39.2 The Members present at a meeting may suspend, amend or add to these, orders for the purposes of that particular meeting.

#### **40 ATTENDANCE AND VOTING AT GENERAL MEETINGS**

40.1 At any meeting of the Mutual a Member, whose Membership is required to be cancelled under **Rule 14**, is not entitled to attend.

40.2 A Member of the Mutual is not entitled to vote at a meeting of the Mutual:

- (a) if the person is not an Active Member of the Mutual; and/or
- (b) the person is excluded from voting under the Co-operatives National Law or these Rules.

40.3 At any general meeting a resolution put to the vote of the meeting shall (as provided in Section 256(2) of the Co-operatives National Law) be decided on a show of hands unless a poll is required by the chairperson or a poll is (before or on the declaration of the result of the show of hands) demanded by at least five Members. If no poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Mutual shall be evidence of the fact. No proof is needed of the number or proportion of the votes recorded in favour of, or against, that resolution.

40.4 If a poll is demanded, in accordance with **Rule 40.3**, it shall be taken in a manner which the chairperson directs. Unless the meeting is adjourned the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

40.5 A poll demanded on the election of a chairperson, or on a question of adjournment, shall be taken immediately.

40.6 A poll demanded in accordance with **Rule 40.3** may be withdrawn.

40.7 On a show of hands, or on a poll, every representative of a body corporate appointed in accordance with Section 115 of the Co-operatives National Law, or every Member who is present at a meeting in person or represented by proxy or attorney, shall have one vote. However, no Member shall have a vote, or be entitled to vote, contrary to the Co-operatives National Law.

40.8 In the case of joint Membership, the joint Members have one vote only between them and that vote may be exercised (subject to the grant of any proxy or power of attorney) only by whichever of the joint Members is the Member whose name appears first in the register of Members.

40.9 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

40.10 All resolutions, except special resolutions, shall be determined by a simple majority.

40.11 The Board may determine that at any meeting of Members, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to the Mutual by

post, facsimile or other electronic means approved by the Board. The Board may prescribe regulations, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid. Except for the purposes of any Rule that specifies a quorum or any Rule prescribed by the Board, a Member is taken to be present at a meeting if the Member has duly lodged a valid direct vote in relation to the meeting.

#### **41 POSTAL BALLOT**

41.1 The Board may whenever it considers appropriate submit any matter or proposal to Members to be determined by a postal ballot. Any postal ballot is to be conducted in the following way:

- (a) the postal ballot:
  - (i) must be secure, transparent and independent; and
  - (ii) must provide for the appointment of a returning officer who is to manage the conduct of the postal ballot in a secure, transparent and independent manner;
- (b) a reasonable time must be permitted for Members to consider, record and return their vote;
- (c) if electronic facilities for the postal ballot are to be used:
  - (i) Members who have limited or no access to electronic facilities must not be prejudiced in their ability to be advised of the postal ballot and to consider, record and return their vote; and
  - (ii) accordingly, facilities must be reasonably available for Members to be advised of the postal ballot, and to consider, record and return their vote, otherwise than by the use of electronic facilities; and
- (d) if the postal ballot is required to be a secret ballot, it must be conducted so that the vote of each Member can be counted without identifying the Member.

41.2 So long as **Rule 41.1** is complied with, the postal ballot is to be conducted as determined by the Board.

41.3 The Board may determine in a particular case whether the resolution by postal ballot should be a secret ballot and whether votes may be returnable by facsimile or other electronic means or both.

#### **42 POSTAL BALLOT REQUISITIONED BY MEMBERS**

42.1 A postal ballot must be held in respect of a special resolution where Active Members who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the Mutual may requisition the Board to conduct the special resolution by postal ballot.

42.2 If a postal ballot is requisitioned by Members under **Rule 42.1**, the requisition should specify whether the postal ballot is to be a secret ballot and must state the matters set out in Section 250(3) of the Co-operatives National Law.

42.3 A postal ballot requisitioned under **Rule 42.1** is to be conducted within two months after the requisition is served and must be conducted in accordance with **Rule 41** and in the form and manner determined by the Board.

- 42.4 The Board may determine in a particular case whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable by facsimile or other electronic means or both.
- 42.5 If the Board decides to conduct a secret postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each Member voted.
- 42.6 The Board is to appoint a returning officer to conduct the postal ballot. In default of such an appointment, the Secretary is the returning officer.
- 42.7 Ballot papers (in such form and with such content as the Board may approve) must be sent to all voting Members giving:
- (a) particulars of the business in relation to which the postal ballot is being conducted;
  - (b) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
  - (c) notice of the closing date and closing time of the postal ballot,
- and must be sent to Members so that they arrive (assuming standard delivery times) at least 21 days before the closing date of the postal ballot.
- 42.8 This **Rule** does not apply in relation to special postal ballots.

### **43 SPECIAL POSTAL BALLOTS**

- 43.1 A special postal ballot for the purposes of passing a special resolution must be conducted in relation to the following matters:
- (a) a conversion to a distributing co-operative as defined by Section 18 of the Co-operatives National Law;
  - (b) a conversion to a co-operative with share capital in accordance with Section 35 of the Co-operatives National Law;
  - (c) transfer of incorporation;
  - (d) an acquisition or disposal of assets referred to in Section 359 of the Co-operatives National Law;
  - (e) a special resolution on requestion of Members;
  - (f) a special resolution to require Members to lend money to the Mutual;
  - (g) a merger;
  - (h) a transfer of engagements;
  - (i) a compromise or arrangement between the Mutual and its Members; and
  - (j) a Members' voluntary winding up.
- 43.2 Ballot papers (in such form and with such content as the Board may approve) must be sent to all voting Members so that they arrive (assuming standard delivery times) at least 28 days before the closing date of the postal ballot.
- 43.3 The special postal ballot must otherwise be conducted in accordance with **Rule 41**.



#### **44 SPECIAL RESOLUTION**

- 44.1 A special resolution means a resolution of which notice has been given of the intention to propose the resolution as a special resolution and which is passed either:
- (a) by two-thirds of the Members who vote at a general meeting in person or by proxy in accordance with **Rule 23**;
  - (b) by two-thirds in a postal ballot; or
  - (c) by three quarters of the Members who cast votes in a special postal ballot of Members.
- 44.2 A resolution must not be considered to be passed as a special resolution unless at least 21 days' notice (28 in the case of a special postal ballot) has been given to the Members of the Mutual specifying:
- (a) the intention to propose the special resolution;
  - (b) the reasons for the making of the special resolution; and
  - (c) the effect of the special resolution being passed.
- 44.3 A special resolution has effect from the date it is passed except in the following circumstances:
- (a) the alteration of a Rule; and
  - (b) any matter for which a special resolution is required to be passed by special postal ballot (other than a special postal ballot in favour of a voluntary winding up),

in which case it has effect from the time it is registered by the Registrar.

#### **45 BOARD OF DIRECTORS**

- 45.1 There shall be a Board of five Directors each of whom shall be a natural person and at least 18 years old.
- 45.2 The Board:
- (a) must not consist of more than one Director of CICL, and
  - (b) subject to the Co-operatives National Law, one Director may be an independent Director.
- 45.3 The business of the Mutual is to be managed by the Board of Directors, and for that purpose the Board may exercise all the powers of the Mutual that are not, by the Co-operatives National Law or these Rules, required to be exercised by the Mutual in general meeting.
- 45.4 The acts of a Director are valid despite any defect that may afterwards be discovered in the appointment or qualification of the Director.
- 42.5 All Directors shall within 12 Months of being elected attend a training course on Director's duties unless they have already completed a relevant Director's training course. Each Director must regularly attend training courses for the purposes of attaining or maintaining skills appropriate to Directors of an irrigation mutual with significant funds under management.

## **46 QUALIFICATIONS OF DIRECTORS**

46.1 A person is not eligible to be elected as Director of the Mutual unless:

- (a) the person is an Active Member of the Mutual, or a representative of a body corporate which is an Active Member of the Mutual (Active Member Director); or
- (b) the person is nominated by the Board as having suitable investment or engineering experience (independent Director).

## **47 FIRST AND SUBSEQUENT DIRECTORS**

47.1 The first Directors are to be elected at the formation meeting of the Mutual.

47.2 At the first annual general meeting and the second annual general meeting of the Mutual, two of the Active Member Directors shall retire.

47.3 At the annual general meeting in the subsequent year the independent Director shall retire.

47.4 At the annual general meeting in each subsequent year the Directors shall retire in rotation of two, two and one in the proportions set out in **Rules 47.2** and **47.3** respectively.

## **48 RETIREMENT OF DIRECTORS**

48.1 The Directors to retire in any year shall (subject to the provision as to filling casual vacancies) be those who have been longest in office since their last election. As between persons who became Directors on the same day to retire shall (unless they otherwise agree among themselves) be determined by lot. In such case, the order for retirement shall be the order in which the names are withdrawn.

## **49 ELIGIBILITY FOR RE-ELECTION**

49.1 A retiring Director shall be eligible for re-election without nomination, subject to the person holding the qualifications specified in **Rule 46**.

## **50 ELECTION OF DIRECTORS**

50.1 At an annual general meeting at which a Director retires or a casual vacancy occurs the vacated office may be filled by electing a person to it.

50.2 A person elected to fill a casual vacancy under this Rule shall retire at the same time as the Director who vacated the office would have done if that Director had not vacated it.

50.3 Nominations for candidates to fill the vacant positions shall be sought in such manner as the Board determines.

50.4 The election of Directors must be conducted by postal ballot in accordance with **Rule 41** and the results of the election must be announced at the annual general meeting.

## **51 DIRECTORS' REMUNERATION**

51.1 A Director of the Mutual shall not receive remuneration for their services as a Director other than:

- (a) fees, concessions and other benefits approved at a general meeting of the Mutual; and

- (b) Director's travelling and other expenses that the Director properly incurs:
  - (i) in attending meetings of the Board of the Mutual or any meetings of committees of Directors of the Mutual; and
  - (ii) in attending any general meetings of the Mutual.

## **52 REQUISITION AND NOTICE OF BOARD MEETING**

- 52.1 A meeting of the Board of Directors may be called by a Director giving notice individually to every other Director.
- 52.2 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.
- 52.3 Meetings of the Board (including those conducted in accordance with **Rule 54**) must be held at least once every three Months and may be held as often as may be necessary for properly conducting the business and operations of the Mutual.

## **53 PROCEEDINGS OF THE BOARD**

- 53.1 Questions arising at any meeting shall be decided by a majority of votes.
- 53.2 In the case of an equality of votes, the chairperson may have a casting vote.
- 53.3 A Director shall not vote in respect of any contract or proposed contract with the Mutual in which the Director is in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract other than an interest in a contract referred to in Section 211 of the Co-operatives National Law and, if the Director votes in contravention of this Rule, the Director's vote shall not be counted.

## **54 TRANSACTION OF BUSINESS OUTSIDE BOARD MEETINGS**

- 54.1 The Board may in accordance with Section 176 of the Co-operatives National Law transact any of its business:
  - (a) by the circulation of papers among all the Members of the Board, and a resolution in writing by a majority of those Members is to be taken to be a decision of the Board; or
  - (b) at a meeting at which Board Members (or some Board Members) participate by telephone, closed-circuit television or other means, but only if any Board Member who speaks on a matter before the meeting, can be heard by the other Members of the Board.
- 54.2 For the purposes of this Rule the chairperson of the Board and each Member of the Board have the same voting rights as they have at an ordinary meeting of the Board.
- 54.3 The resolution is approved when the last Director required for the majority signs.
- 54.4 A resolution approved under this **Rule** is to be recorded in the minutes of the meetings of the Board within 28 days of the resolution being approved.
- 54.5 The Secretary may circulate papers among Members of the Board for the purposes of **Rule 54.1(a)** by facsimile or other transmission of the information in the papers concerned. Separate copies of a resolution may be distributed for signing by the Directors if the wording of the resolution and approval is identical in each copy.

## **55 QUORUM FOR BOARD MEETINGS**

- 55.1 The quorum for a meeting of the Board shall be three Directors, being 50% or more of the number of Directors, where the Active Member Directors outnumber the independent Directors by at least one. in accordance with Section 175 of the Co-operatives National Law.

## **56 CHAIRPERSON OF BOARD**

- 56.1 The chairperson of the Board may be elected by the Board of the Mutual. However, if no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the Directors present may choose one of their number to be chairperson of the meeting, until such time as the chairperson attends and is willing to act in that capacity.
- 56.2 The chairperson may have a casting vote.
- 56.3 The chairperson may be removed, and a new chairperson elected, by ordinary resolution of the Board.

## **57 DELEGATION AND BOARD COMMITTEES**

- 57.1 The Board may (in accordance with Section 178 of the Co-operatives National Law) by resolution delegate the exercise of such of the Board's functions (other than this power of delegation) as are specified in the resolution:
- (a) to a Director;
  - (b) to a committee of two or more Directors;
  - (c) to a committee of Members of the Mutual; or
  - (d) to a committee of Members of the Mutual and other persons if Members comprise the majority of persons on the committee.
- 57.2 The Mutual or the Board may by resolution revoke wholly or in part any such delegation.
- 57.3 A power, the exercise of which has been delegated under this Rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- 57.4 A delegation under this Rule may be made subject to conditions or limitations as to the exercise of any of the powers delegated, or as to time or circumstances.
- 57.5 Notwithstanding any delegation under this Rule, the Board may continue to exercise all or any of the powers delegated.

## **58 EXERCISE OF DELEGATED POWER BY DIRECTORS**

- 58.1 Where a power is exercised by a Director (either alone or with other Directors) and the exercise of the power is evidenced in writing, signed by the Director in the name of the Board or in the Director's own name on behalf of the Board, then the power shall be deemed to have been exercised by the Board. This is so whether or not a resolution delegating the exercise of the power to the Director was in force when the power was exercised, and whether or not any conditions or limitations referred to in **Rule 57.4** were observed by the Director exercising the powers.

- 58.2 An instrument purporting to be signed by a Director shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Mutual under seal. Furthermore, until the contrary is proved, it shall be deemed to be an instrument signed by a delegate of the Board under Section 178 of the Co-operatives National Law.
- 58.3 A committee may elect a chairperson of their meetings. If no such chairperson is elected, or, if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, then the Members present may choose one of their number to be chairperson of the meeting.
- 58.4 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Members of the committee present and voting and in case of an equality of votes the chairperson shall have a second or casting vote.

## **59 REMOVAL OF DIRECTOR FROM OFFICE**

- 59.1 The Mutual may in accordance with Section 180 of the Co-operatives National Law and by ordinary resolution, remove any Director before the expiration of the Director's period of office, and may by a simple majority appoint another person in place of the Director. The person so appointed shall retire at the same time as the removed Director would have done if not removed.

## **60 VACATION OF OFFICE OF DIRECTOR**

- 60.1 A Director vacates office in such circumstances (if any) as are provided in Section 179 of the Co-operatives National Law, the Rules of the Mutual and in any of the following cases:
- (a) if the person is an insolvent under administration (as defined under the Corporations Act);
  - (b) if the person is mentally incapacitated or the subject of an order under a law of another State or of a Territory relating to mental health;
  - (c) if the person has been convicted of an offence and that conviction disqualifies a person from being a Director, as provided by Section 181 of the Co-operatives National Law;
  - (d) if the person is prohibited from managing corporations under Part 2.6D of the Corporations Act;
  - (e) if the Director absents himself/herself from three consecutive ordinary meetings of the Board without its leave;
  - (f) if the Director resigns from office by notice in writing given by the Director to the Mutual;
  - (g) if the Director is removed from office by ordinary resolution of the Mutual;
  - (h) if the person ceases to hold the qualification by reason of which the person was qualified to be a Director;
  - (i) if the Director becomes an employee of the Mutual;
  - (j) if an administrator of the Mutual's affairs is appointed under Division 2 of Part 4.1 of the Co-operatives National Law;

- (k) if the Director is directly or indirectly interested in any contract or proposed contract with the Mutual and fails to declare his/her interest as required under Section 208 of the Co-operatives National Law; and
- (l) if the Director is removed from office, by a voluntary administrator of the Mutual appointed under Part 5.3A of the Corporations Act, as applying under Section 382 of the Co-operatives National Law.

## **61 CASUAL VACANCY**

- 61.1 The Board may appoint a person to fill a casual vacancy (including a vacancy created under **Rule 60**) in the office of Director until the next annual general meeting.

## **62 ALTERNATE DIRECTORS**

- 62.1 Any Director may from time to time apply, in writing, for any Active Member (other than an employee of the Mutual, the auditor or a partner or employer or employee of the auditor) to be appointed by the Board as an alternate Director to sit in the Director's place on the Board.
- 62.2 An alternate Director appointed by the Board shall be entitled to notice of meetings of the Directors and, in the absence of the nominating Director, to attend and vote at those meetings and to sign resolutions and to exercise such powers, authorities and discretions as are vested in or would otherwise be exercisable by the nominating Director.
- 62.3 An alternate Director shall vacate office if the nominating Director ceases to be a Director or on a majority of the other Directors removing him from office.
- 62.4 An appointment or removal under this Rule must be in writing and notice thereof must be served on the alternate Director and the appointment or removal shall take effect forthwith upon the service thereof. Service of any such notice may be effected in accordance with **Rule 78**.
- 62.5 An alternate Director whilst acting in the absence of the nominating Director shall not be an agent of the nominating Director and the nominating Director shall not be liable for the actions of the alternate Director.
- 62.6 The remuneration of any such alternate Director shall be payable out of the remuneration payable to the nominating Director and shall consist of such portion of the last mentioned remuneration as shall be agreed between the alternate Director and the nominating Director. The attendance of the alternate Director at any meeting of the Board shall be deemed to be attendance by the nominating Director.
- 62.7 For purposes of this Rule a meeting of the Directors shall include a meeting conducted pursuant to **Rule 54**.

## **63 OTHER COMMITTEES**

- 63.1 The Board may by resolution appoint committees comprising of Members or other persons or both, to act in an advisory role to the Board and to any committees of Directors.
- 63.2 The provisions of **Rules 58.3** and **58.4** apply to committees appointed under this Rule, subject to any variations approved of by the Board.
- 63.3 The quorum for any meeting of the committee shall be one-half (or where one-half is not a whole number the whole number next higher than one-half) of the number of Members in the committee.

**64 MINUTES OF MEETINGS**

- 64.1 The Board shall have minutes of meetings made in books provided for the purpose, and, in particular:
- (a) of all appointments of officers and employees made by the Directors;
  - (b) of the names of the Directors present at each meeting of the Board and of any committee of the Board;
  - (c) details of every declaration under Division 5 of Part 3.1 of the Co-operatives National Law of interests of Directors made at a meeting; and
  - (d) of all resolutions and proceedings at all meetings of the Mutual and of Directors and of committees of Directors.
- 64.2 Minutes must be recorded in the minute book within 28 days of the date of the meeting to which they relate.
- 64.3 The confirmation of such minutes, signed by the chairperson, shall be taken as the first business at the next succeeding meeting of the Mutual, Board or committee to which the minutes relate. If it is impracticable for the minutes to be confirmed at that meeting, then the minutes shall be confirmed at the next succeeding meeting.
- 64.4 Every Director present at any meeting shall sign their name in a book to be kept for that purpose.
- 64.5 The minutes are to be kept in the English language.

**65 OFFICERS**

- 65.1 Without prejudice to the general powers conferred on the Board by the Co-operatives National Law or these Rules, the Board shall have power to appoint, remove or suspend officers, servants, agents and contractors, and to fix their powers, duties and remuneration.

**66 APPOINTMENT OF SECRETARY**

- 66.1 The Board shall appoint a Secretary who shall perform all the functions and duties required by the Co-operatives National Law, the Regulations, the Rules and the law to be performed or undertaken by the Secretary of the Mutual.
- 66.2 A Secretary shall:
- (a) be appointed to the office on such terms and conditions as the Board may determine; and
  - (b) hold office until death, or removed by the Board, or resignation from office.

**67 INSURANCE**

- 67.1 The Board shall arrange insurance against loss, damage to or liability of the Mutual by reason of fire, accident or otherwise.
- 67.2 The Board shall where possible obtain adequate public liability and occupiers liability insurance and any other insurance the Board considers appropriate for the protection of the Mutual, its assets and funds on behalf of the Mutual.
- 64.3 Subject to the Co-operatives National Law, the Mutual must take out directors' and officers' indemnity insurance.

**68 FINANCIAL YEAR**

68.1 The Financial Year of the Mutual shall end on 30 June.

**69 ACCOUNTS**

69.1 The Board shall have prepared the accounts, statements and Directors' report in accordance with the Corporations Act and Section 284 of the Co-operatives National Law.

69.2 The Board shall submit those accounts, statements and report, together with the auditors' report on those accounts, to the annual general meeting of the Mutual, in accordance with the Corporations Act and Sections 284 and 287 of the Co-operatives National Law.

69.3 The Board shall also have a copy of everything required to be submitted under **Rule 69.2** displayed at the registered office of the Mutual for a period of not less than 14 days before the date of the annual general meeting of the Mutual.

69.4 The Board shall send a copy of everything required to be submitted under **Rule 69.2** to each Member with the notice of the annual general meeting of the Mutual.

69.5 Notwithstanding anything else in this Rule, the Mutual must provide a hard copy or an electronic copy of everything required to be submitted under **Rule 69.2** to the Members within five months of the end of the Financial Year in accordance with Section 284 of the Co-operatives National Law.

69.6 The Mutual shall lodge an annual return with the Registrar for each Financial Year within five months after the end of the Financial Year in accordance with Clause 3.14 of the Regulations.

**70 BANKING**

70.1 The Board shall have a banking account or accounts in the name of the Mutual, into which all moneys received shall be paid as soon as possible after receipt.

70.2 All cheques drawn on such accounts and all drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the Mutual, shall be signed by two Directors or by any two persons authorised by the Board.

**71 APPOINTMENT, DUTIES AND RESPONSIBILITIES OF AUDITORS**

71.1 One or more auditors shall be appointed, hold office, be remunerated, be removed and have qualifications, duties and responsibilities as provided in these Rules or as otherwise provided in, or permitted by, the Corporations Act and Section 316(1) of the Co-operatives National Law.

71.2 At each annual general meeting, if there is a vacancy in the office of auditor, the Mutual shall appoint an auditor to fill the vacancy.

71.3 An auditor appointed under **Rule 71.2** shall hold office until death or removal or resignation from office or until ceasing to be capable of acting as auditor in accordance with the Corporations Act as adopted by Section 300 of the Co-operatives National Law.

71.4 The Board shall fill any vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office, within one Month of such vacancy occurring, unless the Mutual at a general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as Auditor of the Mutual pursuant to this



paragraph holds office, subject to the Corporations Act and Section 301 of the Co-operatives National Law until the next Annual General Meeting of the Mutual.

- 71.5 While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.
- 71.6 The Mutual or the Board shall not appoint as auditor a person who has not consented in writing to the appointment or who has withdrawn such consent, or a person of whose nomination notice has not been given in accordance with the Corporations Act and Section 302 of the Co-operatives National Law.
- 71.7 A person is not qualified to be appointed auditor of the Mutual if:
- (a) the person is not a registered company auditor;
  - (b) the person or corporation in which the person is a substantial shareholder, is indebted to the Mutual (or to a subsidiary corporation of the Mutual) for an amount exceeding \$ 5,000; or
  - (c) the person is:
    - (i) an officer of the Mutual;
    - (ii) is a partner, employer or employee of an officer of the Mutual;
    - (iii) is a partner of an employee of an officer of the Mutual; or
    - (iv) is an employee of an employee of an officer of the Mutual.
- 71.8 A firm is not qualified to be appointed auditor of the Mutual unless:
- (a) at least one Member of the firm is a registered company auditor who is ordinarily resident in New South Wales;
  - (b) no Member of the firm or corporation in which the firm is a substantial shareholder, is indebted to the Mutual (a subsidiary of the Mutual) for an amount exceeding \$5,000; and
  - (c) no Member of the firm is:
    - (i) an officer of the Mutual;
    - (ii) is a partner employer or employee of an officer of the Mutual;
    - (iii) is a partner of an employee of an officer of the Mutual;
    - (iv) is an employee of an employee of an officer of the Mutual; and
    - (v) no officer of the Mutual receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.
- 71.9 All reasonable fees and expenses of the auditor are payable by the Mutual.
- 71.10 The Board shall enable the auditor to have access to all books, accounts, vouchers, securities and documents of the Mutual, and to be furnished with such information and explanation by the Board Members or any other officers as may be necessary for the performance of the duties of the auditor.
- 71.11 The auditor is entitled to attend any general meeting of the Mutual and to receive all notices of and other communications relating to any general meeting which any

Member of the Mutual is entitled to receive. The auditor is also entitled to be heard, at any general meeting which the auditor attends, on any part of the business of the meeting of concern to the auditor.

## **72 REMOVAL OF AUDITORS**

- 72.1 The auditor may be removed from office by resolution at a general meeting.
- 72.2 Notice of intention to move the resolution must be given to the Mutual not less than two months before the meeting at which the resolution is moved, but if, after notice has been given, a meeting is convened for a date two months or less after notice has been given, notice shall be deemed to have been properly given.
- 72.3 Where special notice of a resolution to remove an auditor is received by the Mutual, it shall as soon as possible send a copy of the notice to the auditor and lodge a copy of the notice with the Registrar.
- 72.4 The Mutual shall give notice of a resolution to remove the auditor to persons entitled to be given notice of a meeting of the Mutual at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give notice of the resolution to them in any manner allowed by these Rules not less than 14 days before the meeting.
- 72.5 Within seven days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the Mutual and request that before the meeting at which the resolution is to be considered, a copy of the representations be sent by the Mutual at its expense to every Member of the Mutual to whom notice of the meeting is sent.
- 72.6 Unless the Registrar on the application of the Mutual otherwise orders, the Mutual shall send a copy of the representations in accordance with the auditor's request. The auditor may require that the representations be read out at the meeting and may also speak at the meeting.
- 72.7 Within 14 days after the removal from office of an auditor of the Mutual or the receipt of a notice of resignation from an auditor of the Mutual, the Mutual must lodge with the Registrar a notice of the removal or resignation in the approved form.

## **73 RESIGNATION OF AUDITOR**

- 73.1 The auditor may, by notice in writing given to the Mutual, resign as auditor of the Mutual if:
- (a) the auditor has, by notice in writing given to the Registrar, applied for consent to resign and stated the reasons and, at or about the same time, notified the Mutual in writing of the application; and
  - (b) the auditor has received the consent of the Registrar.
- 73.2 The resignation of the auditor takes effect:
- (a) on the date (if any) specified for the purpose in the notice of resignation;
  - (b) on the date on which the Registrar consents to the resignation; or
  - (c) on the date (if any) fixed by the Registrar for the purpose, whichever last occurs.
- 73.3 Within 14 days after the removal from office of the auditor or after the receipt of a notice of a resignation from an auditor, the Mutual shall lodge with the Registrar a

notice of the removal or resignation on the prescribed form, and, where there is a trustee for the holders of debentures of the Mutual, give to the trustee a copy of the notice lodged with the Registrar.

#### **74 MUTUAL FUNDS**

74.1 The income and property of the Mutual however derived shall be applied solely towards the promotion of the objects of the Mutual and no portion thereof shall be paid or transferred directly or indirectly by way of discount, rebate or otherwise by way of profit to the Members of the Mutual.

74.2 Payment shall be made in good faith for:

- (a) any commensurate remuneration of any Member or servant of the Mutual or other person in return for any services actually rendered to the Mutual; or
- (b) reasonable interest on money lent or reasonable or proper rent for property or premises demised, or let by any Member to the Mutual.

74.3 Any surplus resulting from the Mutual's operation during a Financial Year, after providing for depreciation in value of the Mutual's property or for contingent liability for loss, shall be applied to carrying out the Mutual's objects.

74.4 An amount not exceeding five percent of the surplus may be applied to any charitable purpose, or for promoting co-operation or any community advancement object.

#### **75 PROVISION FOR LOSS**

75.1 The Board shall make such provisions for loss which may result from the transactions of the Mutual as the Co-operatives National Law requires or allows.

#### **76 TRANSFER AND TRANSMISSION OF DEBENTURES**

76.1 On the written request of the transferor (the giver) of a debenture, the Mutual must enter in the appropriate register the name of the transferee (the receiver) in the same way and on the same conditions as if the application for entry were made by the transferee.

76.2 If the Mutual refuses to register a transfer of debentures, it must, within 28 days after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

76.3 An instrument of transfer of a debenture must be executed by or on behalf of the transferor and the transferee. The transferor is taken to remain the holder of the debenture until the debenture in the name of the transferee is entered in the register of debentures.

76.4 The Board may decline to recognise an instrument of debenture and may decline to register a debenture unless:

- (a) a fee of \$50 (or a lesser amount decided by the board) is paid to the Mutual for the transfer of registration;
- (b) the instrument of transfer is accompanied by the relevant debenture(s) and any other evidence the Board reasonably requires (in particular, evidence showing the right of the transferor to make the transfer); and
- (c) any government stamp duty payable is paid.

76.5 Debentures must be transferred in a form approved by the Board.

**77 DISPUTES**

- 77.1 If a Dispute arises a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with this Rule except where the person seeks urgent interlocutory relief.
- 77.2 A Disputes Committee may be asked to advise the Board in relation to any Dispute.
- 77.3 The Disputes Committee will comprise of two independent people, one appointed by each party to the Dispute (Disputes Committee).
- 77.4 The Disputes Committee may not consider any matter or issue otherwise than on the application of either:
- (a) a Member (or Members) of the Co-operative; or
  - (b) a Member (or Members) of the Board
- 77.5 The application shall:
- (a) be in writing;
  - (b) be signed by the applicant; and
  - (c) be in a form (if any) prescribed by the Board,
- and provide in relation to the matter (or issue) which is the subject of the Dispute:
- (d) an accurate description of any affected Landholding;
  - (e) the nature of the Dispute and the date on which the Dispute commenced;
  - (f) copies of any correspondence, notices, plans, data or other information which may be directly relevant to the matter or issue;
  - (g) a succinct statement of the result, remedy or outcome sought by the applicant; and
  - (h) a succinct statement of the basis upon which the applicant believes that result, remedy or outcome to be just and reasonable.
- 77.6 The Disputes Committee may request additional information by notice in writing from the applicant, from the Board, or from another Member. The applicant, the Board or that other Member shall provide that information (subject to rights or privileges and to the law relating to secrecy and confidential information) to the Committee which has requested that information within the time prescribed in the notice (or otherwise within a reasonable time).

**78 NOTICES**

- 78.1 A notice may be given by the Mutual to any Member either personally or by sending it by post to the Member's registered address, or where the Member has notified the Mutual of a facsimile number, by facsimile transmission to the number notified. If the Member has no registered address then the notice can be sent to any address supplied by the Member to the Mutual for the giving of notices.
- 78.2 A notice must be in writing in order to be effective.
- 78.3 Where a notice is sent by post, service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice. In the case of a

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

78.4 If a Member has no registered address (and has not supplied to the Mutual an address for the giving of notices) a notice addressed to the Member and advertised in the newspaper circulating in the neighbourhood of the registered office of the Mutual shall be deemed to be duly given to the Member on the date on which the advertisement appears.

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

78.6 For the purpose of this Rule "registered address" means the address of the Member as appearing in the register of Members and shares.

## **79 WINDING UP**

79.1 The winding up of the Mutual shall be in accordance with Part 4.5 of the Co-operatives National Law.

79.2 If on the winding up or dissolution of the Mutual there remains after the satisfaction of all its debts and liabilities any property, this shall not be paid or distributed amongst the Members of the Mutual but shall be given or transferred to an institution:-

- (a) which has objects similar to those of the Mutual;
- (b) whose constitution prohibits the distribution of its property among its Members; and
- (c) which has been chosen by the Members of the Mutual at or before the time of dissolution or in default thereof by the Chief Judge of such Court as may have or acquire jurisdiction in the matter.

79.3 In **Rule 79.2**, the expression "institution" includes an institution or institutions.

## **80 FINES PAYABLE BY MEMBERS**

80.1 The Board may impose on a Member maximum fine of \$1,000 for any infringement of the Rules.

80.2 A fine shall not be imposed on a Member pursuant to **Rule 80.1** unless:

- (a) written notice of intention to impose the fine and the reason for it has been given to the Member; and
- (b) the Member has been given a reasonable opportunity to appear before the Board in person (with or without witnesses), or to send to the Board a written statement, for the purpose of showing cause why the fine should not be imposed.

## **81 SCHEDULE OF CHARGES**

81.1	Copy book of Rules:	\$20 (max)	<b>Rule 2.5</b>
81.2	Copy of Register:	\$50 (max)	<b>Rule 12.2</b>

81.3	Transfer of Debentures:	\$50 (max)	<b>Rule 76.4(a)</b>
81.4	Access Fee:	As determined by the Board	<b>Rule 20.4</b>
81.4	Termination Fee	As determined by the Board	<b>Rule 20.4</b>
81.5	Maximum Fine:	\$1,000	<b>Rule 80.1</b>

**SCHEDULE 1  
PROXIES**

**COLEAMBALLY IRRIGATION MUTUAL CO-OPERATIVE LIMITED**

I/We, ..... (Name)

Of..... (Address)

being a Member/s of the Mutual hereby appoint

..... (Name)

Of..... (Address)

as my/our proxy, to vote for me/us and on my/our behalf at the

\*annual general meeting of the Mutual/

\*special general meeting of the Mutual,

to be held on the .....day of..... (month) ..... (year)

and at any adjournment of that meeting.

= This form is to be used \*in favour/\*against the resolution:

Signed this .....day of..... in the year .....

\* Strike out whichever is not applicable.

= To be inserted if desired