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RULES
OF
COLEAMBALLY IRRIGATION CO-OPERATIVE LIMITED

Registered under the Co-operatives National Law

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DIVISION 1 - INTRODUCTION

1 INTERPRETATION

1.1 In these Rules, unless the context otherwise requires:

Access Fee means the annual fixed charge for the right to on-going access to water delivery services. The fee is determined by the Board in accordance with **Rule 120** and calculated on the basis of the Delivery Entitlements held by the Member, irrespective of whether water is actually delivered to the Member.

Access Licences means any or all of the access licences held by the Co-operative of the type referred to in section 56 of the Water Management Act.

Active Member means a Member who is in Active Membership within the meaning of **Rule 9.2** and **Active Membership** means the state of being an Active Member of the Co-operative.

Actuarial Valuation Report means the Review of Strategic Asset Allocation and Annual Levy prepared from time to time by Mercer Consulting (Australia) Pty Ltd ABN 55 153 168 140 or if this report ceases to be prepared, any replacement report selected by the Sinking Fund Committee.

Alter or a similar word or expression, used in relation to a Rule amendment, includes "add to", "substitute" and "rescind".

Annual Allocation Determination means the determination by the Board of the percentage of the aggregate of all Water Entitlements that will be made available for distribution by the Co-operative through the System in a Season. The Board may make Annual Allocation Determinations from time to time in accordance with any Available Water Determinations.

Annual Allocation Water means the amount of volumetric water that is made available to a Water Entitlement Holder in an Available Water Account for supply or trade in the Season, based on the Water Entitlements the person holds. The amount is calculated in accordance with any Annual Allocation Determinations made by the Board.

Applicant for Transformation means a Water Entitlement Holder who has applied to the Co-operative to have Water Entitlements transformed to a Share Component of a Water Access Licence.

Area of Operations has the meaning given to that term in the Operating Licence.

Asset Maintenance Fund means the reserve fund established by the Co-operative under **Rule 120.3(d)(i)**.

Auditor means auditor or auditors for the time being of the Co-operative appointed pursuant to **Rule 125.1**.

Australian Consumer Law means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Available Water means the amount of volumetric water that is available to a Member or a Non-Member Water Entitlement Holder at that time for supply or trade. The amount is the amount that remains of the sum of any Annual Allocation Water, any Carryover Allocation Water, any Transfers of Available Water, and any distribution of additional water. In these Rules, the term Available Water does not

have a corresponding meaning to 'Available Water Determination' in the Water Management Act.

Available Water Account means the ledger account for a Member or a Non-Member Water Entitlement Holder that records the person's Available Water at any given time.

Available Water Determination has the same meaning as in the Water Management Act.

Banking account includes an account with any financial institution into which the Co-operative's monies may be paid.

Board means the whole of or any number of the Directors assembled at a meeting of the Directors or transacting business in accordance with **Rule 69**, being not less than a quorum or a majority, as the case may be.

Business Day means a day other than a Saturday, Sunday or gazetted public holiday in New South Wales.

By-Laws means the by-laws passed by the Board from time to time pursuant to **Rule 136**.

Capital means Share capital.

Carryover Allocation Water means the amount of volumetric water that the Water Entitlement Holder is allowed to carry over from the previous season in accordance with the relevant Water Sharing Plan.

CERC means the Community Environmental and Reference Committee referred to in **Rule 74**.

Certificate of Delivery Entitlements means the certificate evidencing the Member's Delivery Entitlements as provided by the Co-operative under **Rule 98**.

Certificate of Shares means a certificate referred to under **Rule 12** evidencing the Shares in the Co-operative and the Farm Number of the Member, and may be in the form of a certificate, letter of allotment, transfer receipt or other document of title to Shares.

Certificate of Water Entitlements means the certificate evidencing the Water Entitlement Holder's Water Entitlements as provided by the Co-operative under **Rule 98**.

Claim includes any claim, legal action or demand.

Consequential Loss means any special or indirect loss or damage, including loss of profits, loss of opportunity, or any other loss or damage which is not a loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach or other act or omission, whether or not the loss or damage was in the contemplation of the parties at the time when they entered into the Rules.

Contribution Notice means a notice given by the Co-operative advising the Contributions due from the Member for the period to which the notice relates.

Contributions mean contributions by Members and include Access Fees, Outlet Charges, Fixed Charge Equivalents, Peak Flow Charges, Levies, Government Water Charges, Termination Fees and Sinking Fund Levies.

Conveyance Access Licence efficiency savings mean the estimated amount of conveyance water that, as a result of efficiency measures, is not lost from the System.

Co-operative means Coleambally Irrigation Co-operative Limited.

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

Corresponding Annual Allocation Water means the Annual Allocation Water to which the Water Entitlement Holder is entitled in respect of the Water Entitlement to which reference is made.

Delivery Entitlement means a right to have water delivered by the Co-operative to a specified Member's Outlet at a specified Landholding, as indicated by a Certificate of Delivery Entitlements and evidenced by an entry in the Register of Members. One Delivery Entitlement confers the right to delivery of up to one Megalitre of volumetric water from the Member's Available Water Account.

Delivery Entitlement Number (DEN) means the number assigned to an individual Delivery Entitlement.

Director means any Director of the Co-operative for the time being and includes an alternate Director referred to under **Rule 65**.

Dispute means any dispute which may arise between any two or more Members or any Member and the Co-operative.

Diversion Point means any location from which the Co-operative takes its supply of water from the Ministerial Corporation pursuant to its Access Licences.

Environment Protection Licence means the licence issued to the Co-operative under section 42 of the *Protection of the Environment Operations Act 1997* (NSW).

Farm Number means a unique number entered in the Register used to identify a Landholding.

Financial year means the financial year of the Co-operative as specified in **Rule 122**.

Fixed Charge Equivalent means the fee charged for access to water delivery services by a Member over and above the access to which the Member is entitled as a result of the number of Delivery Entitlements the Member holds. The fee is determined by the Board in accordance with **Rule 120** and calculated on the basis of metered usage in excess of entitlement.

Government Water Charges means the amounts payable in respect of:

- (a) a Water Entitlement, based on the recovery of the fees payable by the Co-operative to governments or governmental bodies in connection with its Access Licences, which may be different for different classes of Water Entitlements; and

- (b) the volume of water delivered to a Landholding, based on the recovery of fees payable by the Co-operative to governments or governmental bodies in connection with the delivery of water to the Co-operative.

IAC means the Independent Anomalies Committee referred to in **Rule 131.2**.

Joint Landholder means, in relation to a Landholding, any person who holds an interest in land with another person either as a joint tenant or tenant in common.

Landholder means:

- (a) the registered proprietor (or joint registered proprietors) of a Landholding connected to the System; or
- (b) the holder of a perpetual Crown lease connected to the System; or
- (c) any mortgagee, charge or encumbrance of the Landholding, who has entered into and is in possession of the whole of the Landholding.

Landholding means in respect of a Member a parcel of land individually identified by a Farm Number in the Register connected to the System.

Levy means an amount determined by the Board with regard to the compliance, monitoring and reporting against the obligations placed on the Co-operative by State and Federal agencies through legislation and licence compliance.

Licences means the Operating Licence, all Access Licences issued in accordance with the Water Management Act, the Combined Works and Use Approvals Licence and Environment Protection Licence and other authorities lawfully required by the Co-operative to permit it to carry on business as an irrigation corporation in accordance with the Water Management Act.

Lien includes a lien over any form of property.

Loss includes any damage, loss, liability or cost of any kind and however arising (including as a result of any Claim), including penalties, fines and interest but does not include Consequential Loss.

LPI means the Land and Property Information register of the NSW Land and Property Management Authority or its successors.

MEERA Report means the Coleambally Irrigation MEERA Valuation Report prepared from time to time by Jacobs Group (Australia) Pty Limited ABN 37 001 024 095 or if this report ceases to be prepared, any replacement report selected by the Sinking Fund Committee.

Megalitre means one million litres.

Member means a Member of the Co-operative and **Membership** means the state of being a Member of the Co-operative.

Member's Delivery Entitlements means, in respect of any Member, the Delivery Entitlements shown in the Register of Members from time to time as being held by that Member.

Member's Outlet means the Work(s) specified in the Register from which a Member may, subject to the Rules, take its supply.

Ministerial Corporation means the Water Administration Ministerial Corporation constituted by section 371 of the Water Management Act.

Month means calendar month.

Mutual means Coleambally Irrigation Mutual Co-operative Limited.

Non-Member Water Entitlement Holder means a Water Entitlement Holder who is not a Member of the Co-operative.

Non-Member Water Entitlement Holder Contract means the agreement of that name as approved from time to time by the Board.

Non-Member Water Supply Contract means the agreement of that name as approved from time to time by the Board.

Operating Licence means the operating licence held by the Co-operative pursuant to section 122 of the Water Management Act.

Outlet Charge means the amount payable in respect of a Member's Outlet, which may be different for different classes of Member's Outlets.

Peak Flow Charge means a charge per Megalitre in respect of the maximum flow rate that a Member can order (in Megalitres per day) through an outlet (excluding horticulture and smaller outlets).

Personal Information has the meaning given to it in the *Privacy Act 1988* (Cth).

Postal Ballot includes a special postal ballot.

Privacy Policy means the privacy policy of the Co-operative to be found at <https://www.colyirr.com.au/privacy-policy> as amended from time to time.

Refurbishment means repairs that extend the life of a fixed asset.

Register of Cancelled Members means the register maintained by the Co-operative in accordance with **Rule 14.4**.

Register of Members means the register maintained by the Co-operative pursuant to the Co-operatives National Law that includes details of Shares, Delivery Entitlements and any Water Entitlements held by Members, in accordance with **Rule 15**.

Register of Non-Member Water Entitlement Holders means the register maintained by the Co-operative that includes details of Non-Members' interests and dealings in Water Entitlements, in accordance with **Rule 16**.

Registered Office means the Registered Office from time to time of the Co-operative.

Registrar means the Registrar of Co-operatives or any person to whom the Registrar's functions have been delegated.

Regulations means the Regulations made under the Co-operatives National Law.

Relevant Interest has the same meaning given to that term in Schedule 2 of the Co-operatives National Law.

Reserves means the reserves referred to in **Rule 120.3(d)**.

Rules mean the registered Rules of the Co-operative as amended from time to time, including the Water Supply Rules, and reference to particular Rules has a corresponding meaning.

Seal means the common seal or official seal from time to time of the Co-operative.

Season means the period from 15 August in any calendar year to 15 May in the following calendar year or such other period as may be determined by the Board and notified to Members from time to time.

Secretary means any person appointed under **Rule 77** to perform the duties of Secretary of the Co-operative.

Security means the security that the Co-operative may, in accordance with the Water Market Rules, require an Applicant for Transformation to provide for the payment of fees or charges for access to the Co-operative's network for the delivery of water to the Applicant after Transformation.

Share means a share in the Capital of the Co-operative. A reference to Share includes all existing Shares, whether part of the original Capital or not.

Share component means the share component of an available water resource as defined in section 56 of the Water Management Act.

Sinking Fund means the fund established by the Co-operative under **Rule 126.15(a)**.

Sinking Fund Committee means the committee established under **Rule 126**.

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

Special resolution means a resolution which is passed in accordance with **Rule 55**.

State means the State of New South Wales.

System means the system constituted by the Works of the Co-operative for the supply, storage and drainage of water in accordance with the Licences.

Terminating Irrigator means a Member who surrenders the whole or a part of the Member's Delivery Entitlements and the rights and obligations associated with those Delivery Entitlements.

Termination means the surrender of the whole or a part of a Member's Delivery Entitlements.

Termination Fee means a fee payable to the Co-operative for or in respect of the termination or surrender of the whole or a part of a right of access to the Co-operative's irrigation network 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).

Term Transfer means the annual lease of Water Entitlements.

Transformation means the transformation of all or part of a Water Entitlement Holder's Water Entitlements to a share component of a Water Access Licence in

accordance with the Water Market Rules, and **Transformed** will have a corresponding meaning.

Variable Contributions, if charged, means the amount determined by the Board for each Season to be contributed by the Member for each Megalitre or part thereof of water passing through the Member's Outlet.

Water Access Licence means a Water Access Licence issued under section 63 of the Water Management Act.

Water Act means the *Water Act 2007* (Cth).

Water Entitlement means a contractual right to beneficial title to a unit share on the Co-operative's Access Licences, as indicated by a Certificate of Water Entitlements and evidenced by an entry in the Register of Members or Register of Non-Member Water Entitlement Holders. One Water Entitlement confers a right to the benefits from one unit share on the Co-operative's Access Licences.

Water Entitlement Holder means a person (who may or may not be a Member) who holds Water Entitlements against the Co-operative's Access Licences, as evidenced by an entry in the Register of Members or the Register of Non-Member Water Entitlement Holders.

Water Entitlement Number (WEN) means the number assigned to an individual water entitlement by which a search can be conducted on the National Irrigation Corporations Water Entitlement Register.

Water Management Act means the *Water Management Act 2000* (NSW).

Water Management Rules means By-Laws made by the Board in accordance with **Rule 136**, to govern the Co-operative's conduct and dealings with Members and Non-Member Water Entitlement Holders in relation to water delivery and distribution, including but not limited to management of water delivery in times when water availability is restricted.

Water Market Rules means the Water Market Rules pursuant to section 97 of the Water Act.

Water Supply Rules means the Water Supply Rules set out in **Division 8** of these Rules (formerly the Water Supply Contract).

Water Trading Rules means the Water Trading Rules set out in **Division 9** of these Rules.

Works includes any dam, levee, bank, reservoir, weir, flume, channel (whether an artificial channel or natural channel artificially improved), cutting, drain, excavation, tunnel, pipe, sewer, bridge, culvert, fence, pumping plant, machinery, bore and any appliance.

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

Year means the Co-operative's financial year.

1.2 References to the Corporations Act are as adopted under the Co-operatives National Law.

- 1.3 Words:
- (a) importing one gender include the other gender;
 - (b) importing persons include corporations and other bodies corporate;
 - (c) in the singular include the plural, and vice versa;
 - (d) or expressions used have the same meanings as those given to them in the Act.
- 1.4 A reference in these Rules to an Act includes a reference to:
- (a) that Act as originally enacted, and as amended from time to time since its original enactment; and
 - (b) if that 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.
- 1.5 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 the interpretation that will best achieve the purpose of the Rule is to be preferred to any other interpretation. This provision applies whether or not the purpose is expressly stated in the Rule.
- 1.7 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 have the effect of a contract under seal:
- (a) between the Co-operative and each Member;
 - (b) between the Co-operative and each Director, the principal executive officer and the Secretary of the Co-operative; and
 - (c) between a Member and each other Member.
- 2.2 Under the contract referred to in **Rule 2.1**, each of those persons agrees to observe and perform the provisions of the Rules as in force from time to time so far as those provisions are applicable to that person.

- 2.3 The Rules may be altered:
- (a) by a special resolution;
 - (b) by a resolution of the Board in accordance with section 62 of the Co-operatives National Law; or
 - (c) otherwise as permitted by the Co-operatives National Law.
- 2.4 An alteration to the Rules does not take effect unless and until it is registered by the Registrar.
- 2.5 Where any Rule is altered by way of a Board resolution under section 62 of the Co-operatives National Law, the Co-operative 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 Co-operative, following the registration of the alteration.
- 2.6 Any Member is entitled to obtain from the Co-operative a copy of the Rules upon payment of a sum of \$20 or such other amount as the Board may determine from time to time.

3 **NON-DISTRIBUTING CO-OPERATIVE**

- 3.1 The Co-operative 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 Co-operative is:

COLEAMBALLY IRRIGATION CO-OPERATIVE LIMITED

- 4.2 The Co-operative may change its name in accordance with section 224 of the Co-operatives National Law.

DIVISION 2 - POWERS

5 **POWERS**

- 5.1 The Co-operative has, both within and outside the State:

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

- 5.2 The powers of the Co-operative to:

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

must be exercised subject to the Co-operatives National Law and **Rule 54.1(I)**, but are otherwise unlimited by the Rules.

- 5.3 In addition the Co-operative has power to:
- (a) borrow or raise money by any means, including issuing debentures and subordinated debt;
 - (b) enter into financial arrangements;
 - (c) secure by mortgage or otherwise the payment of moneys by any person including, but not limited to, the granting of security by way of legal or equitable mortgage upon the undertaking of the Co-operative or upon all or any part of the property and rights (both present and future) of the Co-operative, including subscriptions, payment of financial accommodation and other moneys, or by the issue of bonds; and
 - (d) promote and carry out any charitable undertaking.
- 5.4 Without limiting the provisions of this **Rule**, and subject to the provisions of the Co-operatives National Law, the Co-operative has power to:
- (a) form or participate in the formation of a body corporate or unit trust;
 - (b) acquire interests in, sell or otherwise dispose of interests in, bodies corporate, unit trusts and joint ventures; and
 - (c) form or enter into a partnership, joint venture or other association with other persons or bodies,
- in order to further the Co-operative's primary activity.

6 **LIEN, CHARGE AND SET OFF**

- 6.1 The Co-operative has, in respect of any debt due from a Member or former Member to the Co-operative, a Lien on each of the following:
- (a) the Shares, credit balance and deposits of a Member or former Member; and
 - (b) any interest payable to a Member or former Member for a loan by the Member to the Co-operative, pursuant to section 343 of the Co-operatives National Law; and
 - (c) any entry fees, regular subscriptions and/or Contributions required to be repaid to a Member when the Member ceases to be a Member.
- 6.2 The Co-operative may set off any amount paid on account of that Share or other thing, or any amount credited or payable to such Member or former Member in or towards payment of the debt.
- 6.3 Subject to **Rule 6.4** the Lien may be enforced at any time after 21 days' notice to the Member or former Member. The Lien is to be enforced by appropriation by the Co-operative of the things that are subject to the Lien. Any Share in respect of which capital has been so appropriated must be cancelled.
- 6.4 A Member or former Member must be given an opportunity to make a submission to the Board in relation to a notice issued under **Rule 6.3**.
- 6.5 The Co-operative has, in respect of any debt due from a Member or former Member to the Co-operative, a first-ranking charge on the Water Entitlements and Delivery Entitlements of the Member or former Member.

- 6.6 The Co-operative may sell in such manner as the Board thinks fit, all or any Water Entitlements and Delivery Entitlements in respect of which the Co-operative has a charge. However, no sale may be made:
- (a) unless a sum in respect of which the charge exists remains payable at the date of the sale; and
 - (b) until the expiration of 14 days after a notice in writing has been given to the registered holder of the Water Entitlements or Delivery Entitlements or both, or the person entitled to the Water Entitlements or Delivery Entitlements or both by reason of death or bankruptcy.
- 6.7 The notice under **Rule 6.6(b)** must:
- (a) state and demand payment of such part of the amount in respect of which the charge exists as is payable at the date when the notice is given; and
 - (b) indicate that unless the sum demanded is paid within the time stipulated, the Water Entitlements or Delivery Entitlements or both will be sold by the Co-operative.
- 6.8 Before the Co-operative accepts an offer for the Water Entitlements or Delivery Entitlements or both to be sold, the Board must notify the Member of:
- (a) the receipt of the offer and the amount of the offer; and
 - (b) the Board's intention to accept the offer at the expiration of 14 days if no payment is made before then to the Co-operative of all moneys in respect of which the charge exists.
- 6.9 From the proceeds of this sale the Co-operative may:
- (a) deduct the expenses, if any, associated with the sale; and
 - (b) apply the balance to reduce the liability of the Member.
- If a surplus remains after this deduction and application, the surplus is payable to the Member whose Water Entitlements or Delivery Entitlements or both were sold.
- 6.10 To give effect to the sale the Board may authorise a person to transfer the Water Entitlements or Delivery Entitlements or both sold to the person who bought them.

7 **DEALINGS OF MEMBERS WITH THE CO-OPERATIVE**

- 7.1 The Co-operative 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 Co-operative for a fixed period.
- 7.2 The provisions of the contract may require a Member to:
- (a) sell products through or to the Co-operative; or
 - (b) obtain supplies or services through or from the Co-operative; or
 - (c) pay to the Co-operative specified sums as liquidated damages for any failure to comply with a requirement authorised by this **Rule**.

- 7.3 A sum specified as liquidated damages is to be considered as a debt due to the Co-operative. In respect of this debt the Co-operative has, pursuant to section 127 of the Co-operatives National Law, a Lien on each of the following:
- (a) the Shares, and the credit balance and deposits of the Member or former Member;
 - (b) any interest payable to the Member or former Member for a loan by the Member to the Co-operative, pursuant to section 343 of the Co-operatives National Law; and
 - (c) any entry fees, regular subscriptions and/or Contributions required to be repaid to a Member when the Member ceases to be a Member.
- 7.4 The enforcement of a Lien created under section 127 of the Co-operatives National Law must comply with that section and **Rule 6**.

8 **SUBDIVISION**

- 8.1 A Member will not subdivide a Landholding without the Co-operative's prior written consent.
- 8.2 In its absolute discretion, the Co-operative may withhold its consent to a subdivision of a Landholding or may grant its consent subject to conditions. The Co-operative may consult with the Mutual in relation to any proposed subdivision.
- 8.3 In addition to any other conditions it may impose, the Co-operative will be entitled, in its discretion as a condition to its consent to the subdivision of the Landholding, to cancel the Member's Water Entitlements and issue new Water Entitlements in respect of any one or more of the parcels of land created by the sub-division.

DIVISION 3 – MEMBERSHIP AND SHARES

9 **PRIMARY ACTIVITIES AND ACTIVE MEMBERSHIP OBLIGATIONS**

In accordance with Part 2.6 of the Co-operatives National Law:

- 9.1 The primary activities of the Co-operative are to:
- (a) provide water delivery services;
 - (b) manage and operate irrigation works, assets and infrastructure for the supply of water; and
 - (c) provide such agricultural services as the Board may determine.
- 9.2 In order to establish Active Membership of the Co-operative, a Member must:
- (a) continue to own or lease a Landholding within the Co-operative's Area of Operations capable of accepting delivery of water from the Co-operative's infrastructure;
 - (b) continue to hold a minimum of 10 Delivery Entitlements attached to the Landholding and a minimum of 10 Shares;
 - (c) use or trade a minimum of 10 Megalitres of Available Water from the Member's Available Water Account each Year;

- (d) pay, or undertake to pay in a manner acceptable to the Co-operative, on or before the due date the Contributions determined in accordance with **Rule 120**;
 - (e) not be in breach of any provision of the relevant Water Supply Rules and relevant By-Laws; and
 - (f) be an active member of the Mutual, unless the Mutual is wound up.
- 9.3 The Board may, at its discretion on a case by case basis, consider an application for Membership from a person who is the lessee of a Landholding within the Co-operative's Area of Operations that can accept the delivery of water from the Co-operative's infrastructure, if:
- (a) the Board is reasonably satisfied that the owner of the Landholding has agreed that the Membership, Shares and Delivery Entitlements should be held in the name of and by the Lessee; and
 - (b) the person is otherwise qualified for Membership under this **Rule**.

10 **APPLICATIONS FOR MEMBERSHIP AND APPLICATIONS FOR SHARES**

10.1 Applications for Membership and Shares must be lodged:

- (a) at the Registered Office;
- (b) in the form approved by the Board; and
- (c) together with the amount required to pay for the Shares in full.

10.2 Every application made under **Rule 10.1** must be considered by the Board.

10.3 The Board may, at its discretion, refuse any application for Membership and Shares under **Rule 10.1**. The Board should assign reasons for such refusal, although the Board may choose to withhold reasons if the Board considers it appropriate to do so. Upon refusal, the applicant's deposit must be refunded without interest.

10.4 Applications for Membership and Shares may only be approved by the Board if:

- (a) the applicant is qualified in accordance with **Rule 9** to be a Member of the Co-operative;
- (b) the applicant has made an appropriate contribution (if any) to the Reserves of the Co-operative as determined by the Board; and
- (c) the applicant has applied to the Co-operative for a minimum of 10 Shares and has applied for or otherwise secured a minimum of 10 Delivery Entitlements.

10.5 If the Board approves of the application, the Board must allot the Shares and Delivery Entitlements for which application is made.

10.6 Applications by Members for additional Shares must be lodged:

- (a) at the Registered Office;
- (b) in the form approved by the Board; and

(c) together with the amount required to pay for the Shares in full.

10.7 Every application made under **Rule 10.6** must be considered by the Board.

10.8 The Board may, at its discretion, refuse any application for additional Shares. The Board should assign reasons for such refusal, although the Board may choose to withhold reasons if the Board considers it appropriate to do so. Upon refusal, the applicant's deposit must be refunded without interest.

10.9 Applications for additional Shares may only be approved by the Board if the Member applicant has made an appropriate contribution (if any) to the Reserves of the Co-operative, as determined by the Board. If the Board approves of the application, the Board must allot the Shares for which application is made.

11 **ALLOTMENT OF SHARES**

11.1 If Shares are allotted by the Board in accordance with these Rules:

- (a) the applicant's name;
- (b) the Farm Number;
- (c) the applicant's ABN (if applicable);
- (d) the Water Entitlement Number (**WEN**) (if applicable);
- (e) the Delivery Entitlement Number (**DEN**);
- (f) the number of Shares allotted;
- (g) the number of Delivery Entitlements allotted or otherwise secured;
- (h) the date of allotment;
- (i) the number of Water Entitlements held by the Member (if any);
- (j) details of any mortgages or charges on the Shares;
- (k) any other information required by or under the Co-operatives National Law; and
- (l) any other information required for the National Irrigation Corporation Water Entitlement Register,

must be entered in the Register of Members.

11.2 The applicant must be notified in writing of the allotment of Shares, Delivery Entitlements and of the entry in the Register of Members. The applicant will then be entitled to the privileges attaching to Membership, or to the holding of Shares, or additional Shares, as is appropriate to the case.

12 **CERTIFICATE OF SHARES**

12.1 Every person whose name is entered as a Member in the Register of Members will, without payment, be entitled to a Certificate of Shares under Seal specifying:

- (a) the number of Shares held by the Member and the amount paid on those Shares;

- (b) the Farm Number;
- (c) any other details required by the Co-operatives National Law; and
- (d) any other information required by or under the National Irrigation Corporation Water Entitlements Register.

12.2 In the event of an inconsistency between a certificate (or certificates) and the Register of Members, the Register of Members will prevail.

12.3 Where Shares are held jointly by several persons, the Co-operative is only required to give one certificate. Delivery of a certificate to one of the joint holders is sufficient delivery to all.

12.4 If a certificate, letter of allotment, transfer, receipt or other document of title to Shares is lost, defaced or destroyed, a duplicate may be issued by the Co-operative in accordance with the Co-operatives National Law and on payment of a fee. This fee must not exceed \$50 and must be on such terms as to evidence and indemnity as the Board thinks fit. A replacement certificate will be marked as such.

13 **LIABILITY OF MEMBERS TO THE CO-OPERATIVE**

13.1 A Member, in accordance with section 121 of the Co-operatives National Law, is liable to the Co-operative for the following amounts:

- (a) the amount, if any, unpaid on the Shares held by that Member; and
- (b) any Contributions or charges, including entry fees and regular subscriptions, payable by the Member to the Co-operative as required by the Rules.

13.2 On the death of a Member the Member's Estate is subject to the same liability as the Member would have been liable until the Member's personal representative or some other person is registered in the Member's place.

13.3 The joint holders of a Share are jointly and severally liable in respect of any amount unpaid on Shares and in respect of any charges referred to in **Rule 13.1**.

14 **CANCELLATION OF MEMBERSHIP - INACTIVE MEMBERS**

14.1 The Board must, subject to **Rule 14.2** and 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 Co-operative and have not been known to the Co-operative for a continuous period of at least two years before that date; 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.

14.2 A Member must be given an opportunity to make a submission to the Board in relation to a notice issued under **Rule 14.1**.

14.3 The Board is to declare the Shares of a Member forfeited and subsequently cancelled at the same time as the Member's Membership is cancelled and the cancellation of the Shares must be noted on the Register of Members. The amount due in respect of that cancellation and forfeiture must be dealt with and repaid in

accordance with section 163 of the Co-operatives National Law. The Co-operative may terminate the Member's Delivery Entitlements by giving notice to the Member.

- 14.4 The Co-operative must, in a form approved by the Registrar, keep a register of Memberships cancelled pursuant to **Rule 14.1**. This Register must specify the particulars prescribed in the Regulations.

15 REGISTER OF MEMBERS

- 15.1 The Co-operative must keep a Register of Members that includes Members' interests and dealing in Shares, Delivery Entitlements and Water Entitlements.
- 15.2 A Member will ensure that the Co-operative is informed in writing within 14 days of the creation of any interest or dealing in their Shares, Delivery Entitlements or Water Entitlements.
- 15.3 Any interest or dealing which may be registered for a Water Entitlement on the Water Access Licence Register in accordance with the Water Management Act may be registered for a Water Entitlement on the Co-operative's Register of Members.

16 REGISTER OF NON-MEMBER WATER ENTITLEMENT HOLDERS

- 16.1 The Co-operative must keep a Register of Non-Member Water Entitlement Holders that includes Non-Member Water Entitlement Holders' interests and dealings in Water Entitlements.
- 16.2 A Water Entitlement Holder will ensure that the Co-operative is informed in writing within 14 days of the creation of any interest or dealing in their Water Entitlements.
- 16.3 Any interest or dealing which may be registered for a Water Entitlement on the Water Access Licence Register in accordance with the Water Management Act may be registered for a Water Entitlement on the Co-operative's Register of Non-Member Water Entitlement Holders.

17 TERMINATION OF DELIVERY ENTITLEMENTS

- 17.1 A Member who holds Delivery Entitlements must remain qualified under **Rule 9** (including by holding at least 10 Shares).
- 17.2 If a Member who holds Delivery Entitlements ceases to be qualified under **Rule 9**, the Member is in breach of **Rule 17.1** and the Co-operative may terminate the Member's Delivery Entitlements by giving notice to the Member.
- 17.3 A Member may initiate Termination in accordance with **Rule 102**.
- 17.4 On Termination of one or more of a Member's Delivery Entitlements, the Co-operative may require the Member to pay a Termination Fee in relation to those Delivery Entitlements in accordance with the *Water Charge (Termination Fees) Rules 2009* (Cth).

18 CAPITAL

- 18.1 The Capital of the Co-operative must be raised by the issue of Shares of a nominal value of \$1 each.
- 18.2 The Capital varies in amount according to the nominal value of Shares from time to time subscribed.

- 18.3 Shares may be of more than one class provided the shareholding and the rights of shareholders comply with the Co-operative principles as set out in the Co-operatives National Law.
- 18.4 A Share must not be allotted unless the nominal value of the Share has been paid.
- 18.5 A Share must not be issued at a discount.
- 18.6 A Member must not have a Relevant Interest in Shares the nominal value of which is more than 10% of the nominal value of the issued Shares.
- 18.7 Shares of the Co-operative must not be quoted for sale or purchase on any stock exchange or in any other public manner whatever (within the meaning of the *Income Tax Assessment Act 1936* (Cth)).

19 **JOINT HOLDERS**

- 19.1 Where two or more persons are registered as the holders of any Shares, they will be deemed to hold the Shares as joint tenants with benefits of survivorship subject to the following:
- (a) the Co-operative will not be bound to register more than three persons as holders of any Share. However, this will not apply to the executors or trustees of the deceased holder;
 - (b) the joint holders of any Share will be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Share;
 - (c) on the death of any one of the joint holders the survivor(s) will be the only person(s) recognised by the Co-operative as having any title to the Shares; and
 - (d) only the person whose name stands first in the Register as one of the joint holders of any Share will be entitled to delivery of the certificate relating to the Share or to receive notice from the Co-operative. Any notice given to the person will be deemed to be a notice to all joint holders.

20 **SHARES TO BE FORFEITED TO REMEDY CONTRAVENTION OF MAXIMUM LEVEL OF SHARE INTEREST**

- 20.1 Where a person (whether or not a Member of the Co-operative) contravenes **Rule 18.6** which is not remedied within 14 days of a notice being issued by the Board, the Board will declare to be forfeited sufficient number of the Shares in which the person has a Relevant Interest to remedy the contravention.
- 20.2 The Shares to be forfeited pursuant to this **Rule** are:
- (a) the Shares nominated by the person for the purpose; or
 - (b) in the absence of such nomination - the Shares in which the person has had a Relevant Interest for the shortest time.
- 20.3 A declaration of the Board that Shares are forfeited operates to forfeit the Shares concerned.
- 20.4 The provisions of sections 163 to 165 (inclusive) of the Co-operatives National Law will apply to and in respect of Shares forfeited under this **Rule** as if the Shares had been forfeited under **Rule 14**.

21 **NOTICE TO BE GIVEN OF SUBSTANTIAL SHARE INTEREST AND SUBSTANTIAL CHANGE IN SHARE INTEREST**

- 21.1 A person must give notice in writing to the Co-operative within five business days after becoming aware that the person has a substantial Share interest in the Co-operative.
- 21.2 A person who has a substantial Share interest in the Co-operative must give notice in writing to the Co-operative within five business days after becoming aware that a substantial change has occurred in that interest.
- 21.3 A person who has ceased to have a substantial Share interest in the Co-operative must give notice in writing to the Co-operative within five business days after becoming aware that the person has ceased to have that interest.
- 21.4 For the purposes of this **Rule**:
- (a) a person has a substantial Share interest in the Co-operative if the nominal value of the Shares in which the person has a Relevant Interest represents 5% or more of the nominal value of the issued Capital of the Co-operative;
 - (b) a substantial change takes place in a person's Share interest in the Co-operative if there is an increase or decrease in the number of Shares in which the person has a Relevant Interest and the increase or decrease represents at least 1% of the nominal value of the issued Capital of the Co-operative; and
 - (c) "notice" means a notice in the form approved by the Registrar, specifying the particulars prescribed by the Regulations.

22 **FORFEITED SHARES**

- 22.1 A person whose Shares have been forfeited according to these Rules:
- (a) ceases to be a Member in respect of the forfeited Shares;
 - (b) if all Shares of the person have been forfeited, ceases to be a party to the Water Supply Rules (but this does not prevent the person from offering to enter into a Non-Member Water Supply Contract with the Co-operative); and
 - (c) remains liable to pay to the Co-operative all moneys which were payable (whether or not in respect of the Shares) as at the date of forfeiture.
- 22.2 A statutory declaration by a Director of the Co-operative stating that a Share in the Co-operative has been forfeited on a date stated in the declaration is conclusive evidence of that fact as against all persons claiming to be entitled to the Share.

23 **TRANSFER AND TRANSMISSION OF SHARES**

- 23.1 A Share must not be sold or transferred except:
- (a) with the consent of the Board;
 - (b) to another Member; and
 - (c) as otherwise provided by these Rules and/or the Co-operatives National Law.

- 23.2 The instrument of transfer will be executed by or on behalf of the transferor and the transferee. The transferor will be deemed to remain the holder of the Share until the name of the transferee is entered in the Register of Members.
- 23.3 Shares will be transferred by instrument in writing in any usual or common form or in any other form which the Board will approve (including the form set out in **SCHEDULE 1**).
- 23.4 The Board may decline to recognise an instrument of transfer unless:
- (a) a fee of \$250 is paid to the Co-operative for the transfer; and
 - (b) the instrument of transfer is accompanied by the Certificate of Shares to be transferred, and any other evidence the Board may require to prove the title of the transferor and of the right of the transferor to transfer the Shares.
- 23.5 The Board may waive the production of any certificates upon evidence satisfactory to it of the loss or destruction of such certificates.
- 23.6 The Board may decline to register any transfer of Shares:
- (a) upon which the Co-operative has a Lien;
 - (b) to a transferee who or which is not qualified to be a Member, or of whom the Board for any reason whatsoever does not approve;
 - (c) where the Member is a Lessee of the Landholding unless the Board is satisfied that the registered proprietor of the relevant land has approved of the transfer of the Shares;
 - (d) if there is any interest or dealings listed on the Register of Members and the consent (if required) of the holder of any such interest or dealing has not been obtained; or
 - (e) which would result in breach of **Rule 23.1**.
- 23.7 In the case of transfer of Shares which is to take place in the course of a sale of the Landholding, the transfer will not take effect unless and until the Co-operative receives a Notice of Sale executed by both the transferor and transferee together with an Application to Transfer the Shares duly stamped by the Office of State Revenue (if applicable).
- 23.8 A Member must not transfer a Share to a person of a limited legal capacity. However, the Co-operative will not be bound to enquire as to the age or soundness of mind of any transferee.
- 23.9 The Board will not be bound to give any reason for its refusal to register any transfer of Shares. If the Board refuses to register a transfer of any Shares it must send to the transferee notice of the refusal within 28 days after the date on which the transfer was lodged with the Co-operative.
- 23.10 Upon the registration of a transfer a new certificate specifying the Shares transferred or transmitted will be delivered to the transferee or transmitted.
- 23.11 Every instrument of transfer which is registered will be retained by the Co-operative. However, any instrument of transfer which the Board refuses to register (except in the case of fraud) will be returned on demand to the persons depositing the instrument of transfer.

23.12 The Board must have a record of all transfers made in the proper books of the Co-operative.

23.13 The Board may suspend the registration of transfers during the 14 days immediately preceding an annual general meeting.

24 EFFECT OF SALE, TRANSFER OR DISPOSAL OF SHARES

24.1 A Member who no longer holds at least 10 Shares is not entitled to vote at any meeting of the Co-operative.

25 DEATH OF MEMBER

25.1 Subject to section 103 of the Co-operatives National Law, on the death of a Member the Board must transfer the deceased Member's Shares, Delivery Entitlements and/or Water Entitlements 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 Co-operative within three months after the death of the Member.

25.2 Where the deceased Member is entitled to a Share in equity, the Board must not transfer the Share without the consent of the registered holder of the Share.

26 REGISTRATION OF OFFICIAL TRUSTEE IN BANKRUPTCY

26.1 Where a Member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the Shares, Delivery Entitlements and/or Water Entitlements held by the bankrupt Member.

26.2 If the bankrupt Member is entitled in equity to the Share the Board may register the Official Trustee in Bankruptcy as the holder of a Share. This requires the consent:

(a) of the registered holder of the Share; and

(b) the Co-operative.

27 REGISTRATION AS ADMINISTRATOR OF ESTATE OF INCAPABLE MEMBER

27.1 A person appointed under a law of a State or Territory to administer the estate of a registered holder of a Share in the Co-operative who is incapable of managing their affairs because of mental or physical infirmity may be registered as the holder of that Share as administrator of the estate of the incapable person.

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

28.1 A person becoming entitled to a Share, Delivery Entitlement or Water Entitlement by reason of the death, bankruptcy or the incapacity of the holder is entitled to the advantages to which that person would be entitled if he or she were the registered holder of the Share, Delivery Entitlement or Water Entitlement. However, before being registered as a Member in respect of the Share, Delivery Entitlement or Water Entitlement, the person is not entitled to exercise any right conferred by Membership in relation to meetings of the Co-operative.

28.2 A person registered pursuant to **Rules 25, 26 and 27** is, while so registered, subject to the same liabilities in respect of the Share, Delivery Entitlement or Water Entitlement as those to which that person would have been subject if the Share, Delivery Entitlement or Water Entitlement had remained, or had been registered, in the name of the dead person, incapable person or the bankrupt.

29 **PURCHASE OR REPAYMENT OF MEMBERS' SHARES**

29.1 Subject to section 107 of the Co-operatives National Law and this **Rule**, the Co-operative may:

- (a) purchase any Share of a Member at the request of the Member; and
- (b) repay to a Member, with the Member's consent, the whole or any part of the amount paid up on any Share held by the Member when the sum repaid is not required for the activities of the Co-operative.

29.2 The amount paid for a Share when it is repurchased may be an amount that is less than the nominal value of the Share, but only if the books of the Co-operative disclose that the amount paid is the net shareholder's equity per Share in the undertaking of the Co-operative.

29.3 The Co-operative must cancel any Share purchased by, or repaid in full by, the Co-operative.

29.4 If the Co-operative repurchases all of the Shares of a Member, the Water Supply Rules associated with Membership with that Member is terminated (but this does not prevent the person from offering to enter into a Non-Member Water Supply Contract with the Co-operative).

29.5 If, in the opinion of the Board, payment of the repurchase price would adversely affect the financial position of the Co-operative, the Board may, instead of paying the repurchase price to the Member, allot or issue debentures of the Co-operative to the Member to the value of the amount.

29.6 A debenture issued pursuant to this **Rule** must:

- (a) bear interest during any period as determined in accordance with section 108 of the Co-operatives National Law; and
- (b) be repaid to the Member as soon as repayment would not, in the opinion of the Board, adversely affect the financial position of the Co-operative and in any case, within 10 years.

30 **TRANSFER AND TRANSMISSION OF DEBENTURES**

30.1 The instrument of transfer of any debenture must be executed by or on behalf of the transferor and the transferee. The transferor is deemed to remain the holder of the debenture until the name of the transferee is entered in the register of debentures.

30.2 Debentures must be transferred by instrument in writing in any usual or common form which the Board has approved (including the form set out in **SCHEDULE 2**).

30.3 The Board may decline to recognise any instrument of transfer unless:

- (a) a fee of \$50 is paid to the Co-operative for the transfer; and

- (b) the instrument of transfer is accompanied by the certificate (if any) of the debentures 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.

30.4 A debenture must not be sold or transferred except:

- (a) with the consent of the Board; or
- (b) as otherwise provided by the Rules or the Co-operatives National Law.

30.5 The Board may decline to register any transfer to a person not qualified to be a Member or of whom it does not approve. The Board may also decline to register any transfer of debentures on which the Co-operative has a Lien or charge. If the Board refuses to register a transfer of debentures it must send notice of the refusal to the transferee within 28 days after the date on which the Board declined to register the transfer.

30.6 The Board must have a record of all transfers made in the proper books of the Co-operative.

31 **SUSPENSION OF MEMBERS**

31.1 The Co-operative may, in general meeting, suspend Members, by special resolution, for a period not exceeding one year, who do any of the following acts:

- (a) infringe any of the Rules (including the Water Supply Rules) or By-Laws of the Co-operative;
- (b) fail to discharge obligations to the Co-operative, whether prescribed by these Rules or arising out of contract; or
- (c) conduct themselves in a manner prejudicial or detrimental to the interests of the Co-operative.

31.2 Where in the opinion of the Board a Member does any act referred to in **Rule 31.1**, the Board may call a special general meeting within 21 days of the occurrence of the act to consider that act.

31.3 Where the Board resolves to call a special general meeting of Members pursuant to **Rule 31.2** the following procedure will apply:

- (a) at least 21 days written notice stating the date, time and place of meeting will be given to any Member whose act is to be considered at the special general meeting and the written notice will also state the nature of the act which, in the Board's opinion, has been done by the Member;
- (b) at the meeting the Member will be afforded a full opportunity to be heard and will be entitled to call witnesses and to cross-examine witnesses. If the Member fails to attend at the time and place mentioned, without reasonable excuse, the act will be considered and the Co-operative may consider the resolution before it on the evidence before it, in spite of the absence of the Member. Once the act has been considered, the Co-operative may decide to suspend the Member who committed the act; and
- (c) the Co-operative will not make a decision on the act or on a suspension, except by vote by secret ballot of the Members present and entitled to vote. A motion for that decision will not be deemed to be passed unless two thirds of the Members so present and so entitled vote in favour of the motion.

- 31.4 If the Co-operative suspends a Member under this **Rule**, the Board may determine that some or all of the Membership rights of that Member (including the provision of water pursuant to the Water Supply Contract) are suspended.
- 31.5 The Board will issue a notice to a Member suspended under this **Rule** stating the rights suspended and the period of suspension.
- 31.6 A suspension under this **Rule** will cease:
- (a) on the date specified in the notice issued under **Rule 31.5**; or
 - (b) on an earlier date if the grounds on which the suspension was made have been rectified to the satisfaction of the Board.
- 31.7 If the Board resolves to lift the suspension of a Member under **Rule 31.6(b)** the Member must be notified in writing as soon as possible and the suspension will cease on the date specified in the notice issued under this **Rule 31.7**.

32 **EXPULSION OF MEMBERS**

- 32.1 Subject to Part 2.6, Division 4 of the Co-operatives National Law, a Member may be expelled from the Co-operative by special resolution to the effect:
- (a) that the Member has failed to discharge the Member's obligations to the Co-operative, whether prescribed by these Rules or arising out of any contract; or
 - (b) that the Member has been guilty of conduct detrimental to the Co-operative.
- 32.2 In either case written notice of the proposed resolution must 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. The Member must be given a reasonable opportunity of being heard at the meeting.
- 32.3 The Shares of any Member expelled will be forfeited and subsequently cancelled at the date of expulsion and the cancellation of the Shares must be noted in the Register of Members. Subject to **Rule 32.4**, the Co-operative must pay to the expelled Member the amount of capital paid up on the Member's Shares at the time of the expulsion (less any amount owing by the Member to the Co-operative). The Delivery Entitlements of any Member expelled will be dealt with in accordance with **Rule 17**.
- 32.4 If the balance sheet of the Co-operative last issued before the expulsion of a Member of the Co-operative disclosed a loss or deficiency, there must be a proportionate reduction in the capital to be repaid to the Member. This reduction must be by an amount that bears, to the amount of the loss or deficiency disclosed in the balance sheet, the same proportion as the number of Shares held by the Member bore to the total number of Shares held by all Members of the Co-operative as at the date of expulsion of the Member.
- 32.5 Payment to the expelled Member must be made at such time as is determined by the Board in its discretion but not later than 12 months from the date of expulsion.
- 32.6 Expulsion of one joint Member means expulsion of all Members holding Membership jointly with the expelled Member.

32.7 An expelled Member must not be re-admitted as a Member unless the re-admission is approved by special resolution. A Member who is readmitted in this way must not have restored to them any Shares which were cancelled on their expulsion.

33 **RESIGNATION BY MEMBERS**

33.1 A Member will have resigned and ceased to be a Member on the expiration of one month notice in writing of the Member's intention to resign from Membership, given by the Member to the Secretary.

33.2 The Co-operative must repay the Member's Shares in accordance with section 128 of the Co-operatives National Law.

33.3 The Shares of the Member who has given notice under **Rule 33.1** will be cancelled at the date of resignation and the cancellation of the Shares must be noted in the Register of Members. The Delivery Entitlements of any Member who has given notice under **Rule 33.1** will be dealt with in accordance with **Rule 17**.

34 **CEASING MEMBERSHIP AND NON-MEMBER WATER ENTITLEMENT HOLDERS**

34.1 A person must 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 32**;
- (c) if the Member becomes bankrupt and the Members vote by special resolution that the Membership of the bankrupt must cease on the passing of the resolution;
- (d) if the Member's Property becomes subject to control under the law relating to bankruptcy and the Members vote by special resolution that the Membership of the Member cease on the passing of the resolution;
- (e) if the Member becomes bankrupt and the trustee of the Member's Estate disclaims any debt, contract, duty or liability of the Member with the Co-operative;
- (f) subject to section 117(2) of the Co-operatives National Law, on death of the Member;
- (g) if the contract of Membership is rescinded on the ground of misrepresentation or mistake;
- (h) if the Member's Shares are transferred to another person and the transferee is registered as the holder of the Share;
- (i) if the Member's Shares are forfeited in accordance with the provisions of the Co-operatives National Law or the provisions of these Rules;
- (j) if the Member's Shares are repurchased by the Co-operative in accordance with the provisions of these Rules;
- (k) if the Member's Shares are sold by the Co-operative pursuant to any power in these Rules and the purchaser is registered as holder in the Member's place;

- (l) if the amount paid up on the Member's Shares are repaid to the Member in accordance with the provisions of these Rules;
 - (m) if the Member has resigned in accordance with **Rule 33**;
 - (n) in the case of a Member that is a body corporate, if the body is dissolved;
 - (o) on Termination by a Member under **Rule 102**; or
 - (p) if the Member's right to Water Supply is otherwise terminated.
- 34.2 A Member must sign a Non-Member Water Entitlement Holder Contract upon ceasing Membership if the former Member will continue to hold Water Entitlements.
- 34.3 If a Member's Membership has not ceased but the forfeiture or cancellation of a Member's Shares results in the Member's shareholding falling below the minimum to establish Active Membership under **Rule 9**, the Co-operative must deal with the Member as an inactive Member under **Rule 14**.
- 34.4 A person may hold Water Entitlements on one or more of the Co-operative's Access Licences without being a Member.
- 34.5 The Board must require a Non-Member Water Entitlement Holder Contract to be signed by:
- (a) a person upon becoming a Non-Member Water Entitlement Holder; and
 - (b) a former Member upon ceasing Membership if the former Member continues to hold Water Entitlements.

35 **APPLICATION FOR TRANSFORMATION**

- 35.1 Subject to these Rules and the Water Market Rules, a Water Entitlement Holder may apply to the Board for Transformation of Water Entitlements by providing the written information required by the Board. On receipt of the application by the Co-operative, the Water Entitlement Holder is deemed to be an Applicant for Transformation.
- 35.2 The Board may require the Applicant for Transformation to provide:
- (a) the information required to be provided pursuant to **Rule 35.1**; and
 - (b) any additional information that the Board may reasonably deem necessary to complete the Transformation requirements in accordance with the Water Market Rules.
- 35.3 An application for Transformation must be accompanied by the fee set out in **Rule 137**.
- 35.4 The Board must not approve an Application for Transformation until:
- (a) all outstanding amounts payable to the Co-operative (including sinking fund levies under **Rules 126.14** or **127.1**) have been paid;
 - (b) the Security (if any) that the Co-operative may require in accordance with the Water Market Rules has been provided; and

- (c) any person who holds a legal or equitable interest in the Water Entitlements, including any encumbrancee registered on the Applicant for Transformation's title to the Water Entitlements, has given approval or issued the Co-operative with a discharge of encumbrance or consent to the release of the encumbrance.

35.5 The Board must advise the Applicant for Transformation of its decision:

- (a) if the Board does not require any further information or fees under **Rule 35.2, 35.3** or **35.4** - within 25 Business Days of receiving the Application; or
- (b) if the Board requires further information or fees under **Rules 35.2, 35.3** or **35.4** - within 25 Business Days after the Applicant has provided the required information or fees (but this period of 25 Business Days does not include the Business Days after steps are taken to obtain the approval of a person who holds a legal or equitable interest in the Water Entitlements and before the approval is given or refused, or after steps have been taken to comply with a requirement under a law of a State and before the requirement is satisfied or advice is received to the effect that it cannot be satisfied).

35.6 Subject to this **Rule**, the Board may approve provisional cancellation of the Application for Transformation. Upon compliance with this Rule, Transformation may be completed.

35.7 The Board may as a Condition of Approval require the Applicant for Transformation to provide Security, the nature and amount of which must comply with the requirements of the Water Market Rules. **Rules 117.5** to **117.11** apply (with the necessary changes) to the Security.

36 **EFFECT OF TRANSFORMATION ON MEMBERSHIP**

An Applicant for Transformation may retain Membership if the Applicant can continue to meet the requirements to establish Active Membership under **Rule 9**.

DIVISION 4 - VOTING

37 **ONE MEMBER ONE VOTE**

37.1 An Active Member of the Co-operative has one vote only in respect of any question or motion arising at a general meeting of the Co-operative.

37.2 A Member's right to vote is a personal right and is not attached to, or conferred by, any Share held by the Member in the Co-operative.

37.3 In the case of joint Membership, the joint Members have one vote only between them. That vote may only be exercised (subject to the grant of any proxy or power of attorney) by the joint Member first appearing in the Register in respect of that joint Membership.

37.4 A Member is not entitled to vote if the Member is not an Active Member of the Co-operative.

38 **PROXY VOTES**

38.1 Voting may be by proxy at a general meeting.

- 38.2 The instrument appointing a proxy must be in writing under the hand of the appointer or of the appointer's attorney who has been duly authorised in writing.
- 38.3 An instrument appointing a proxy will be deemed to confer authority to demand or join in the demanding of a poll.
- 38.4 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and the proxy must vote in this manner.
- 38.5 No person can act as a proxy unless the person is an Active Member of the Co-operative.
- 38.6 A person (with the exception of the Directors of the Co-operative who may act as proxy for a maximum of 10 Members) must not act as proxy for more than two Members on any one occasion.
- 38.7 **Rule 38.6** does not apply if the person acts under an instrument of proxy which specifies the manner in which they must vote, pursuant to **Rule 38.4**.
- 38.8 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 Co-operative at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

39 **FORM AND VALIDITY OF PROXY**

- 39.1 An instrument appointing a proxy is not valid unless:
- (a) the instrument in the form approved by the Board (including **SCHEDULE 3**); and
 - (b) if the instrument was signed under a power of attorney or other authority, that power or authority (or a copy of that power or authority certified by a notary);
- is/are deposited:
- (c) not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (d) in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll;

at the Registered Office, or at another place specified in the notice convening the meeting.

40 **COUNTING OF PROXIES**

- 40.1 The chairperson must determine if a vote recorded in a form of proxy is to be counted in relation to a proposed resolution.
- 40.2 Forms of proxy must be kept for at least three months after the meeting to which they relate. After this time they may be destroyed.

41 **RESTRICTION ON VOTING ENTITLEMENT UNDER POWER OF ATTORNEY**

41.1 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.

42 **EFFECT OF RELEVANT SHARE AND VOTING INTEREST ON VOTING RIGHTS**

42.1 A Member is not entitled to vote if another person (whether or not a Member of the Co-operative) has a Relevant Interest in any Share held by the Member or in the right to vote of the Member.

42.2 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.

42.3 Where the Registrar of Co-operatives orders that the Member is entitled to vote the Member's right to vote will be restored.

43 **NOTICE TO BE GIVEN OF VOTING INTEREST**

43.1 A person (whether or not a Member of the Co-operative) must give notice in writing to the Co-operative 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 Co-operative.

43.2 For the purposes of this **Rule**, "notice" means a notice which contains the prescribed particulars as set out in clause 3.21 of the Regulations.

DIVISION 5 - GENERAL MEETINGS

44 **ANNUAL GENERAL MEETINGS**

44.1 Subject to **Rule 45**, a general meeting of the Co-operative to be known as the "annual general meeting" must be held each year on a date and a time determined by the Board. This date must be within five months after the close of the financial year of the Co-operative.

44.2 All general meetings of the Co-operative other than the annual general meeting are special general meetings.

44.3 If an annual general meeting is not held in accordance with **Rule 44.1**, the Members may requisition such a meeting. This requisition must be in accordance with section 257 of the Co-operatives National Law and **Rule 45**.

45 **SPECIAL GENERAL MEETINGS**

45.1 The Board may, whenever it thinks fit, call a special general meeting of the Co-operative.

45.2 Subject to section 257 of the Co-operatives National Law, the Board must call a general meeting of the Co-operative on the requisition in writing by such number of 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 Co-operative.

45.3 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 Co-operative by being lodged at the Registered Office.

45.4 A meeting requisitioned by Members in accordance with the Rules must be called and held as soon as practicable and in any case within 63 days after the requisition is served.

45.5 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 Co-operative 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 Co-operative;
- (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 Co-operative; and
- (f) any such amount required to be paid by the Co-operative is to be retained by the Co-operative out of any money due from the Co-operative by way of fees or other remuneration in respect of their services to such of the Directors as were in default.

46 **GENERAL MEETINGS – METHODS AND NOTICE**

46.1 The Co-operative 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.

46.2 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.

- 46.3 If the technology used in accordance with **Rule 46.1** 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.
- 46.4 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 46.4** is final.
- 46.5 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) must be given of any general meeting in the manner stipulated in **Rule 133**.
- 46.6 Notice must be given to those persons who are, under these Rules, entitled to receive such notices from the Co-operative. However, the non-receipt of the notice by any Member does not invalidate the proceedings at the general meeting.
- 46.7 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 47.1**;
 - (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 133**.
- 46.8 Any Member who has a resolution to submit to a general meeting must give written notice of it to the Co-operative not less than 28 days prior to the date of the meeting.
- 46.9 Where, in relation to a general meeting:
- (a) a Member has notified their intention to move any business; and
 - (b) that notification has been made in accordance with the Rules,
- the Board must insert that business in any notice convening the general meeting.

46.10 Except as is provided by this **Rule**, no other person will be entitled to receive notices of general meetings.

47 **BUSINESS OF GENERAL MEETINGS**

47.1 The ordinary business of the annual general meeting is:

- (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 the statement of financial performance, the statement of financial position, and the statement of cash flows at the end of that year; and
- (c) to announce the results of the postal ballot for the election of Directors and determine the remuneration of Directors.

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

47.3 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.

48 **QUORUM AT GENERAL MEETINGS**

48.1 An item of business must not be transacted at any general meeting unless a quorum of Members entitled to vote is present during the transaction of that item.

48.2 Except where these Rules state otherwise, 20 Active Members present in person, each being entitled to exercise a 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 46.2(d)**.

48.3 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.

48.4 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.

49 **CHAIRPERSON AT GENERAL MEETINGS**

49.1 The chairperson, if any, of the Board presides as chairperson at every general meeting of the Co-operative.

- 49.2 If there is no chairperson, or if at any meeting he or she 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 must choose someone from their number to be chairperson (until such time as the chairperson attends and is willing to act).
- 49.3 The chairperson may, with the consent of any meeting at which a quorum is present, adjourn the meeting from time to time and from place to place. The chairperson must adjourn the meeting in this way if directed to do so by the meeting. However, 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. When a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given to all the Members in the same manner as notice was (or ought to) have been given of the original meeting. Apart from this it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

50 **STANDING ORDERS AT GENERAL MEETINGS**

- 50.1 Subject to **Rule 50.2**, the following standing orders must be observed at the Co-operative's meetings:
- (a) the mover of a proposition will not speak for more than 10 minutes. Subsequent speakers will 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 proposition is proposed no second amendment will be considered until the first amendment is disposed of;
 - (c) if an amendment is carried, the proposition as so amended will displace the original proposition and may itself be amended;
 - (d) if an amendment is defeated, then a further amendment may be moved to the original proposition. However, only one amendment will be submitted to the meeting for discussion at one time;
 - (e) the mover of every original proposition, but not of an amendment, will have the right to reply. Immediately after this the question will be put from the chairperson. No other Member will 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) propositions and amendments will 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. Such resolution will 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 chairperson provided that the permission may be conditional; and
 - (i) standing orders may be suspended for any period by ordinary resolution.
- 50.2 The Members present at a meeting may suspend, amend or add to these orders for the purposes of that particular meeting.

51 ATTENDANCE AND VOTING AT GENERAL MEETINGS

- 51.1 At any meeting of the Co-operative a Member who has been given notice that the Member's Membership is required to be cancelled under **Rule 14** is not entitled to attend.
- 51.2 The Board will, 21 days prior to the calling of a general meeting, close the Register for the purposes of establishing voting entitlements and no changes to voting entitlements between that date and the close of the general meeting will be acknowledged without a resolution of the Board to that effect.
- 51.3 A Member of the Co-operative is entitled to vote at a meeting of the Co-operative if:
- (a) that person is an Active Member of the Co-operative; and/or
 - (b) the person is otherwise permitted to vote under the Co-operatives National Law or the Rules.
- 51.4 At any general meeting a resolution put to the vote of the meeting must (as provided in section 256(2) of the Co-operatives National Law) be decided on a show of hands unless:
- (a) a poll is required by the chairperson; or
 - (b) a poll is (before or on the declaration of the result of the show of hands) demanded by at least five Members.
- 51.5 If no poll is demanded a declaration by the chairperson that a resolution has been, on a show of hands:
- (a) carried;
 - (b) carried unanimously;
 - (c) carried by a particular majority; or
 - (d) lost;
- and an entry to that effect in the book of the proceedings of the Co-operative is evidence of the fact. No proof is needed of the number or proportion of the votes recorded in favour of, or against, that resolution.
- 51.6 Every Member of the Co-operative (not under the age of 18) and every representative of a body corporate appointed under section 115 of the Co-operatives National Law, who is present at a meeting:
- (a) in person; or
 - (b) represented by proxy or attorney;
- has, subject to **Rule 37.3**, one vote.
- However, no Member has a vote, or is entitled or eligible to vote, contrary to the Co-operatives National Law.
- 51.7 Each Membership is entitled to one vote at a general meeting. In the case of a joint Membership the first mentioned Member in the Register is the voting Member.

- 51.8 If a poll is demanded, in accordance with **Rule 51.4**, it will be taken in a manner which the chairperson directs. Unless the meeting is adjourned the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 51.9 A poll demanded on the election of a chairperson, or on a question of adjournment, will be taken immediately.
- 51.10 A poll demanded in accordance with **Rule 51.4** may be withdrawn.
- 51.11 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, is entitled to a second or casting vote.
- 51.12 All resolutions, except special resolutions, are determined by a simple majority.
- 51.13 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 Co-operative 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.

52 **POSTAL BALLOT**

- 52.1 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;
 - (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;
 - (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.

52.2 So long as **Rule 52.1** is complied with, the postal ballot is to be conducted as determined by the Board.

52.3 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.

53 **POSTAL BALLOT REQUISITIONED BY MEMBERS**

53.1 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 Co-operative may requisition the Board to conduct the special resolution by postal ballot.

53.2 If a postal ballot is requisitioned by Members under **Rule 53.1**, the requisition should specify whether the postal ballot is to be a secret ballot.

53.3 A postal ballot requisitioned under **Rule 53.1** is to be conducted in accordance with **Rule 52** and in the form and manner determined by the Board.

53.4 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.

53.5 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.

53.6 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.

53.7 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.

53.8 This **Rule** does not apply in relation to special postal ballots.

54 **WHEN A SPECIAL POSTAL BALLOT IS REQUIRED**

54.1 A special postal ballot must be conducted for the purpose of passing a special resolution in relation to any of the following matters:

- (a) conversion of the Co-operative to a co-operative without share capital or a distributing co-operative;
- (b) a special resolution on the requisition of Members;
- (c) a special resolution to require Members to lend money to the Co-operative;

- (d) a transfer of incorporation;
- (e) an acquisition or disposal of assets referred to in section 359 of the Co-operatives National Law;
- (f) the maximum permissible level of Share interest in the Co-operative;
- (g) Share offers under section 374 of the Co-operatives National Law;
- (h) a merger;
- (i) a transfer of engagements;
- (j) a compromise or arrangement between the Co-operative and the Members;
- (k) a Members' voluntary winding-up; or
- (l) the Co-operative intends to borrow an amount in excess of 5% of the net assets of the Co-operative or \$1,500,000 (whichever is the greater).

55 **SPECIAL RESOLUTION**

55.1 A special resolution is a resolution of the Co-operative which must be passed:

- (a) by a two thirds majority of Members voting in person or by proxy at a general meeting;
- (b) by a two thirds majority in a postal ballot (other than a special postal ballot); or
- (c) by a three quarters majority in a special postal ballot.

55.2 A resolution must not be considered to be passed as a special resolution unless at least 21 days notice has been given to the Members of the Co-operative 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.

55.3 A special resolution has effect from the date it is passed except in the following circumstances:

- (a) the alteration of a Rule; or
- (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.

DIVISION 6 - DIRECTORS

56 **BOARD OF DIRECTORS**

56.1 There is a Board of six Directors all of whom must be:

- (a) natural persons, whether as a Member of the Co-operative, a representative of a body corporate Member, or otherwise; and
- (b) at least 18 years old.

56.2 Subject to the Co-operatives National Law, two Directors may be independent Directors and of the remaining four Directors, one may be an employee who is an Active Member.

56.3 The business of the Co-operative is managed by the Board of Directors, subject to the Co-operatives National Law and the Rules.

56.4 The Board may exercise all of the powers of the Co-operative that are not, by the Co-operatives National Law or the Rules, required to be exercised by the Co-operative in general meeting.

56.5 The acts of a Director are valid despite any defect that may afterwards be discovered in the appointment or qualification of the Director.

56.6 All Directors will within twelve months of becoming elected attend a training course on Directors' duties and regularly attend courses for the purpose of attaining or maintaining skills appropriate to Directors of an irrigation co-operative.

57 **QUALIFICATIONS OF DIRECTORS**

57.1 A person is not eligible to be elected as a Director of a Co-operative unless the person:

- (a) is an Active Member of the Co-operative, or a representative of a body corporate which is an Active Member of the Co-operative (Active Member Director); or
- (b) is a person nominated by the Board who the Board believes has relevant skills, experience or knowledge (independent Director); or
- (c) an employee or officer of the Co-operative who is an Active Member of the Co-operative (Active Member Director).

58 **DIRECTORS' TERMS**

58.1 At the annual general meeting in each year, two Directors must retire in accordance with **Rule 59.1**.

59 **DIRECTORS' RETIREMENT**

59.1 The Directors to retire in any year must (subject to the provision as to filling casual vacancies) be those who have been longest in office since their last election.

59.2 As between persons who became Directors on the same day, which of them is to retire must (unless they otherwise agree among themselves) be determined by lot. In such case, the order for retirement will be the order in which the names are withdrawn.

60 RE-ELECTION OF RETIRING DIRECTORS

60.1 A retiring Director is eligible for re-election without nomination subject to the person holding the qualifications specified in **Rule 57**.

61 FILLING A VACATED OFFICE

61.1 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.

61.2 Nominations for candidates to fill the vacant positions must be sought in the manner which the Board determines.

61.3 The nominations must provide details of the qualifications and experience of the person nominated.

61.4 The election of Directors, other than the independent Directors, must be conducted by postal ballot in accordance with **Rule 52** and the results of the election must be announced at the annual general meeting.

61.5 At the annual general meeting at which an independent Director retires:

(a) where the Board nominates only one person to fill the vacant position, and with the approval of the Members by ordinary resolution, the person will be deemed elected; or

(b) where the Board nominates more than one person to fill the vacant position, an election will be conducted by show of hands.

62 REMOVAL FROM OFFICE OF DIRECTOR

62.1 The Co-operative may at a general meeting (or other manner permitted by the Co-operatives National Law or the Rules) by resolution passed by a simple majority:

(a) remove any Director before his or her period of office expires; and

(b) appoint another person in place of that Director.

62.2 The person appointed under **Rule 62.1** must retire at the same time as the removed Director would have retired if not removed.

63 VACATION OF OFFICE OF DIRECTOR

63.1 A Director vacates office in the circumstances (if any) as are provided in the Rules and in any of the following circumstances:

(a) if the person is the auditor of the Co-operative or a partner, employee or employer of the auditor;

(b) 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;

(c) if the person is prohibited from managing corporations under Part 2D.6 of the Corporations Act;

(d) if the person is an insolvent under administration (as defined in the Corporations Act);

- (e) 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;
- (f) if the Director is absent from three consecutive ordinary meetings of the Board without its leave;
- (g) if the Director resigns the office of Director by written notice given by the Director to the Co-operative;
- (h) if the Director is removed from office by ordinary resolution of the Co-operative;
- (i) if a person ceases to hold the qualification by reason of which the person was qualified to be a Director;
- (j) if the Director becomes an employee of the Co-operative except if qualified under **Rule 57**; and
- (k) if an administrator of the Co-operative's affairs is appointed under Division 2 of Part 4.1 of the Co-operatives National Law.

64 **FILLING OF CASUAL VACANCIES**

- 64.1 The Board may appoint a person to fill a casual vacancy (including a vacancy created under **Rule 63**) in the office of Director until the next annual general meeting.
- 64.2 The person so chosen by the Members (in accordance with **Rule 61**) at the next annual general meeting will retire at the same time as the Director who vacated the office would have done if that Director had not vacated it.

65 **ALTERNATE DIRECTORS**

- 65.1 Any Director may from time to time apply, in writing, for any Active Member (other than an employee of the Co-operative, 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.
- 65.2 An alternate Director appointed by the Board will 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.
- 65.3 An alternate Director will vacate office if the nominating Director ceases to be a Director or on a majority of the other Directors removing him from office.
- 65.4 An appointment or removal under this **Rule** must be in writing and must be served on the alternate Director. The appointment or removal will take effect from service of the notice of appointment or removal, as the case may be. Service of any such notice may be affected in accordance with **Rule 133**. An alternate Director whilst acting in the absence of the nominating Director will not be an agent of the nominating Director and the nominating Director will not be liable for the actions of the alternate Director.
- 65.5 The remuneration of any such alternate Director will be payable out of the remuneration payable to the nominating Director and will consist of such portion of the last mentioned remuneration as will be agreed between the alternate Director

and the nominating Director. The attendance of the alternate Director at any meeting of the Board will be deemed to be attendance by the nominating Director.

65.6 For purposes of this **Rule** a meeting of the Directors will include a meeting conducted pursuant to **Rule 69**.

66 **DIRECTOR'S EXPENSES**

66.1 A Director will receive such remuneration for his or her services as will be determined in general meeting, and all necessary expenses incurred by him or her in the business of the Co-operative will be refunded to him or her.

67 **DIRECTORS' LIABILITY INSURANCE**

67.1 Subject to any restrictions in the Co-operatives National Law, the Co-operative will pay the Directors and Officers insurance premiums for the Co-operative of its Directors and officers during their term of office.

DIVISION 7 - PROCEEDINGS OF THE BOARD

68 **PROCEEDINGS OF THE BOARD**

68.1 Meetings of the Board (including those conducted in accordance with **Rule 69**) are to be held as often as may be necessary and must in any case be held at least once every three months.

68.2 Questions arising at any meeting must be decided by a majority of votes.

68.3 In the case of an equality of votes the chairperson has a second or casting vote.

68.4 A meeting of the Board may be called by a Director giving notice individually to every other Director.

68.5 A meeting of the Board may be called or held using any technology consented to by the Board. The consent may be a standing one.

68.6 Except in special circumstances determined by the chairperson, at least 48 hours notice must be given to the Directors of all meetings of the Board.

69 **TRANSACTION OF BUSINESS OUTSIDE BOARD MEETINGS**

69.1 The Board may in accordance with section 176 of the Co-operatives National Law transact its business in any of the following ways:

(a) by circulation of papers among all of the Members of the Board. A resolution in writing approved in writing by a majority of those Members is to be taken to be a decision of the Board;

(b) 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; and

(c) at a meeting at which Directors (or some Directors) participate by telephone, closed-circuit television or other means, but only if any Director who speaks on a matter before the meeting can be heard by the other.

- 69.2 For the purpose of this **Rule**:
- (a) the chairperson and each other Director have the same voting rights as they have at an ordinary meeting of the Board; and
 - (b) a resolution is approved when the last Director required for the majority signs the resolution.
- 69.3 A resolution approved under this **Rule** is to be recorded in the minutes of the meetings of the Board.
- 69.4 For the purposes of this **Rule**, papers may be circulated among Directors by facsimile or other means of transmission.

70 **QUORUM FOR BOARD MEETINGS**

- 70.1 The quorum for a meeting of the Board is more than one half of the number of Directors on the Board and at least three of whom must be Active Members.

71 **CHAIRPERSON OF BOARD**

- 71.1 The chairperson of the Board must be an Active Member.
- 71.2 The chairperson of the Board may be elected by the Board.
- 71.3 If no 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.

72 **DELEGATION AND BOARD COMMITTEES**

- 72.1 In accordance with section 178 of the Co-operatives National Law, the Board may by resolution delegate the exercise of any of the Board's powers (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 Co-operative; or
 - (d) to a committee of Members and other persons if Members comprise the majority of persons on the committee.
- 72.2 The Co-operative or the Board may by resolution revoke wholly or in part any such delegation.
- 72.3 A function, the exercise of which has been delegated under this **Rule**, may be exercised from time to time in accordance with the terms of the delegation while the delegation remains unrevoked.
- 72.4 A delegation under this **Rule** may be made subject to conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance.
- 72.5 Despite any delegation under this **Rule**, the Board may continue to exercise all or any of the functions delegated.

72.6 A committee may elect a chairperson of their meetings. If no 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.

72.7 A committee may meet, and adjourn, as it thinks fit. Questions arising at any meeting must be determined by a majority of votes of the members of the committee present and voting. In the case of an equality of votes the chairperson has a second or casting vote.

73 **OTHER COMMITTEES**

73.1 The Board may by resolution appoint committees comprised of Members or other persons, or both, to act in an advisory role to the Board and to any committees of Directors.

73.2 The provisions of **Rule 72.6** and **Rule 72.7** apply to committees appointed under this **Rule** subject to any variations approved of by the Board.

73.3 The quorum for any meeting of the committee is 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.

74 **COMMUNITY ENVIRONMENTAL AND REFERENCE COMMITTEE**

74.1 The role of the CERC is to provide the Board with advice on environmental matters that might impact on the Co-operative, or that might arise as a consequence of irrigation within the Coleambally Irrigation District.

74.2 The CERC will comprise up to 10 members consisting of six Members, one from each of the five Regions and one representing the Kerarbury LWMP area. The Members within the five Regions may elect the regional representative and Kerarbury land owners will nominate a representative from their area. The Board may seek four additional committee members representing the CICAL Board, Coleambally community and Murrumbidgee Council.

74.3 From time to time the CERC may seek the assistance of other organisations or individuals with particular skills, knowledge, experience and/or responsibilities to assist its deliberations.

74.4 The Board will approve and provide the CERC with a written charter. The Members of the CERC are bound by the charter and may be removed by the Board if they fail to comply with that Charter.

74.5 The Board may delegate to the CERC certain Board powers consistent with the CERC charter from time to time.

74.6 The Board retains the right to review or override any decision or action of the CERC. The Board may review or override any decision or action of the CERC of the Board's own volition or on the written application of any interested person.

75 **MINUTES**

75.1 The Board must enter minutes of meetings into books provided for this purpose. In particular, minutes must be recorded:

- (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) of all resolutions and proceedings at all meetings of the Co-operative and of Directors and of committees of Directors;
- (d) appointments of Directors and secretaries;
- (e) details of personal interests of Directors in contracts entered into by the Co-operative;
- (f) the By-Laws made by the Board; and
- (g) general meetings of the Co-operative.

75.2 Minutes must be recorded in the minute book within 14 days of the date of the meeting to which they relate.

75.3 The confirmation of the minutes must be taken as the first business at the next succeeding meeting of the Co-operative, Board or committee to which the minutes relate. If it is impracticable for the minutes to be confirmed at that meeting, then the minutes must be confirmed at the next succeeding meeting.

75.4 Every Director present at any meeting must sign his or her name in a book to be kept for that purpose.

75.5 The minutes are to be kept in the English language.

75.6 The minutes of each general meeting must be available for inspection by Members.

76 **OFFICERS**

76.1 Without prejudice to the general powers conferred on the Board by the Co-operatives National Law and the Rules, the Board has power to appoint and, at its discretion, remove or suspend officers, employees, agents and contractors, and to fix their powers, duties and remuneration.

76.2 The Board may delegate any of its powers under **Rule 76.1** to an officer or employee of the Co-operative, subject to any conditions or limitations which the Board sees fit to impose.

76.3 The Board may, at any time, revoke or vary a delegation made under **Rule 76.2**.

76.4 Despite any delegation under this **Rule**, the Board may continue to exercise all or any of the powers under **Rule 76.1**.

77 **APPOINTMENT OF A SECRETARY**

77.1 The Board will appoint a Secretary who will perform all of 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 Co-operative.

77.2 A Secretary will:

- (a) be appointed to the office on such terms and conditions as the Board may determine; and
- (b) hold office until death, or removal by the Board, or resignation from office.

DIVISION 8 - WATER SUPPLY RULES

78 ONGOING TERMS OF WATER SUPPLY RULES

78.1 This Division is a continuation of the previous Water Supply Contract and clarifies that the Water Supply Contract is part of the Co-operative Rules.

79 WATER SUPPLY RULES

79.1 This Division sets out the terms of Water Supply to Members and has the effect of changing the name of the former Water Supply Contract to Water Supply Rules.

79.2 Interpretation of this **Rule**

In addition to the definitions under **Rule 1**, in these Water Supply Rules, unless the context otherwise requires:

Annual Water Pricing Policy is the policy determined by the Board for the forthcoming Season.

Class A Water Supply means a high security volumetric water allocation as described in **SCHEDULE 4**.

Class B Water Supply means normal security volumetric water allocation as described in **SCHEDULE 4**.

Class F Water Supply means "high flow opportunistic" water as described in **SCHEDULE 4**.

Class G Water Supply means high security stock and domestic volumetric allocation water as described in **SCHEDULE 4**.

Class T Water Supply means high security town water volumetric allocation water to be supplied as described in **SCHEDULE 4**.

Customer means a person to whom water is supplied by the Co-operative under these Water Supply Rules and can include Members and Non-Members.

Drainage includes surface drainage and subsoil drainage.

Drainage Outlet means the point of connection between the Landholding and the surface drainage system as approved by the Co-operative.

GST means a tax in the nature of a goods and services tax, value-added tax, broad-based consumption tax or other similar tax introduced in Australia.

GST Law includes any Act, order, ruling or regulation which imposes or otherwise deals with the administration or imposition of a GST in Australia.

Landholding, means in respect of a Member a parcel of land individually identified by a Farm Number in the Register connected to the System. For the purposes of the definition of **Permitted Use** and where the relevant parcel of land is Association Property, includes the Development Lots and Neighbourhood Lots in the relevant Community Plan, Precinct Plan or Neighbourhood Plan (as the case may be) to which the water supplied by the Co-operative is to be distributed.

Law means the Water Management Act, the *Water Act* 1912 and any other relevant law including all By-Laws, regulations and other statutory instruments issued under these Acts.

Meter means an apparatus for the measurement of water or Drainage approved by the Co-operative.

Overdraw means an advance order for water in excess of that to which a Member is entitled in any Year which, when delivered to the Member, will be repaid as determined by the Board or the By-laws.

Permitted Use means a use applicable to the Landholding or part of the Landholding, subject to any restriction on use applied by the Co-operative or any other law in respect of the Landholding.

Policies means the policies and rules of, or determinations by, the Co-operative published on the Co-operative's website.

Private Works means Works owned by an entity other than the Co-operative.

Prohibited Substance includes the substances set out in the By-laws (if any).

Services mean water services, drainage services and other services to be provided by the Co-operative.

Special Conditions in respect of a Member means the special conditions, obligations and/or services described in the Register in relation to that Member.

Stakeholder Representation Body means a local government authority or association and any other body or organisation recognised by the Co-operative as representing the interests of Water Entitlements holders.

Transmission Loss means the volume of water lost, including as a result of evaporation, seepage and leakage, as estimated by the Co-operative, during the distribution of water through the System to the Member's Outlet.

Unmeasured Water means the water which the Co-operative determines was supplied to the Member in circumstances where:

- (a) a Meter is out of repair or, in the opinion of the Co-operative, is measuring incorrectly; or
- (b) there is no Meter or other instrument measuring supply.

80 **WATER SUPPLY OBLIGATIONS OF THE CO-OPERATIVE**

80.1

- (a) Water may be supplied to a Landholding by the Co-operative unconditionally or subject to conditions.
- (b) If the supply of water is required for rice growing, the conditions of supply may include conditions regarding the area and location of the land on which rice may be grown.

80.2 Provided the Member complies in all respects with the Rules (including these Water Supply Rules) and any relevant By-Laws and Policies, the Co-operative will, if requested by the Member:

- (a) make available to the Member at the Member's Outlet the Annual Allocation Water or other Available Water in the Member's Available Water Account:
 - (i) subject to these Water Supply Rules, the Rules, relevant By-Laws the Law and any other relevant instrument or Licence held by the Co-operative;
 - (ii) in the class or classes of water supply specified in **SCHEDULE 4**;
 - (iii) for a Permitted Use;
 - (iv) in connection with the Landholding;
 - (v) at the times fixed by the Co-operative;
 - (vi) in the quantities fixed by the Co-operative;
 - (vii) for a Contribution payable by the Member in accordance with **Rule 120**; and
 - (viii) for which the Member holds the according number of Delivery Entitlements; and
- (b) use its reasonable endeavours to provide any other services to the Member on the terms agreed with the Member from time to time.

80.3 Without limiting anything in these Water Supply Rules, where the Landholding is Association Property, the distribution of water to a Development Lot or a Neighbourhood Lot in the relevant Community Plan, Precinct Plan or Neighbourhood Plan for a Permitted Use is deemed to be a use in connection with the Landholding for the purpose of **Rule 80.2(a)**.

80.4 The Co-operative cannot be compelled to deliver water, and will not be in breach of these Water Supply Rules for reducing supply or failing to deliver water:

- (a) if the delivery would, in the reasonable opinion of the Co-operative, result in a breach of any of the Licences, any statute or any legal right or entitlements of a third party, or would not comply with a By-Law or a Policy;
- (b) in the event of drought, accident or any other cause which the Co-operative considers renders it impractical to deliver water;
- (c) if the Co-operative is satisfied that it is necessary or expedient to reduce or discontinue the supply of water to any area or person because of an actual or threatened shortage of water or any other sufficient cause. That determination may be made in relation to all water, or to water used for any purpose or class of purposes, and may apply to and in respect of any particular area or person specified in the determination or to and in respect of any class of areas or persons so specified;
- (d) if, in the opinion of the Co-operative, the supply or continuance of supply is likely to cause damage to a Landholding;
- (e) if the Member has failed to make and maintain adequate provision:
 - (i) for the drainage of surplus surface water into the drainage works provided by the Co-operative for that purpose; or

- (ii) if no such drainage works have been provided, for the retention of surplus surface water on the land in an appropriate manner; or
 - (f) if the Member fails to comply with a provision of this **Rule 80.4** or of any condition attaching to a supply of water.
- 80.5 The Co-operative may refuse to continue to make available the Annual Allocation Water to which a Member is entitled in accordance with the Member's Water Entitlements if, in the reasonable opinion of the Co-operative, such a refusal is required to enable the Co-operative to honour its obligations under one or more of the Licences or under any other relevant laws.
- 80.6 A refusal to supply or a discontinuation of supply:
- (a) does not relieve the Member from liability for payment for any water supplied; and
 - (b) does not prevent the Co-operative from proceeding against a Member.
- 80.7 If the Co-operative anticipates at any time that the Annual Allocation will be less than 100% of the aggregate of all Water Entitlements, the Co-operative will provide for allocation of the available water as follows:
- (a) to the holders of Water Entitlements which convey Class A, Class G and Class T Water Supply, the maximum percentage of their Water Entitlements as stipulated in the relevant Law;
 - (b) so long as adequate provision has been made in accordance with **Rule 80.7(a)**, to the holders of Water Entitlements which convey Class B Water Supply, as near to 100% of their Water Entitlements as is possible and prudent; and
 - (c) so long as adequate provision has been made in accordance with **Rules 80.7(a)** and **80.7(b)** to supply all the holders of Water Entitlements, the Board may in its discretion allocate any remainder as Class F Water Supply, divided proportionally between all Class F Water Supply holders.
- 80.8 Any reduction in an allocation made pursuant to **Rule 80.7** does not preclude a further change in allocation under **Rule 80.5**.
- 80.9 The Member may apply to the Co-operative for a conversion of the Member's Water Entitlements from one class of water supply to another. The Co-operative must consider every application and may:
- (a) refuse any application in its discretion; or
 - (b) approve any application subject to such terms and conditions as the Co-operative may reasonably determine.
- 80.10 The Member acknowledges that the Co-operative is not under any obligation to supply a specific quality of water (including drinking water). The Member accepts full responsibility for rendering the water suitable for drinking use. Any use of the water as drinking water or for other domestic purposes is at the Member's own risk and the Co-operative accepts no liability for any such use.
- 80.11 The Co-operative obligations under this **Rule 80** are subject to reasonable amendment which the Co-operative may deem to be necessary to accommodate any changes in its Licence conditions or any of them, or any other fact, matter or

thing imposed on it by the Ministerial Corporation from time to time affecting, directly or indirectly, its ability to meet those obligations.

80.12 Despite any other Rule, any variation, amendment, supplementation or replacement of the Policies must not contravene the Australian Consumer Law.

81 AVAILABLE WATER ACCOUNT

81.1 The Co-operative must establish an Available Water Account for:

- (a) each Member or, in case of joint Members, one Available Water Account between them; and
- (b) each Non-Member Water Entitlement Holder.

81.2 The Co-operative must keep an updated record of the amount of Available Water in the Available Water Account.

82 ANNUAL ALLOCATION DETERMINATION

82.1 Subject to **Rule 80.5**, the Co-operative must within 30 days of the commencement of each Season:

- (a) make an Annual Allocation Determination; and
- (b) notify the Member or Non-Member Water Entitlement Holder of the Annual Allocation Water to which the person is entitled in accordance with the Annual Allocation Determination, whether as a Water Entitlement Holder or as a transferee under any Term Transfer of Water Entitlements.

82.2 The Co-operative may:

- (a) alter an Annual Allocation Determination retrospectively (on one or more occasions in any Season) and accordingly alter the amount of Annual Water Allocation to which a Member or Non-Member Water Entitlement Holder is entitled; and
- (b) alter the amount of Available Water in a Member's or a Non-Member Water Entitlement Holder's Available Water Account to reflect the change in the amount of Annual Allocation Water to which the person is entitled.

83 CONVEYANCE ACCESS LICENCE

83.1 The Co-operative must have shareholder approval to sell water permanently from the Conveyance Access Licence.

83.2 Subject to this **Rule**, the Co-operative will deal with Conveyance Access Licence efficiency savings as follows:

- (a) by allocation in whole megalitres to all Members proportionate to the number of their Delivery Entitlements held, at a price determined by the Board which is fair and reasonable PROVIDED THAT if a Member does not accept the offer in any year then the Co-operative may sell such water allocation as is not accepted by the Member as it will determine; or
- (b) by offer of sale in whole megalitres to all Members proportionate to the number of their Delivery Entitlements held, at a price determined by the Board which is fair and reasonable PROVIDED THAT if a Member does not

accept the offer in any year then the Co-operative may sell such water allocation as is not accepted by the Member as it will determine.

83.3 Only an Active Member is eligible to receive a Member benefit of additional water from the Conveyance Access Licence efficiency savings under **Rule 83.2**.

84 **WATER SUPPLY OBLIGATIONS OF THE MEMBER**

84.1 The Member agrees to:

- (a) take a supply of water from the Co-operative under the terms of these Water Supply Rules, in accordance with the Member's Delivery Entitlements and the Available Water in the Member's Available Water Account;
- (b) apply all the water taken to a Permitted Use;
- (c) place an order with the Co-operative in accordance with the class or classes of water supply, as described in **SCHEDULE 4** which the Member has agreed to receive;
- (d) rectify, to the Co-operative's satisfaction, any arrears of Contributions due from the Member, and any other default or non-compliance notified by the Co-operative to the Member;
- (e) ensure that the Member's Landholding is, in the opinion of the Co-operative, properly prepared for irrigation to prevent the waste of water;
- (f) ensure that the ditches or channels on the Landholding to be used for the distribution of water within the Landholding are, in the opinion of the Co-operative, adequate and in a good state of repair;
- (g) ensure that Drainage works on the Landholding are, in the opinion of the Co-operative, in a good state of repair;
- (h) acknowledge that the Member's Annual Allocation Water will be calculated having regard to Transmission Losses and the Member is not entitled to delivery of that component of water which represents the Transmission Losses provided that this **Rule** will not prohibit the Co-operative from agreeing to allocate or sell that component of water which represents the Transmission Losses to Members on a reasonable basis as determined by the Co-operative;
- (i) subject to **Rules 85** and **90.5**, not receive water in excess of 100% of the Member's Annual Allocation Water, exclusive of Transfers of Allocation or Term Transfers of Entitlements in which the Member was the Transferee.

85 **OVERDRAW AND OTHER DEALINGS IN RESPECT OF MEMBER'S AVAILABLE WATER ACCOUNT**

85.1 A Member must not:

- (a) overdraw the Member's Available Water Account; or
- (b) otherwise deal with the Member's Available Water Account;

otherwise than in accordance with the Water Trading Rules, provided that where the proposed transferor or proposed transferee is a Member, the dealing must be in

accordance with the Water Trading Rules set out in the Rules of the Co-operative from time to time.

85.2 The Member acknowledges that if the Member were to:

- (a) destroy, damage or interfere with any part of the System without lawful authority;
- (b) deposit anything in any part of the System without lawful authority; or
- (c) take water from the System without lawful authority;

this would constitute an offence under the Water Management Act punishable by a substantial fine.

86 **RESTRICTIONS**

86.1 The Member must not take water from the Co-operative during a period where the supply of water to the Member is subject to suspension under these Water Supply Rules.

86.2 The Member must not, without the Co-operative's prior written permission, including without limitation as provided by the Water Trading Rules:

- (a) directly or indirectly discharge or allow or cause to be discharged any Prohibited Substance into the System or to do any other act which might cause the water in the System to become contaminated;
- (b) divert or take water supplying or flowing into the System or do any other act to cause the quantity of water in the System to diminish;
- (c) construct or use any Work within the Landholding if such Work is likely to have the effect of altering the rate of delivery of water to the Landholding or elsewhere;
- (d) place, install or permit the placement or installation of a structure in or near a Work in such a manner as to wilfully or negligently interfere with the operations of the Work or destroy or damage the Work;
- (e) discharge rain water, ground water or surface water into the Co-operative's Drainage system. The Member will take any steps necessary to prevent the intrusion of such water into the Drainage system. However, the Member will not be responsible for any such intrusion arising from a fact, matter or circumstance within the control of the Co-operative; or
- (f) deal in any way with the Member's Water Entitlements, the Member's Annual Allocation Water or any interest in any of them.

86.3 Where the Co-operative is of the opinion that the Member has breached or allowed a breach of **Rule 86.1** or **Rule 86.2**, the Member must pay to the Co-operative an amount equivalent to the cost and expense which the Co-operative reasonably determines that it has incurred in detecting the breach, including any expenses associated with entry to and inspection of the Landholding and all costs and expenses of its notification of such breach.

86.4 If a Contribution remains unpaid and an alternative arrangement has not been approved by the Co-operative after a period of 90 days after the Contribution Notice has been issued, the Co-operative may exercise any security it may hold

over the Member's Annual Allocation Water and deal with it until such time as the total debt (including interest) is fully recovered. When the total debt has been recovered the Co-operative must return the whole interest in the Member's Annual Allocation Water to the Member.

87 ACCESS TO LANDHOLDING WITHIN AREA OF OPERATIONS

- 87.1 The Co-operative may, after giving reasonable notice to the Landholder, enter and occupy any Landholding within its Area of Operations in the manner and for the purposes described in section 120 of the Water Management Act.
- 87.2 In the exercise of its right to enter and occupy any Landholding the Co-operative must ensure that as little damage as possible is caused. If any damage is caused the Member may make a claim for compensation in accordance with section 120(2) of the Water Management Act. The Co-operative will duly consider the Member's claim for compensation.
- 87.3 The Member must give every-assistance possible to the Co-operative, its officers, employees and agents to enter and occupy the Landholding for all proper purposes.
- 87.4 The Co-operative may give a written notice to the Member requiring the Member to repair, alter or remove, within the reasonable period specified, all defective or improper Work(s) discovered on an inspection by the Co-operative. Any defective or improper Work(s) required must be reasonably necessary to protect the legitimate interests of the Co-operative.
- 87.5 If the Member does not comply with a notice of the type referred to in **Rule 87.4** within the specified time the Co-operative, its employees or other persons authorised by it may enter the Landholding and repair, alter or remove the defective or improper Work(s). The Member will be liable for the Co-operative's costs and expenses in undertaking such repair, alteration or removal, provided such costs were necessary and reasonable.

88 ACCESS TO LANDHOLDING OUTSIDE AREA OF OPERATIONS

- 88.1 The Co-operative may in accordance with this **Rule 88**, after giving reasonable notice to the Landholder, enter and occupy any Landholding outside its Area of Operations to which it supplies water in accordance with **Rule 80**, for any one or more of the following purposes:
- (a) to install, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that the Co-operative considers are necessary or appropriate to any of its Works or to construct new Works and, for these purposes, to carry out any work on, below or above the surface of the Landholding;
 - (b) to read a meter that:
 - (i) measures water supplied by the Co-operative; or
 - (ii) monitors drainage for quantity or quality or both;
 - (c) to find the source of pollution of water within the Landholding;
 - (d) to ascertain whether a Water Supply Rule or other Rule for the provision of services by the Co-operative is being breached;

- (e) to rectify defective or improper work that has not been rectified by a customer in accordance with a notice served by the Co-operative on the customer under the Water Supply Rules or other Rules;
- (f) to ascertain the character and condition of the land or a building to enable the corporation to install, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve:
 - (i) efficient, co-ordinated and commercially viable systems and services for supplying water from both the surface and subsurface sources; and/or
 - (ii) surface and subsurface drainage networks which have sufficient capacity having regard to relevant factors, including the amount of water supplied by the Co-operative to customers and Members;

or to construct new Works for the purposes of providing systems, services and/or networks of the type referred to at (i) and (ii) above;
- (g) to ascertain the condition and location of any pipe, sewer, drain, channel or fitting or other work used in connection with the land or a building to enable the corporation to install, operate, repair, replace, maintain, remove, extend, expand, connect, disconnect or improve the systems and services:
 - (i) efficient co-ordinated and commercially viable systems and services for supplying water from both the surface and subsurface sources; and/or
 - (ii) surface and subsurface drainage networks which have sufficient capacity having regard to relevant factors, including the amount of water supplied by the Co-operative to customers and Members;

or to construct new Works for the purposes of providing systems, services or networks of the type referred to at (i) and (ii) above; and
- (h) to carry out any investigation or inspection, take levels, drill test bore-holes, make surveys and marks, and fix pegs and stakes, for the purpose of determining the site of any proposed water management work.

88.2 **Rule 88.1** does not affect any other action the Co-operative may lawfully take in accordance with an agreement or otherwise.

88.3 In the exercise of its right to enter and occupy any Landholding in accordance with this **Rule 88** the Co-operative must ensure that as little damage as possible is caused. If any damage is caused the Member may make a claim for compensation, subject to the provisions of **Rule 95**. The Co-operative will duly consider the Member's claim for compensation.

88.4 The Member must give every assistance possible to the Co-operative, its officers, employees and agents to enter and occupy the Landholding for all proper purposes.

88.5 The Co-operative may give a written notice to the Member requiring the Member to repair, alter or remove, within the reasonable period specified, all defective or improper Work(s) discovered on an inspection by the Co-operative. Any defective or improper Work(s) required must be reasonably necessary to protect the legitimate interests of the Co-operative.

88.6 If the Member does not comply with a notice of the type referred to in **Rule 88.5** within the specified time the Co-operative, its employees or other persons authorised by it may enter the Landholding and repair, alter or remove the defective or improper Work(s). The Member will be liable for the Co-operative's costs and expenses in undertaking such repair, alteration or removal, provided such costs were necessary and reasonable.

89 **DRAINAGE**

89.1 Subject to these Water Supply Rules, the Law and any other relevant instrument or Licence, the Co-operative will use its reasonable endeavours to supply Drainage services for discharge by the Member through the Member's connection to the Co-operative's Drainage system.

89.2 The Co-operative will not provide subsoil Drainage services unless it agrees to do so in writing.

89.3 The Co-operative may give a direction to the Member that discharge of water from the Landholding:

- (a) must comply with water quality standards having regard to the requirements of the Licences (or any of them) and as prescribed by the Co-operative;
- (b) must occur only through certain Works;
- (c) must occur at times prescribed in writing by the Co-operative from time to time; and/or
- (d) must not exceed volumes prescribed in writing by the Co-operative from time to time.

89.4 A Member must comply with the reasonable directions of the Co-operative, notified by the Co-operative to the Member, for the purpose of reducing the impact of pesticides, nutrients, salt and any other pollutant, contaminant or water condition on receiving waters.

89.5 A Member must provide the Co-operative all reasonable access to the Member's Landholding and provide the Co-operative with all reasonable assistance for the purposes of the Co-operative determining whether the Member is complying with **Rule 89.3** or **Rule 89.4**.

89.6 Where the Co-operative determines that the Member has breached **Rule 89.3**, **Rule 89.4** or **Rule 89.5**, in addition to any other rights the Co-operative may have under the Rules, the Co-operative may immediately do any, some or all of the following:

- (a) suspend delivery of water (without any obligation to make up any delay or shortfall in delivery) and deny the Member any services provided by the Co-operative;
- (b) by giving a notice to the Member, require the Member to conduct works such as to prevent the continuance of the breach of the Rule; or
- (c) by giving notice to the Member, require the Member to suspend the discharge of Drainage or any substance into the System (without any liability for the consequences, including flooding).

- 89.7 Without limitation, in accordance with **Rules 84.1(g)** and **89.8** a Member must comply with any of the Co-operative's requirements regarding the construction and maintenance of internal drains and connections to the Works of the Co-operative.
- 89.8 The Co-operative may require the Member to construct (at the Member's cost) suitable and adequate Works on the Landholding to store water prior to its discharge into the Drainage system and for the regulation of the Drainage of water into the Drainage system. If the Member does not construct the required Works the Co-operative may construct them or complete their construction in accordance with **Rule 91**.
- 89.9 The Co-operative may give reasonable directions to the Member from time to time to store water from the Landholding in the Works. The Member must comply with these directions.
- 89.10 The Co-operative may permit the Member to discharge water into the Drainage system where the Member is otherwise not permitted to do so. However, the Member must comply with the obligations imposed by the Co-operative and pay any moneys required by the Co-operative in connection with the discharge.
- 89.11 The Member must not breach any direction given to the Member by the Co-operative or discharge water into the Drainage system other than as permitted under this **Rule 89**.
- 89.12 Where the Co-operative is of the reasonable opinion that the Member has breached or allowed a breach of this **Rule 89**, the Member must pay to the Co-operative an amount equivalent to the cost and expense which the Co-operative considers it has incurred in detecting the breach, including all costs and expenses associated with entry into and inspection of the Landholding and all costs and expenses of its notification of such breach.
- 89.13 Under the Environment Protection Licence, a withholding period will apply where an insecticide or herbicide which may cause pollution to the Drainage system has been used on the Member's Landholding. During the withholding period, water will not be drained from the Drainage Outlet. The duration of the withholding period may be reviewed by the Co-operative from time to time.

90 **CONTRIBUTIONS AND OTHER CHARGES**

- 90.1 The Member will pay to the Co-operative all Contributions for which the Member is liable, pursuant to the Rules, the Annual Water Pricing Policy and as notified by the Co-operative in accordance with this **Rule 90**.
- 90.2 The Co-operative will issue to the Member a Contribution Notice, advising the Contributions due from the Member in respect of a Year. The Member must pay the Contributions on the due date and in the manner specified by the Co-operative in the Contribution Notice.
- 90.3 If a Member first becomes subject to a Contribution Notice after the commencement of any Year, the amount of the Contributions is to be apportioned, for the period from the date on which the Member becomes subject to the Contribution Notice until 30 June next following, on the basis of such proportion of the charge as that period bears to the whole of that Year.
- 90.4 A Contribution Notice must include details of:
- (a) the Member's name, Delivery Entitlement Number and contact information;

- (b) the types of services provided and the types of Contributions payable by the Member for the period covered by the Contribution Notice;
 - (c) the amounts of Contributions as assessed by the Co-operative;
 - (d) any variations in the Contributions or bases of calculating Contributions since the period covered by the last immediately preceding Contribution Notice;
 - (e) the date of the Contribution Notice;
 - (f) the due date for payment (being not less than 28 days after the date of the Contribution Notice); and
 - (g) the method or methods for payment.
- 90.5 If the Co-operative agrees with the Member to provide water in excess of the Member's Available Water then the Member must reimburse the Co-operative for all of the Co-operative's costs of acquiring and delivering that water, including an appropriate part of the Co-operative's overheads, on demand.
- 90.6 In addition to any Contributions payable to the Co-operative, the Co-operative may require the Member to contribute an appropriate levy as reasonably determined by the Co-operative from time to time having regard to the compliance, monitoring and reporting against the obligations placed on the Co-operative by State and Federal agencies through legislation and licence compliance.
- 90.7 Where payment is made by the Member by cheque, the cheque must be honoured on presentation to a bank. If upon presentation the Member's cheque is not honoured for any reason the Co-operative may require the Member to pay, and the Member must pay, the Contribution owing and any additional fee as the Co-operative may reasonably determine from time to time.
- 90.8 All unpaid amounts owing to the Co-operative will bear interest, as determined by the Co-operative from time to time calculated in accordance with the prescribed rate pursuant to section 356 of the *Water Management Act* (NSW), from the due date until paid by the Member. Interest will be calculated and accrued on a daily basis and be levied monthly commencing on the due date until the date of payment by the Member.
- 90.9 The Member will indemnify the Co-operative for all and any costs and fees incurred by the Co-operative in recovering or attempting to recover an unpaid amount due and payable by the Member to the Co-operative.
- 90.10 Any unpaid amount or interest will be recovered from the Member as a debt due to the Co-operative. The Co-operative may serve legal process and other documents by certified mail on the Member at:
- (a) the Member's last known address; or
 - (b) such address as the Co-operative may have as notified by the Member in writing; or
 - (c) such other address as may be provided from time to time to the Co-operative by the Australian Electoral Commission.
- 90.11 Any payments made by the Member for any overdue amounts will be applied first to the payment of accrued interest.

91 CONSTRUCTION, MAINTENANCE AND REPAIR OF WORKS

91.1 The Member agrees to:

- (a) engage the Co-operative, or a contractor appropriately qualified and approved by the Co-operative, to carry out any work in relation to the Member's connection to the System. This work must be approved by the Co-operative before connection;
- (b) pay a connection fee to the Co-operative in respect of connection to the System. This fee will be an amount determined from time to time by the Co-operative as permitted by Law and any provisions of any Licence or other legal instrument;
- (c) ensure that all Works on the Landholding are properly cleaned and maintained to the satisfaction of the Co-operative at the Member's cost and expense;
- (d) if required by notice from the Co-operative and where it would be detrimental to the Co-operative or other Members not to do so, construct, remove, alter, repair or improve (or procure the construction, removal, alteration, repair or improvement of) Works on the Landholding deemed necessary or desirable by the Co-operative:
 - (i) for the efficient management and conveyance of water supplied to the Landholding; and
 - (ii) for the storage, discharge and regulation of water into the Drainage system.

91.2 The Co-operative will stipulate the location, design, form, dimensions and levels of any materials for any Works required to be constructed.

91.3 If the Member does not construct the required Works, the Co-operative may construct them or complete their construction.

91.4 Where the Co-operative has constructed Works or completed their construction, it may recover the costs and expenses incurred in such construction or completion of construction as the case may be including costs of acquisition of land or easements deemed necessary for construction of Works.

91.5 The Member will not, without the written approval of the Co-operative, construct or use any Work (or any other device whatsoever) within the Landholding if the Work (or device) is likely to have the effect of altering the rate of delivery of water onto the Landholding.

91.6 The Member will not remove or cause to be removed any structure, building, fixture, fence or other improvement on the Landholding in respect of which any monies are owing to the Co-operative without the written consent of the Co-operative.

91.7 A Member which causes damage to a bridge, culvert, canal, channel, drain or other work constructed by the Co-operative is liable to pay the cost in repairing such damage and any incidental or consequential costs arising from such damage.

91.8 The Works constructed under this **Rule** are the sole property of the Co-operative.

91.9 A Member will not construct, use or manage a Private Work that is not entered in the Register.

92 MEASUREMENT OF WATER USAGE

92.1 The supply of water by the Co-operative to any Landholding will be measured by a Meter except where the Co-operative has given prior written approval for measurement other than by a Meter.

92.2 The quantity of water supplied by the Co-operative as measured by a Meter will be taken to be the quantity of water actually supplied unless the Member can establish, to the satisfaction of the Co-operative, that a materially different quantity was supplied.

92.3 The Co-operative may determine the quantity of Unmeasured Water using any means it considers fit. The Co-operative's estimate of the quantity of water supplied will be taken to be the actual quantity of water supplied to the Member unless the Member appeals under **Rule 92.4**.

92.4 The Co-operative must give to the Member notice of its determination of the volume of Unmeasured Water. The Member has the right to appeal the Co-operative's decision by giving notice of the appeal to the Co-operative (setting out particulars of, reasons for and information in support of, the Member's appeal) within 14 days after the notice of the Co-operative's determination is given to the Member. If the Member gives the Co-operative notice of an appeal in accordance with this **Rule**, the Co-operative must:

- (a) examine and give due and proper consideration to the particulars, reasons and information set out in the notice of the appeal; and
- (b) make a determination regarding the Member's appeal within 28 days after receipt of the notice of the appeal and give the Member notice of the determination, including reasons.

If the Member's appeal is upheld, the Co-operative must vary or amend its notice of determination of the volume of Unmeasured Water.

92.5 The Co-operative may install, upgrade, replace and re-condition one or more Meters on the Landholding.

92.6 The Member may be required by the Co-operative to:

- (a) install or pay for the installation of one or more Meters of any type and size approved by the Co-operative;
- (b) make installations according to the Co-operative's requirements or pay for the making of such installations; and
- (c) maintain the installation in good working order and in accordance with the Co-operative's requirements.

92.7 Any Meter installed on the Landholding is the property of the Co-operative irrespective of who installs the Meter.

92.8 The Co-operative will from time to time and at such intervals as it determines, take readings, or require the Member to take and record readings on behalf of the Co-operative, from any Meter for the purposes of calculating Contributions or for such other purposes as the Co-operative thinks fit.

- 92.9 The Member must take all reasonable steps to ensure the safekeeping of each Meter installed on the Landholding. The Member must keep each Meter in a location which allows unfettered access by the Co-operative to the Meter and, upon request, return each Meter to the Co-operative where the water supply is discontinued or the Meter is otherwise no longer required.
- 92.10 The Member must not alter or remove, or allow the alteration or removal of, a Meter or other apparatus for the measurement, conveyance, reception or storage of water and Drainage without the prior written consent of the Co-operative.

93 **DEFAULT**

93.1 The Member must:

- (a) comply at all times with the provisions of these Water Supply Rules;
- (b) at all times observe the provisions of the Law;
- (c) not do anything (or allow anything to be done) in relation to the Landholding or the Member's Water Entitlements, the doing or omission of which may result in a breach by the Co-operative of any of the Licences, or may render any of the Licences liable to suspension or cancellation; and
- (d) at all times comply (or procure compliance) with all environmental protocols, best management practices, cropping regimes and other catchment management policies from time to time implemented or adopted in respect of the Landholding;

and the Member will be in default of these Water Supply Rules if the Member contravenes any of these obligations.

93.2 Subject to **Rule 93.7**, where a Member is in default the Co-operative may by written demand require the default to be remedied. If the default by the Member continues for 30 days after the written demand, the Co-operative is entitled to take any action necessary to remedy the default on behalf of the Member. All costs incurred by the Co-operative in remedying the default may be charged to the Member.

93.3 Subject to **Rule 93.7**, if:

- (a) the Member repeatedly defaults or the default involves a material breach of these Water Supply Rules; or
- (b) any default of the Member is so severe or prolonged that the Co-operative forms the view (on reasonable grounds) that the default may cause or substantially contribute to a breach of the Licences (or any of them), the Law or any legal right or entitlement of a third party;

the Co-operative may do any, some or all of the following:

- (c) impose a fine on the Member in accordance with **Rule 135**;
- (d) immediately by giving notice to the Member, suspend all or part of the Member's water supply, until the default is remedied, without any obligation to make up any delay or shortfall in supply to the Member once the default is remedied;

- (e) immediately by giving notice to the Member, require the Member to suspend the discharge of Drainage or any substance into the System, until the default is remedied, without any liability for the consequences, including flooding;
- (f) immediately by giving notice to the Member, suspend any determination of, or increase in, or crediting of, Annual Allocation Water, until the default is remedied, without any obligation to make up any delay or shortfall once the default is remedied;
- (g) immediately by giving notice to the Member, suspend the Member's right to use, transfer, terminate, surrender, or otherwise deal with, the Member's Water Entitlements, Available Water or Delivery Entitlements, until the default is remedied, without any liability for the consequences; or
- (h) if the default relates to money due for payment by the Member to the Co-operative, after giving 14 days' notice to the Member:
 - (i) transfer some or all of the Member's Water Entitlements or Available Water and apply the proceeds towards the satisfaction of any money due for payment by the Member to the Co-operative; or
 - (ii) cancel some or all of the Member's Water Entitlements or Available Water and apply a reasonable estimate of the value of the cancelled Water Entitlements or Available Water to the money due for payment by the Member to the Co-operative;

and the Co-operative must pay any surplus to the person entitled to it.

The rights of the Co-operative under this **Rule 93.3** are available whether or not the default is capable of being remedied.

93.4 Subject to **Rule 93.7**, if the existing manner of use of the Landholding (including, if relevant, the application of water) is or becomes (by reason of any of the Licences or a variation of any of them) likely, in the reasonable opinion of the Co-operative, whether immediately or over a period of time, to cause a breach of any of the Licences, the Member will not be in default by virtue of such use until:

- (a) the Co-operative has given a written notice to the Member specifying the manner in which the use may result in a breach of the Licences (or any of them) and recommending to the Member alterations to the use of the Landholding to remedy or avoid the breach; and
- (b) the Member has failed to provide to the Co-operative written evidence that the recommendations of the Co-operative are being implemented by the Member, or to provide to the Co-operative a written proposal setting out reasonable (in the opinion of the Co-operative) alternatives to the Co-operative's recommendations in relation to the use of the Landholding within 60 days after the receipt of the notice referred to in **Rule 93.4(a)**.

93.5 If the Member proposes alternatives to the Co-operative's recommendations in accordance with **Rule 93.4(b)**:

- (a) the Co-operative will advise the Member, within 30 days of receiving the written proposal, whether the Member's alternatives are acceptable;

- (b) within a further 30 days the Co-operative and the Member will agree on alternatives to the use of the Landholding and a timetable for their implementation;
- (c) if the implementation does not proceed in accordance with that timetable the Co-operative may serve a further notice on the Member requiring implementation within 30 days; and
- (d) if at the expiration of the 30 day period the implementation has not proceeded in accordance with that notice the Member will be in default and the Co-operative will be entitled to exercise all of its rights under this **Rule 93.5**.

93.6 The Member will reimburse the Co-operative for any expenses incurred or Loss suffered as a result of a default.

93.7 Nothing in this **Rule 93** will prevent the Co-operative from immediately suspending the supply of water to the Member where the Co-operative, upon becoming aware of a default by the Member, reasonably determines that the default is so severe or its ramifications so serious or immediate (whether for the Co-operative or another person) that immediate suspension is necessary.

93.8 The Co-operative's rights under this **Rule 93** are in addition to any other rights the Co-operative may have at law or in equity.

94 **GUARANTEES AND OTHER SECURITIES**

94.1 The Co-operative's obligations under these Water Supply Rules are subject to the Member, at its cost, arranging for the provision of such guarantee(s) and/or security(ies) (including without limitation third party guarantees) in favour of the Co-operative as the Co-operative may in its sole discretion require.

95 **WARRANTY AND LIMITATION OF LIABILITY**

95.1 Neither party will be liable to the other party under or in respect of the Rules for any Consequential Loss arising from any cause of action (including negligence).

95.2 The Co-operative warrants that it will use all reasonable endeavours to operate its business in an efficient and cost-effective manner and to comply with its obligation under each of the Licences in order to maintain and keep current the Licences for each of their respective terms and any renewed term.

95.3 Without limitation, no matter or thing done by the Co-operative, or by any person acting under the authority of the Co-operative, will, if that matter or thing was done bona fide under **Rule 80.4** subject the Co-operative or any such person to any action, liability, claim or demand whatsoever.

95.4 To the extent permissible by law, any and all implied warranties or representations by the Co-operative are negated. In particular, and without limitation, the Co-operative gives no warranty as to the quality of, or suitability for any purpose of, any water delivered by it and gives no warranty that any particular volume of water will be available at any time or times unless expressly agreed by the Co-operative in a particular instance.

95.5 Notwithstanding any other provision of these Water Supply Rules, the Co-operative will not be liable for any failure or delay in the Co-operative's performance of its obligations under these Water Supply Rules to the extent that such failure or delay

is caused or contributed to by any event or circumstance beyond the control of the Co-operative.

95.6 Subject to **Rule 95.7** and **Rule 95.8**, the maximum aggregate amount that either party may recover from the other party in respect of any Claim, whether in contract, tort (including negligence), statute or any other cause of action, arising out of or in connection with these Rules (including the negotiations for, subject matter of, or breach of the Rules) is an amount equal to the amount of all Contributions paid by the Member under the Rules in the 12-month period immediately preceding the date on which the party receives notice of the Claim.

95.7 **Rule 95.6** does not limit the amount that the Co-operative may recover from the Member in respect of any Claim for Contributions.

95.8 The Member indemnifies the Co-operative against all Loss incurred by the Co-operative arising directly or indirectly as a result of or in connection with:

- (a) any death or injury to persons, and any loss or damage to the real or personal property of the Co-operative or a third party, caused by any act or omission of the Member; or
- (b) any negligent or wilful act or omission of the Member,

except to the extent that any Loss is caused by or contributed to by the Co-operative's negligence or breach of these Rules.

95.9 The limitations on the liability of the Co-operative, exclusions of liabilities of the Co-operative and indemnities contained in this **Rule 95** are in addition to any other limitations on the liability of the Co-operative, exclusions of liability of the Co-operative and indemnities available to the Co-operative by law including:

- (a) the indemnities provided by section 137 of the Water Management Act 2000 (NSW) and section 36 of Schedule 9 of the Water Management Act (NSW); and
- (b) the exclusion of liability under section 397 of the Water Management Act (NSW) for any act or omission done, or omitted to be done, in good faith for the purpose of executing the Water Management Act (NSW).

96 **GST**

96.1 With the exception of any amount payable under this **Rule 96**, unless otherwise expressly stated all amounts stated to be payable under these Water Supply Rules are exclusive of GST.

96.2 Notwithstanding any other provision of these Water Supply Rules:

- (a) if a GST applies to any supply made by either party under or in connection with these Water Supply Rules; and
- (b) the party making the supply is or will be registered under GST Law at the time the supply is made by that party; and
- (c) a tax invoice (as that term is defined in the GST Law) in connection with the supply has been rendered by the supplier to the recipient of the supply,

the consideration (reduced, if required, in accordance with **Rule 96**) payable or to be provided for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply.

- 96.3 If the imposition of a GST or any subsequent change in the GST Law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes, duties or statutory charges (in this **Rule 96** "taxes"), the consideration payable by the recipient of the supply made under this document will be reduced by the actual costs of the party making the supply that are reduced directly or indirectly as a consequence of the abolition of or reduction in taxes.
- 96.4 The parties agree to meet prior to the imposition of a GST in order to determine in good faith the variation of any consideration in accordance with this **Rule 96**. In determining the amount of any reductions to the consideration in accordance with this **Rule 96**, the supplier must furnish the recipient of the supply with any relevant information reasonably requested by the supply recipient.
- 96.5 If this document requires a party to pay, reimburse or contribute to an amount for which the other party has received an invoice from a third party which includes GST, then the relevant amount for payment, contribution or reimbursement will be the GST Exclusive Value (calculated in accordance with the GST Law) of the supply to that other party.

97 **MEMBER NOT TO CAUSE A CONTRAVENTION OF THE LICENCES**

- 97.1 The Co-operative must notify the Member from time to time in writing of the Co-operative's obligations under its Licences.
- 97.2 The Member must not knowingly do or omit to do anything that may cause a contravention of the Licences.
- 97.3 The Member indemnifies and will keep indemnified the Co-operative from and against all claims and costs to which the Co-operative will or may become liable to as a result of any contravention referred to in **Rule 97.2** except to the extent that the negligence of the Co-operative causes or contributes to the quantum of any such claims or costs.

98 **CERTIFICATE OF WATER ENTITLEMENTS AND CERTIFICATE OF DELIVERY ENTITLEMENTS**

- 98.1 Every person whose name is entered as a Water Entitlement Holder in the Register of Members or Register of Non-Member Water Entitlement Holders will without payment be entitled to a certificate under seal specifying the number of Water Entitlements of that person, the Water Entitlement Number and the class, or classes, of water supply attaching to the Water Entitlements.
- 98.2 In the event of an inconsistency between a certificate (or certificates) issued under **Rule 98.1** and the Register, the Register will prevail.
- 98.3 However, where Water Entitlements are held jointly by several persons, the Co-operative is only required to provide one Certificate of Water Entitlements. Delivery of a Certificate of Water Entitlements to one of the joint holders is sufficient delivery to all.
- 98.4 If a Certificate of Water Entitlements, letter of allotment, transfer, receipt or other document of title to Water Entitlements is lost, defaced or destroyed, a duplicate may be issued by the Co-operative on payment of a fee. This fee must not exceed

\$50 and must be on such terms as to evidence and indemnity as the Board thinks fit. A replacement Certificate of Water Entitlements will be marked as such.

98.5 Every person whose name is entered as a Water Entitlement Holder in the Register of Members will also be entered on the National Irrigation Corporation Water Entitlements Register.

98.6 Every person whose name is entered as a Member in the Register of Members will without payment be entitled to a certificate under seal specifying the number of Delivery Entitlements of that person and the Delivery Entitlement Number.

98.7 In the event of an inconsistency between a certificate (or certificates) issued under **Rule 98.6** and the Register, the Register will prevail.

98.8 However, where Delivery Entitlements are held jointly by several persons, the Co-operative is only required to provide one Certificate of Delivery Entitlements. Delivery of a Certificate of Delivery Entitlements to one of the joint holders is sufficient delivery to all.

98.9 If a Certificate of Delivery Entitlements, letter of allotment, transfer, receipt or other document of title to Delivery Entitlements is lost, defaced or destroyed, a duplicate may be issued by the Co-operative on payment of a fee. This fee must not exceed \$50 and must be on such terms as to evidence and indemnity as the Board thinks fit. A replacement Certificate of Delivery Entitlements will be marked as such.

99 **REVIEW**

99.1 The Co-operative must review these Water Supply Rules on the first anniversary of the formation of the Co-operative, and on every fifth anniversary of the formation of the Co-operative.

99.2 In the reviews referred to in **Rule 99.1** the Co-operative must consult with and consider in good faith any representations made by the Members and any Stakeholder Representation Body.

100 **VARIATION AND AMENDMENT**

100.1 These Water Supply Rules may be varied, amended, supplemented or replaced in accordance with the Co-operatives National Law.

100.2 Despite any other Rule, any variation, amendment, supplementation or replacement pursuant to **Rule 100.1** must not contravene the Australian Consumer Law.

101 **COMMENCEMENT AND TERMINATION**

101.1 The Water Supply Contract which has been re-named Water Supply Rules and the renaming continues the terms and conditions of the Water Supply Contract unless otherwise amended.

101.2 These Water Supply Rules will expire on the expiry of the Co-operative's Operating Licence and/or any subsequent licence periods in accordance with section 124 of the Water Management Act.

102 **TERMINATION BY MEMBER**

- 102.1 At any time on the giving of 30 days written notice to the Co-operative the Member may terminate their obligations under these Water Supply Rules and all rights or obligations of the parties will cease except for any rights or obligations of the parties to one another arising out of anything occurring before the termination.
- 102.2 A notice of termination under **Rule 102.1** is ineffective unless the Member:
- (a) transfers his or her Member's Water Entitlements and Delivery Entitlements in accordance with the Water Trading Rules;
 - (b) transfers or sells to the Co-operative his or her Shares in accordance with the Rules;
 - (c) enters into an agreement with the Co-operative either on terms negotiated between the Member and the Co-operative or on terms determined by a tribunal of competent jurisdiction whereby the Co-operative is possessed of legally enforceable rights equivalent to those set out in Rule 88; and
 - (d) has paid the Termination Fee as set out in **Rule 17**.

103 **WAIVER**

- 103.1 An action of the Co-operative in respect of these Water Supply Rules will only be binding against the Co-operative as a waiver if in writing and signed by an authorised officer of the Co-operative.
- 103.2 No custom or practice which evolves between the parties will constitute a waiver or lessen the Co-operative's right to insist upon the Member's strict performance or observance of any provision of these Water Supply Rules or to exercise any of the Co-operative's other rights.
- 103.3 Regardless of the Co-operative's knowledge at the time, a demand by the Co-operative for Contributions or the subsequent acceptance of Contributions will not constitute a waiver of any earlier default by the Member.

DIVISION 9 - WATER TRADING RULES

104 **INTERPRETATION OF WATER TRADING RULES**

- 104.1 In addition to the definitions set out in **Rule 1**, in these Water Trading Rules:

Annual Transferee Member means a Member who is a transferee under **Rule 111** and **Rule 112**.

Applicants means the transferor and transferee under a Transfer Application.

External Transfer of Available Water into the Access Licences will have the meaning given to that term in **Rule 112**.

External Transfer of Available Water out of the Access Licences will have the meaning given to that term in **Rule 111**.

External Permanent Transfer of Water Entitlements into the Access Licences will have the meaning given to that term in **Rule 116**.

External Permanent Transfer of Water Entitlements out of the Access Licences will have the meaning given to that term in **Rule 115**.

External Term Transfer of Water Entitlements into the Access Licences will have the meaning given to that term in **Rule 114**.

External Term Transfer of Water Entitlements out of the Access Licences will have the meaning given to that term in **Rule 113**. **External Transfer** means an External Permanent Transfer of Water Entitlements, External Term Transfer of Allocation or an External Transfer of Available Water.

Internal Transfer of Available Water has the meaning given to that term in **Rule 107**.

Internal Permanent Transfer of Delivery Entitlements has the meaning given to that term in **Rule 110**.

Internal Permanent Transfer of Water Entitlements has the meaning given to that term in **Rule 109**.

Internal Term Transfer of Water Entitlements has the meaning given to that term in **Rule 108**. **Internal Transfer** means an Internal Permanent Transfer of Water Entitlements, Internal Term Transfer of Water Entitlements or an Internal Transfer of Available Water.

Order when used in connection with the supply of water to a Member, means an order for the supply of water in the prescribed form (if any) and placed with the Co-operative.

Purchaser means any transferee, purchaser or dispose, whether by way of gift, declaration of trust or for value.

Term Water Entitlement Contract means a contractual arrangement between a Water Entitlement Holder and another person for an External or Internal Term Transfer of Water Entitlements.

Transfer means an Internal Transfer of Available Water, an Internal Term Transfer of Water Entitlements, an Internal Permanent Transfer of Water Entitlements, an Internal Permanent Transfer of Delivery Entitlements, an External Transfer of Water Entitlements, an External Term Transfer of Water Entitlements or an External Permanent Transfer of Water Entitlements, as the context requires.

Transfer Application means an application for a Transfer completed and signed and in the form determined by the Co-operative.

Transfer Assessment Criteria has the meaning given to that term in **Rule 106**.

Transferee means the party to a Transfer Application proposing to acquire Water Entitlements, or quantity of Available Water, as the case may be.

Transferor means the party to a Transfer Application proposing to sell Water Entitlements or a quantity of Available Water, as the case may be.

105 TRANSFERS AND RESTRICTIONS

- 105.1 These Water Trading Rules should be read in conjunction with, and are subject to, the Water Act, the Water Management Act and the instruments made under them (including the Water Market Rules, the *Basin Plan 2012* (Cth) and the *Water Charge (Termination Fees) Rules 2009* (Cth)).

- 105.2 Except as may be provided under **Rule 35** (Transformation), the Water Entitlements Holder may not sell, transfer or otherwise dispose of in any other way the Water Entitlement Holder's Water Entitlements or Available Water (in whole or in part) except:
- (a) in the case of an Internal Transfer of Available Water in accordance with **Rule 107**;
 - (b) in the case of an Internal Term Transfer of Water Entitlements in accordance with **Rule 108**;
 - (c) in the case of an Internal Permanent Transfer of Water Entitlements in accordance with **Rule 109**;
 - (d) in the case of an Internal Permanent Transfer of Delivery Entitlements in accordance with **Rule 110**;
 - (e) in the case of an External Transfer of Available Water Out of the Access Licences in accordance with **Rule 111**;
 - (f) in the case of an External Transfer of Available Water Into the Access Licences in accordance with **Rule 112**;
 - (g) in the case of an External Term Transfer of Water Entitlements Out of the Access Licences in accordance with **Rule 113**;
 - (h) in the case of an External Term Transfer of Allocation Into of the Access Licences in accordance with **Rule 114**;
 - (i) in the case of an External Permanent Transfer of Water Entitlements Out of the Access Licences in accordance with **Rule 115**;
 - (j) in the case of an External Permanent Transfer of Water Entitlements Into the Access Licences, in accordance with **Rule 116**.

105.3 The Board may approve a Transfer unconditionally or subject to conditions.

106 **TRANSFER ASSESSMENT**

- 106.1 Every Transfer Application for an External or an Internal Permanent Transfer of Water Entitlements must be determined by the Board.
- 106.2 A Transfer Application for an External or an Internal Term Transfer of Water Entitlements may be determined by the Chief Executive.
- 106.3 A Transfer Application for an External or an Internal Transfer of Available Water may be determined by the Chief Executive.
- 106.4 The Co-operative may change or reverse a determination with respect to a Transfer Application or a Transfer if a decision of the NSW Minister for Regional Water or a Government or statutory authority (including a change to, or reversal of, a previous decision) affects the Transfer Application or a Transfer.
- 106.5 Determinations under **Rules 106.1 to 106.4** may, subject to **Rule 35**, be made at the discretion of the decision maker.
- 106.6 With respect to Internal Permanent Transfers of Delivery Entitlements, the Co-operative may, acting reasonably, restrict the Transfer, and the factors to be taken

into account in deciding whether a restriction is reasonable include, but are not limited to, the following:

- (a) overall capacity in the System;
- (b) capacity in the parts of the System to which water would potentially be delivered under the transferred Delivery Entitlements;
- (c) reconfiguration or decommissioning work in the parts of the System to which water would potentially be delivered under the transferred Delivery Entitlements;
- (d) connectivity between specific parts of the System relevant to the proposed transfer;
- (e) payment of fees or charges for access, changing access, or terminating or surrendering access, to the System;
- (f) the number of Delivery Entitlements reasonably required to irrigate a person's Landholding for both current and expected future water use;
- (g) the net costs to the Co-operative of assessing and giving effect to the Transfer;
- (h) the provision of reasonable security to the Co-operative for the payment of fees or charges for access to the System by the person acquiring the Delivery Entitlements; and
- (i) whether the proposed Transfer would result in the Delivery Entitlements being held by a person who does not own or occupy land in the area serviced by the Co-operative.

106.7 In considering and determining any Transfer Application, the Board or the Chief Executive (as the case may be) may attribute such weight to each factor they consider relevant as it or they determine in the context of the Transfer Application under consideration.

106.8 The Board or the Chief Executive (as the case may be) may also (and where they are under an obligation at law to do so, must also) take into account other criteria relevant to the Co-operative's obligations under the Licences.

106.9 Subject to **Rules 106.10** and **106.13**, no transfer will take effect until the Board or the Chief Executive (as the case may be) has recorded the Transfer by altering:

- (a) the Register of Member or the Register of Non-Member Water Entitlement Holders, in the case of Internal and External Permanent Transfers of Water Entitlements, or
- (b) the appropriate records of the Co-operative, in the case of Internal and External Transfers of Available Water and Internal and External Term Transfers of Water Entitlements.

106.10 No External Transfer may take effect, and the consent of the Board or the Chief Executive (as the case may be) to all Transfers remains in escrow, until the Ministerial Corporation and each other authority (if any) having jurisdiction in relation to the proposed Transfer approves the proposed Transfer.

- 106.11 The Co-operative may refuse a Transfer unless all Contributions or Levies payable by the transferor (if applicable) and the transferee (if applicable) have been paid.
- 106.12 The Co-operative may refuse a Transfer if there is any interest or dealing listed on the Register of Members or Register of Non-Member Water Entitlement Holders and the consent (if required) of the holder of any such interest or dealing has not been obtained by the Applicant.
- 106.13 The Co-operative is not obliged to seek the approval of, nor to join in any application to, the Ministerial Corporation or any other authority (if any) whose approval is required in respect of the proposed Transfer, unless and until the Transfer Application has been approved by the Board or the Chief Executive (as the case may be).

107 **INTERNAL TRANSFERS OF AVAILABLE WATER**

- 107.1 ***Internal Transfer of Available Water*** means a contractual arrangement between a Water Entitlement Holder and another person under which the Water Entitlement Holder agrees, subject to these Water Trading Rules, to transfer to the other person, for supply for use:
- (a) only within the Season during which the Transfer is made; or
 - (b) in the case of a Transfer made in the period between two Seasons, in the Season next following the Transfer; or
 - (c) a certain quantity (expressed in whole Megalitres) of the Water Entitlement Holder's Available Water.
- 107.2 In addition to any other requirements set out in these Water Trading Rules, an Internal Transfer of Available Water may only be effected by lodging a Transfer Application, made by both the Applicants, to the Co-operative to approve the transfer of that quantity of the transferor's Available Water to the transferee's Available Water Account.

108 **INTERNAL TERM TRANSFERS OF WATER ENTITLEMENTS**

- 108.1 ***Internal Term Transfer of Water Entitlements*** means a contractual arrangement (Term Water Entitlement Contract) between a Water Entitlement Holder and another person under which the Water Entitlement Holder agrees to transfer to the other person the right to the Water Entitlements specified in the contract for an agreed period.
- 108.2 The Internal Term Transfer of Water Entitlements is subject to these Water Trading Rules and can be for a period no longer than any term limit set out in the relevant Water Sharing Plan for term transfers.
- 108.3 In addition to any other requirements set out in these Water Trading Rules, an Internal Term Transfer of Water Entitlements may only be effected by lodging with the Co-operative a Term Water Entitlement Contract, signed by both the Applicants, for the approval of the Co-operative.
- 108.4 Immediately the Internal Term Transfer of Water Entitlements takes effect in accordance with this **Rule 108** and for the term in which the Transfer occurs, the Co-operative may allocate the Annual Allocation Water in respect of the specified Water Entitlements directly to the Available Water Account of the transferee.

109 **INTERNAL PERMANENT TRANSFERS OF WATER ENTITLEMENTS**

109.1 ***Internal Permanent Transfer of Water Entitlements*** means an absolute legal assignment of Water Entitlements from a Water Entitlement Holder to another person and will include all of the rights which attach to the relevant Water Entitlements.

109.2 In addition to any other requirements set out in these Water Trading Rules, an Internal Permanent Transfer of Water Entitlements may only be effected by lodging with the Co-operative a Transfer Application, made by both the Applicants, for the approval of the Co-operative.

110 **INTERNAL PERMANENT TRANSFERS OF DELIVERY ENTITLEMENTS**

110.1 ***Internal Permanent Transfer of Delivery Entitlements*** means:

- (a) an absolute legal assignment of Delivery Entitlements from a Member to another Member, including all of the rights which attach to the relevant Delivery Entitlements; or
- (b) a transfer of a Member's Delivery Entitlements between the Member's Outlets or between the Landholdings of the Member.

110.2 In addition to any other requirements set out in these Water Trading Rules, an Internal Permanent Transfer of Delivery Entitlements may only be effected by lodging with the Co-operative a Transfer Application, made by both the Applicants, for the approval of the Co-operative.

110.3 Delivery Entitlements are not transferable unless:

- (a) the transferee is a Member and is the registered proprietor of a Landholding;
- (b) the transferee's Landholding is connected, or is able to be connected, to the System, to the satisfaction of the Co-operative; and
- (c) there is sufficient capacity in the System and the Works on the transferee's Landholding for the delivery of water to the Landholding, to the satisfaction of the Co-operative.

111 **EXTERNAL TRANSFER OF AVAILABLE WATER OUT OF THE ACCESS LICENCES**

111.1 ***External Transfer of Available Water Out of the Access Licences*** means a contractual arrangement between a Water Entitlement Holder and another person for the sale by the Water Entitlement Holder and purchase by the other person, subject to these Water Trading Rules, of a certain quantity (expressed in whole Megalitres) of the Water Entitlement Holder's Available Water, for supply for use:

- (a) only within the Season during which the Transfer is made; or
- (b) in the case of a Transfer made in the period between two Seasons, in the Season next following the Transfer.

111.2 For the purposes of this **Rule 111** and **Rules 112, 113, 114, 115** and **116** the expressions "access licence" and "water allocation" will have the same meaning as given to them in the Dictionary of the Water Management Act. "Share component" will have the same meaning as given to it in section 56 of the Water Management Act.

111.3 An External Transfer of Available Water Out of the Access Licences may only be effected by each of the Applicants completing and lodging with the Co-operative a Transfer Application for the Co-operative to apply under Division 4, Part 2, Chapter 3 of the Water Management Act for an assignment of water allocation to the person holding the access licence pursuant to which the transferee Applicant is supplied with water.

112 **EXTERNAL TRANSFER OF AVAILABLE WATER INTO THE ACCESS LICENCES**

112.1 ***External Transfer of Available Water Into the Access Licences*** means a contractual arrangement between a Member and another person for the sale by the other person and purchase by the Member, subject to these Water Trading Rules, of a certain quantity (expressed in whole Megalitres) of volumetric water, for supply for use:

- (a) only within the Season during which the Transfer is made; or
- (b) in the case of a Transfer made in the period between two Seasons, in the Season next following the Transfer.

112.2 An External Transfer of Available Water Into the Access Licences may only be effected by the Applicants completing and lodging with the Co-operative a Transfer Application, for the Co-operative to apply under Division 4, Part 2, Chapter 3 of the Water Management Act for an assignment of water allocation from the person holding the access licence pursuant to which the transferor Applicant is supplied with water to the Co-operative's Access Licence from which the Member is supplied with water.

113 **EXTERNAL TERM TRANSFER OF WATER ENTITLEMENTS OUT OF THE ACCESS LICENCES**

113.1 ***External Term Transfer of Water Entitlements Out of the Access Licences*** means a contractual arrangement (Term Water Entitlement Contract) between a Water Entitlement Holder and another person under which the Water Entitlements Holder agrees to transfer, for the agreed term, the right to the relevant share component on the Co-operative's Access Licence to which the Water Entitlement Holder has beneficial title under the Water Entitlements specified in the contract.

113.2 The External Term Transfer of Water Entitlements is subject to these Water Trading Rules and can be for a period no longer than any term limit set out in the relevant Water Sharing Plan for term transfers.

113.3 An External Term Transfer of Water Entitlements out of the Access Licences may only be effected by each of the Applicants completing and lodging with the Co-operative a Transfer Application for the Co-operative to apply under Division 4, Part 2, Chapter 3 of the Water Management Act for an assignment of share component to the person holding the access licence pursuant to which the transferee Applicant is supplied with water.

113.4 The transferor Applicant must procure that the person holding the access licence pursuant to which the transferee Applicant is supplied with water enter into an agreement with the Co-operative to ensure that the share component is assigned back to the Co-operative at the end of the agreed term for the transfer of share component.

114 **EXTERNAL TERM TRANSFER OF WATER ENTITLEMENTS INTO THE ACCESS LICENCES**

114.1 ***External Term Transfer of Entitlements Into the Access Licences*** means a contractual agreement (Term Water Entitlement Contract) between a Water Entitlement Holder or Member and another person under which the other person agrees to assign to the Co-operative for an agreed term, for the benefit of the Water Entitlement Holder or Member, a share component of an access licence.

114.2 The External Term Transfer of Entitlements is subject to these Water Trading Rules and can be for a period no longer than any term limit set out in the relevant Water Sharing Plan for term transfers.

114.3 An External Term Transfer of Water Entitlements Into the Access Licences may only be effected by the Applicants completing and lodging with the Co-operative a Transfer Application for the Co-operative to apply under Division 4, Part 2, Chapter 3 of the Water Management Act, for an assignment of share component of part of the access licence from the person holding the access licence pursuant to which the transferor Applicant is supplied with water to the Co-operative.

114.4 The Co-operative must enter into an agreement with the person holding the access licence pursuant to which the transferor Applicant is supplied with water to ensure that the share component is assigned back to that person at the end of the agreed term for the transfer of share component.

115 **EXTERNAL PERMANENT TRANSFERS OF WATER ENTITLEMENTS OUT OF WATER ACCESS LICENCES**

115.1 ***External Permanent Transfer Out of the Access Licences*** means a contractual agreement between a Water Entitlement Holder and another person for an absolute legal assignment by way of sale and purchase, subject to these Water Trading Rules, of one or more Water Entitlements.

115.2 Subject to **Rule 35**, An External Permanent Transfer Out of the Area of Operations may only be effected by the Applicants lodging with the Co-operative a Transfer Application for the Co-operative to apply under Division 4, Part 2, Chapter 3 of the Water Management Act, for an assignment of part of the share component of the Co-operative, to the person holding the access licence pursuant to which the transferee Applicant is supplied with water.

116 **EXTERNAL PERMANENT TRANSFERS OF WATER ENTITLEMENTS INTO THE ACCESS LICENCES**

116.1 ***External Permanent Transfer of Water Entitlements Into the Access Licences*** means a contractual agreement between a Water Entitlement Holder or Member and another person for an absolute legal assignment, subject to these Water Trading Rules, of one or more share components from the other person to the Co-operative for the benefit of the Water Entitlement Holder or Member.

116.2 An External Permanent Transfer of Water Entitlements Into the Access Licences may only be effected by the Applicants completing and lodging with the Co-operative a Transfer Application for the Co-operative to apply under Division 4, Part 2, Chapter 3 of the Water Management Act, for an assignment of share component from the person holding the access licence pursuant to which the transferor Applicant is supplied with water to one of the Co-operative's Access Licences.

117 SECURITY

117.1 This **Rule** applies if a Member holds either:

- (a) Delivery Entitlements but no Water Entitlements; or
- (b) at least five times more Delivery Entitlements than Water Entitlements;

or either of those things will apply after any Transfer, issue of Delivery Entitlements or cancellation of Water Entitlements, or reduction in the amount of Security (including as a result of the Co-operative applying the security in accordance with **Rule 117.10** or otherwise).

117.2 The Co-operative may, to the maximum extent permitted by law, require security to be given by the Applicant for the payment of Charges for access to the System for the delivery of water to the Member.

117.3 The Co-operative must not require security to be given by the Member under **Rule 117.2** in an amount that, at the time the security is given:

- (a) exceeds the amount that, under the *Water Charge (Termination Fees) Rules 2009* (Cth), would be payable to the Co-operative for the termination or surrender of the Delivery Entitlements held by the Applicant at that time (this will generally be the amount of the Termination Fee that would be payable to the Co-operative for the termination or surrender of all of the Delivery Entitlements held by the Applicant at that time); or
- (b) if there is no such amount, exceeds the amount of the "total network access charge" within the meaning of the *Water Charge (Termination Fees) Rules 2009* (Cth) payable to the Co-operative in respect of the financial year in which the security is given.

117.4 The Co-operative may refuse to accept security required under **Rule 117.2** unless the Applicant offers it in one or more of the following forms:

- (a) a guarantee given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth) (**Bank Guarantee**);
- (b) a deposit lodged with the Co-operative (**Deposit**); or
- (c) any other form of security agreed upon by the Co-operative and the Member.

117.5 If the security given by the Member is a Bank Guarantee, the Bank Guarantee must:

- (a) be unconditional; and
- (b) not have an expiry date, except with the Co-operative's consent.

117.6 If the security given by the Member is a Deposit, the Co-operative must (and the Member authorises the Co-operative to) deposit the Deposit in an interest-bearing cash management account.

117.7 The Co-operative must pay interest earned on the Deposit to the Member periodically as determined by the Co-operative.

117.8 The Member bears the risk of loss of the Deposit.

- 117.9 For the purposes of this **Rule 117**, a reference to interest means interest actually earned on the Deposit less all duty, bank charges and any other money properly payable in respect of the investment of the Deposit.
- 117.10 The Co-operative may apply the security given by the Member in accordance with **Rule 117.2** to any outstanding Charges if they remain unpaid for 14 days after they fall due or upon termination or surrender of the Member's Delivery Entitlements or the termination of the Agreement.
- 117.11 Subject to **Rules 117.1** and **117.2**, the Co-operative must return any surplus of the security after deduction under **Rule 117.10** to the Member after 14 days have elapsed from the termination or surrender of the Member's Delivery Entitlements or the termination of the Agreement.

118 **OBLIGATIONS OF THE CO-OPERATIVE**

- 118.1 The Co-operative will notify the Applicants of its determination on any Transfer Application within 30 days of receipt of a duly completed and executed Transfer Application accompanied by all of the required material and information.
- 118.2 If the Co-operative requires further information from the Applicants in order to determine the Transfer Application the Co-operative must notify the Member or Water Entitlement Holder within 14 days after the Co-operative receives the Transfer Application, of the additional information required. The Applicants must provide the information promptly. The 30 day period during which the Co-operative must determine the Transfer Application commences on receipt of the last of the information required by the Co-operative.
- 118.3 The Co-operative must promptly determine all Transfer Applications in accordance with these Water Trading Rules.
- 118.4 If a Transfer Application for an Internal or External Permanent Transfer of Water Entitlements is approved the Co-operative must promptly record the Transfer in the Register of Members and/or the Register of Non-Member Water Entitlement Holders (as appropriate) and issue fresh Certificates of Water Entitlements (as appropriate) showing the quantity and distinctive identification numbers of the Water Entitlement Holder's Water Entitlements.
- 118.5 If a Transfer Application for an Internal or External Transfer of Available Water or an Internal or External Term Transfer of Water Entitlements is approved, the Co-operative must promptly record the Transfer in the appropriate records of the Co-operative.
- 118.6 If a Transfer Application for an Internal Permanent Transfer of Delivery Entitlements is approved the Co-operative must promptly record the Transfer in the Register of Members and issue fresh Certificates of Delivery Entitlements showing the quantity and distinctive identification numbers of the transferor's and transferee's Delivery Entitlements.
- 118.7 All Transfer Applications, together with any Certificates of Water Entitlements, which are the subject of or are affected by the Transfer to which the Transfer Application relates, must be left for registration at the Registered Office or such other place as the Co-operative may permit and such other evidence as the Co-operative may reasonably require to show the right of the transferor to make the Transfer.

119 **GENERAL**

119.1 Any stamp duty payable in respect of any Transfer Application must be paid by the Applicants before a Transfer Application will be registered by the Co-operative.

119.2 Applicants must pay, bear and indemnify the Co-operative in respect of all duties, taxes and imposts assessed or assessable, charged or chargeable or for which the Co-operative may become liable by reason of the Transfer to which the Transfer Application relates.

119.3 Applicants must reimburse the Co-operative on demand for all costs incurred by the Co-operative (including an appropriate part of the Co-operative's overheads):

- (a) in considering the Transfer Application and all accompanying information;
- (b) for the fees and expenses of any consultants engaged by the Co-operative to assist the Co-operative in its review and assessment of the Transfer Application; and
- (c) payable to the Ministerial Corporation or to any other authority in relation to the Transfer Application or the Transfer itself;

or otherwise reasonably incurred as a direct result of the Transfer Application or the Transfer itself.

DIVISION 10 - CONTRIBUTIONS, OPERATING EXPENSES, RESERVES AND CHARGES TO MEMBERS

120 **DETERMINATION OF CONTRIBUTIONS**

120.1 The Board must by the last Business Day of each May, determine all or any of the following Contributions:

- (a) Access Fee for each class of Delivery Entitlement;
- (b) Outlet Charges;
- (c) Fixed Charge Equivalent for metered usage exceeding Delivery Entitlements held by a Member;
- (d) Peak Flow Charges;
- (e) Levies;
- (f) Government Water Charges; and
- (g) Termination Fees;

and notify Members not later than 10 Business Days before the charges come into effect of those determinations in the form of a Contribution Notice.

120.2 The Contributions determined by the Board for one class of water supply need not be the same as those determined for another class of water supply, but the Contributions determined for a class of water supply must be the same for all Water Entitlements conveying that class of water supply.

120.3 In determining Contributions for a Year the Board must calculate Contributions so as to cover costs and expenses and overheads of the Co-operative in carrying out its primary activities, including, but not limited to:

- (a) the amounts payable by the Co-operative pursuant to its Licences;
- (b) the anticipated costs of the operation by the Co-operative of its business and the performance of the Co-operative of its functions as an irrigation corporation for the relevant Year;
- (c) costs of regular repairs, Refurbishment, maintenance and construction in relation to the Co-operative's assets for the Year;
- (d) amounts sufficient to allow accumulation of reserves at rates sufficient to meet anticipated expenses and liabilities of the Co-operative in future Years, including:
 - (i) a fund to be known as the "Asset Maintenance Fund" to cover maintenance and Refurbishment expenses on the Co-operative's assets; and
 - (ii) such other reserves as the Co-operative may from time to time determine are prudent and reasonable to permit the Co-operative to carry out its primary activities; and
- (e) the costs and expenses of the Co-operative in delivering water to Members.

120.4 The Board may at any time vary any Contribution, whether or not the Member has paid that Contribution, for any reason including but not limited to:

- (a) an error however described having been made in the Contribution or in its calculation;
- (b) the provision of any additional services; and
- (c) any other factor, matter or circumstance determined by the Board.

120.5 The Board will notify the Member of any variation in Contributions. Any variation will take effect from the date on which the relevant notice is delivered to the Member or such other date as may be specified by the Board in such notice.

121 ESTABLISHMENT OF MANAGEMENT RESERVES

121.1 The Board must cause separate accounts to be kept for the Reserves established under **Rule 120.3**.

121.2 Subject to **Rule 121.3** moneys to the credit of the Reserves may only be utilised for the purposes stated (in respect of each particular reserve) in **Rule 120.3**.

121.3 Moneys to the credit of the Reserves may only be expended for a purpose other than those stated (in respect of each particular reserve) in **Rule 120.3(d)** if approved by an ordinary resolution of Members at a general meeting.

DIVISION 11 - ACCOUNTS

122 FINANCIAL YEAR

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

123 **ACCOUNTS**

- 123.1 The Board must have prepared the accounts, statements and Directors' report in accordance with the Rules.
- 123.2 The Board must submit those accounts, statements and report, together with the auditor's report on those accounts, to the annual general meeting of the Co-operative, in accordance with the Rules.
- 123.3 The Board must also have a copy of everything required to be submitted under **Rule 123.2** displayed at the Registered Office for a period of not less than 14 days before the date of the annual general meeting of the Co-operative.
- 123.4 The Board must, at least 21 days before the date of the annual general meeting of the Co-operative, send a copy of everything required to be submitted under **Rule 123.2** to each Member.

124 **BANKING**

- 124.1 The Board must have a banking account or accounts in the name of the Co-operative into which all moneys received must be paid as soon as possible after receipt.
- 124.2 All cheques drawn on these accounts and all drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the Co-operative, must be signed by two Directors or by any two persons authorised by the Board.

125 **AUDIT**

- 125.1 One or more auditors must be appointed, hold office, be remunerated, be removed and have qualifications, duties and responsibilities as provided by the Co-operatives National Law.
- 125.2 All reasonable fees and expenses of the auditor are payable by the Co-operative.

DIVISION 12 – SINKING FUND AND OTHER CO-OPERATIVE FUNDS

126 **SINKING FUND**

- 126.1 The role of the Sinking Fund Committee is to:
- (a) advise the Board in respect of the Sinking Fund; and
 - (b) make recommendations to the Board with respect to Sinking Fund Levies, in accordance with this **Rule**.
- 126.2 Members of the Sinking Fund Committee must be appointed by the Board. The Sinking Fund Committee will comprise at least four members, but no more than six members, consisting of:
- (a) two independent Directors;
 - (b) two other Directors; and
 - (c) if the Board wishes to appoint more than four members of the Sinking Fund Committee, up to two other natural persons over the age of 18 years with

relevant skills, experience or knowledge (who may be, but need not be, Members or Directors).

- 126.3 Each member of the Sinking Fund Committee will have a term starting on the date of their appointment as a member of the Sinking Fund Committee and ending at the end of the Year in which their appointment takes effect.
- 126.4 A person appointed by the Board to the Sinking Fund Committee can serve consecutive terms as a member of the Sinking Fund Committee.
- 126.5 There is no limit to the number of terms, consecutive or otherwise, that a person appointed by the Board to the Sinking Fund Committee can serve as a member of the Sinking Fund Committee.
- 126.6 The Board may, at any time, remove any member of the Sinking Fund Committee before his or her term of office expires and appoint another person in place of that member of the Sinking Fund Committee.
- 126.7 The Board may approve, amend or revoke a written charter for the Sinking Fund Committee. The charter must not be inconsistent with the Rules. The members of the Sinking Fund Committee are bound by the charter.
- 126.8 The Sinking Fund Committee must elect one of its members who is an independent Director as chairperson of their meetings. If at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, then the members of the Sinking Fund Committee who are present must choose the other independent Director to be chairperson of the meeting.
- 126.9 Subject to any charter, the Sinking Fund Committee may meet, and adjourn, as it thinks fit. Questions arising at any meeting of the Sinking Fund Committee must be determined by a majority of votes of the members of the Sinking Fund Committee present and voting. In the case of an equality of votes, the chairperson has a second or casting vote.
- 126.10 The quorum for any meeting of the Sinking Fund Committee is one half (or where one half is not a whole number, the whole number next higher than one half) of the number of members of the Sinking Fund Committee, and must include at least one of its members who is an independent Director.
- 126.11 From time to time the Sinking Fund Committee may seek the assistance of the other organisations or individuals with particular skills, knowledge, experience and/or responsibilities to assist in its deliberations.
- 126.12 The Board may delegate any Board powers to the Sinking Fund Committee, subject to **Rule 72**.
- 126.13 The Board retains the right to review or override any decision or action of the Sinking Fund Committee. The Board may review or override any decision or action of the Sinking Fund Committee of the Board's own volition or on the written application of any interested person.
- 126.14 The Co-operative will collect Sinking Fund Levies and the Member must pay the Sinking Fund Levies to the Co-operative in accordance with this **Rule** and **Rule 120**.
- 126.15 The Sinking Fund Committee must, by the last Business Day of each May, recommend to the Board the Sinking Fund Levies for the next Year. In recommending Sinking Fund Levies for a Year, the Sinking Fund Committee must:

- (a) calculate the Sinking Fund Levies so as to allow accumulation of reserves, to be known as the "Sinking Fund", at rates sufficient to cover capital expenditure for the construction, Refurbishment and replacement in future Years of existing and future irrigation and drainage assets of the Co-operative; and
 - (b) in undertaking the calculation under **Rule 126.15(a)**, take into account both the MEERA Report and the Actuarial Valuation Report.
- 126.16 The Co-operative must have a separate account with a financial institution into which all Sinking Fund Levies must be paid as soon as possible after receipt.
- 126.17 The Co-operative must cause separate accounts to be kept for the Sinking Fund.
- 126.18 The Sinking Fund must only be spent on capital expenditure for the construction, Refurbishment and replacement of existing and future irrigation and drainage assets of the Co-operative. Moneys to the credit of the Sinking Fund, however derived, may only be used for those purposes and no portion thereof can be paid or transferred directly or indirectly by way of discount, rebate or otherwise by way of profit to Members.
- 126.19 The Sinking Fund Committee must develop and implement a business plan and investment strategy for the Sinking Fund that manages risk and sets financial investment objectives which provide future funding for the timely construction, Refurbishment and replacement of existing and future irrigation and drainage assets of the Co-operative.
- 126.20 The Co-operative must provide Members, in each annual report of the Co-operative, with an update on the Sinking Fund, including summaries of the structure and security of investments and any major capital expenditure to be incurred for the construction, Refurbishment and replacement of existing and future irrigation and drainage assets of the Co-operative.

127 **OTHER CO-OPERATIVE FUNDS**

- 127.1 Without limiting **Rule 126.14**, the Co-operative may, in accordance with directions from the Mutual, also collect sinking fund levies as agent for the Mutual and the Member must pay the levies to the Co-operative in accordance with **Rule 126**. The Co-operative is the agent of the Mutual and will remit all funds collected in accordance with its instructions.
- 127.2 The Board may resolve to retain all or any part of the surplus arising in any Year from the business of the Co-operative to be applied for the benefit of the Co-operative.
- 127.3 There shall be no return or distribution of surplus or share capital to Members. Without limiting this **Rule**, the Co-operative must not pay dividends.
- 127.4 Nothing in this **Rule** precludes the payment of a bonus to an employee in accordance with the terms of his or her employment.
- 127.5 A part of the surplus, not exceeding 10%, arising in any Year from the business of the Co-operative may be applied for charitable purposes.
- 127.6 For the purposes of this **Rule**, "surplus" means the excess of income over expenditure after making adequate allowances for taxation expense, for depreciation in value of the property of the Co-operative and for future contingencies.

DIVISION 13 - MISCELLANEOUS

128 SEAL

- 128.1 The name of the Co-operative 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 directs.
- 128.2 The Co-operative may have for use in place of its common seal one or more official seals for use outside the State. Each of the official seals must be a facsimile of the common seal with the addition on its face of the name of every place where it is to be used.
- 128.3 The common seal of the Co-operative must 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.
- 128.4 The person affixing the official seal must certify in writing on the instrument to which it is affixed the date on which and the place at which it is affixed.

129 CUSTODY AND INSPECTION OF RECORDS AND REGISTERS

- 129.1 The Co-operative 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;
 - (c) a copy of the last annual report of the Co-operative under section 284 of the Co-operatives National Law;
 - (d) a copy of the minutes of each general meeting;
 - (e) the register of Directors, Members and Shares;
 - (f) the register of Members and Register of Non-Member Water Entitlement Holders;
 - (g) the register of the names of persons who have given loans or deposits to, or hold securities or debentures given or issued by, the Co-operative;
 - (h) the register of notifiable interests which is to be entered in alphabetical order of the names of persons from whom the Co-operative has received notification under **Rules 21** and **43**; and
 - (i) such other registers as the Co-operatives National Law or the Regulations provide are to be open for inspection.
- 129.2 A Member is entitled to make a copy of entries in a register specified in this **Rule** and to do so free of charge. The Co-operative may charge an amount per page for photocopies.
- 129.3 The Co-operative 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 Regulation;

- (b) a copy of the Rules; and
 - (c) a copy of the last annual report of the Co-operative under section 284 of the Co-operatives National Law.
- 129.4 Shares, debentures, charges and any other certificates or documents or duplicates of them pertaining to securities shall be safely kept by the Co-operative in the way and with the provision for their security as the Board directs.

130 **PROVISION FOR LOSS**

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

131 **DISPUTE RESOLUTION**

- 131.1 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.
- 131.2 The IAC may be asked to advise the Board in relation to any Dispute. In consideration of a Dispute only the elected Members of the IAC may sit as a mediating committee and make recommendations to the Board.
- 131.3 Either the Board or the IAC may request the CERC to provide advice in relation to any Dispute.

132 **DISPUTES COMMITTEES**

- 132.1 The IAC will comprise three Members selected from a pool of not more than seven Members elected by the Members. The Board may also appoint four independent advisors to the IAC.
- 132.2 The IAC will conduct their business in the same manner as is specified in the Rules for the conduct of meetings of the Board (subject to the qualifications and limitations set out in this **Rule**).
- 132.3 The IAC will be empowered to consider, and to make recommendations to the Board, in relation to any matter affecting any Member of the Co-operative, and the Co-operative, arising out of:
- (a) these Rules (other than this **Rule**); and/or
 - (b) any order, Water Supply Rules, Water Trading Rules or any other provisions determined from time to time by the Board.
- 132.4 The IAC will 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 Director (or Directors) of the Board.
- 132.5 The application must:
- (a) be in writing;

- (b) be signed by the applicant;
- (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.

132.6 The IAC 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 will 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).

133 **NOTICES**

133.1 A notice or other document is required to be given to a Member under the Rules or the Co-operatives National Law:

- (a) personally;
- (b) by post; or
- (c) subject to section 611 of the Co-operatives National Law, by publishing the notice in a newspaper circulating generally in the State or in the area served by the Co-operative.

133.2 A document may be served on a Co-operative:

- (a) by post addressed to the Registered Office; or
- (b) by leaving it at the Registered Office with a person who appears to be aged 16 or more.

133.3 Where a notice is sent by post, service is 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 this service it is enough to prove that the envelope containing the notice was properly addressed and posted.

133.4 A notice or other document to a Member, advertised in a newspaper, is deemed to be duly given to the Member on the date on which the advertisement appears.

- 133.5 A notice forwarded by facsimile transmission is 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.
- 133.6 A notice may be given by the Co-operative to the joint holders of a Share by giving the notice to the joint holder named first in the Register in respect of that Share.
- 133.7 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 the representative of the deceased, or incapacitated person, or trustee of the bankrupt, or by any like description. The address should be that supplied for the purpose by the person claiming to be entitled. Alternatively, 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.
- 133.8 Notice of every general meeting must be given, in same manner as authorised above to:
- (a) every Member of the Co-operative except those Members who have not supplied to the Co-operative an address for the giving of notices to them; and
 - (b) every person entitled to a Share in consequence of the death, incapacity or bankruptcy of a Member who, but for that Member's death, incapacity or bankruptcy would be entitled to receive notice of the meeting.
- 133.9 For the purpose of this **Rule** "registered address" means the address of the Member as appearing in the Register.

134 **WINDING-UP**

- 134.1 The winding-up of the Co-operative must be in accordance with Part 4.5 of the Co-operatives National Law.
- 134.2 If, on the winding up or dissolution of the Co-operative, there is a deficiency, Members are liable to contribute towards the deficiency to the extent of any amount unpaid on Shares held by the Member and any charges payable by the Member to the Co-operative as required by these Rules.
- 134.3 If, on the winding up or dissolution of the Co-operative, 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 Co-operative but shall be given or transferred to an institution:-
- (a) which has similar functions to those of the Co-operative;
 - (b) whose constitution prohibits the distribution of its property among its members; and
 - (c) which has been chosen by the Members of the Co-operative at or before the time of dissolution or in default thereof by a judge of such court as may have or acquire jurisdiction in the matter.
- 134.4 In **Rule 134.3**, the expression "institution" includes an institution or institutions.

135 **FINES PAYABLE BY MEMBERS**

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

135.2 A fine pursuant to **Rule 135.1** must not be imposed on a Member 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.

136 **BY-LAWS**

136.1 The Board may make By-Laws not inconsistent with the Co-operatives National Law, the Regulations, the Rules, or the Licences to govern the Co-operative's conduct and dealings with Members and Non-Members who accept delivery of water through the Co-operatives infrastructure.

136.2 Despite any other Rule, any variation, amendment, supplementation or introduction of new By-Laws must not contravene the Australian Consumer Law.

136.3 The Members must comply with By-Laws made under these Rules.

137 **SCHEDULE OF CHARGES**

Copy book of Rules	-	Rule 2	-	\$20.00
Duplicate Share Certificate-		Rule 12	-	\$50.00
Nominal Value of Shares	-	Rule 18	-	\$1.00
Transfer of Shares	-	Rule 23	-	\$50.00
Termination Fee	-	Rule 17	-	as published annually
Access Fee	-	Rule 120	-	as determined by the Board
Outlet Charge	-	Rule 120	-	as determined by the Board
Government Water Charges	-	Rule 120	-	pass-through cost
Transfer of Debentures	-	Rule 30	-	\$50.00
Transfer of Water	-	Rule 119	-	as published annually
Inspection of Register	-	Rule 129	-	free
Maximum Fine	-	Rule 135	-	\$1,000
Transformation Fee	-	Rule 35	-	as published annually

Sinking Fund Levy - **Rule 126** - as determined by the Board

138 REGISTER OF FOREIGN OWNERSHIP

138.1 In this **Rule 138**, “foreign person” has the same meaning as in the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* (Cth) but also includes a foreign corporation to which paragraph 51(xx) of the *Commonwealth of Australia Constitution Act* applies.

138.2 Each Member acknowledges that:

- (a) the Co-operative must comply with the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* (Cth);
- (b) this requires the Co-operative to determine periodically whether it is, has become, or has ceased to be, a foreign person; and
- (c) in order to make that determination, the Co-operative needs information from its Members.

138.3 If a Member is, or becomes, or ceases to be, a foreign person during a financial year (1 July to 30 June), the Member must give notice of that circumstance to the Co-operative by the seventh day after the end of the financial year but this **Rule** does not apply if either:

- (a) the Member is not a foreign person at the end of the financial year and was not a foreign person at the end of the previous financial year; or
- (b) the Member is no longer a member at the end of the financial year.

138.4 Without limiting **Rules 138.1** to **138.3**, if a Member gives a notice to the Commissioner of Taxation under Part 3B (Requirements to give information about foreign holdings of water entitlements) of the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* (Cth) of an event described in section 30N (Becoming a foreign person while holding a water entitlement or contractual water right) or section 30P (Ceasing to be a foreign person while holding a water entitlement or contractual water right) in respect of a registrable water entitlement (including a Water Entitlement) or a contractual water right, the Member must give a copy of the notice to the Co-operative at the same time.

139 PRIVACY

139.1 The Co-operative will at all times comply with the Privacy Policy.

139.2 If, as a result of Membership of the Co-operative, any Member is able to access any Personal Information, then the Member must:

- (a) comply with the Privacy Act 1988 (Cth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, including the Australian Privacy Principles, as if it were regulated by these laws;
- (b) comply with any privacy code, policy or terms which have been adopted by or are binding on the Co-operative (copies available on request) as if it were directly bound by them;

- (c) comply with any direction of the Co-operative that is consistent with the laws, codes and policies referred to in **Rules 139.2(a)** and **139.2(b)** above, including as to technical, security and organisational measures; and
- (d) immediately notify the Co-operative in writing, and give the Co-operative full details, about any accidental or unauthorised access to any Personal Information.

140 **TRANSITIONAL PROVISIONS**

140.1 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 Co-operative which have accrued before the amendments take effect.

141 **REFERENCES TO AMENDED OR REPEALED LEGISLATION**

141.1 Where the Rules contain a reference to the whole or any provision of an Act or Regulations that has been amended, the reference will be construed as a reference to that law or provision as amended from time to time.

141.2 Where the Rules contain a reference to the whole or any provision of an Act or Regulations has been repealed and replaced, the reference will be construed as a reference to the replacement Act or Regulations or to the provision (if any) in the replacement law that corresponds to the provision referred to in these Rules.

SCHEDULE 1

"Transfer of Share Forms"

I, of.....
in consideration of the sum of \$
paid to me by, of
(hereinafter called "the transferee") transfer

the Share (or Shares) numbered
.....

in COLEAMBALLY IRRIGATION CO-OPERATIVE LIMITED

to the transferee, the transferee's executors, administrators, and assigns, subject to the several conditions on which I hold the Share or Shares at the time of execution of this form ("**conditions**");

and I, the transferee, agree to take the Share (or Shares) subject to the conditions and further acknowledge that on registration of the transfer:

- I will be liable for additional Contributions to the Co-operative; and
- unless the Mutual is wound up, I must become a member of the Mutual and will be liable for additional contributions to the Mutual.

EXECUTED on the day of in the year of

Signed by,
transferor.

In the presence of, witness.

Signed by,
transferee.

In the presence of, witness.

SCHEDULE 2

"Transfer of Debenture Forms"

I, of.....
in consideration of the sum of \$
paid to me by, of
(hereinafter called "the transferee") transfer
the debenture (or debentures) numbered

.....
in COLEAMBALLY IRRIGATION CO-OPERATIVE LIMITED

to the transferee, the transferee's executors, administrators, and assigns, subject to the several conditions on which I hold the debenture or debentures at the time of execution of this form ("**conditions**");

and I, the transferee, agree to take the Share (or Shares) subject to the conditions.

EXECUTED on the day of in the year of

Signed by,
transferor.

In the presence of, witness.

Signed by,
transferee.

In the presence of, witness.

SCHEDULE 3

PROXIES

COLEAMBALLY IRRIGATION CO-OPERATIVE LIMITED

I/We, (Name) of (Address)

being a Member/s of the abovenamed Co-operative hereby appoint

..... (Name) of (Address) as my/our

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

*annual general/

*special general meeting of the Co-operative,

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

SCHEDULE 4

CLASSES OF WATER SUPPLY

Description of Classes of Water Supply

Class A Water Supply

High security volumetric allocation water to be supplied for horticultural or industrial use, as noted in the Irrigation Corporation Licence and recorded in the Register for an individual Member.

An approved Meter must be installed and functioning in the Member's Outlet to gain access.

An advance (as determined from time to time) water order must be placed on the Co-operative's water ordering system prior to gaining access.

Class B Water Supply

Normal security volumetric allocation water to be supplied to large area irrigation farms, horticulture farms, domestic gardens and for recreation use as noted in the Irrigation Corporation Licence and recorded in the Register for an individual Member.

An approved Meter must be installed and functioning in the Member's Outlet to gain access.

An advance (as determined from time to time) water order must be placed on the Co-operative's water ordering system prior to gaining access.

Class F Water Supply

High flow opportunistic water to a Member's Outlet installed in the Co-operative's Drainage system. There are no Water Entitlements attached to Class F Water Supply.

Meter must be installed and functioning on the Member's Outlet to gain access. Meter readings must be supplied to the Co-operative to continue access.

An advance (as determined from time to time) water order must be placed on the Co-operative's water ordering system prior to gaining access.

The availability of Class F Water Supply may, in the discretion of the Co-operative, be suspended during periods where Class G Water Supply is made available by the Co-operative.

Class G Water Supply

High security volumetric allocation water supplied for the purpose of priority pumping to a Landholding to water stock in accordance with section 52 Chapter 3 Part 1 Division 1 of the Water Management Act and the Access Licence.

Meter must be installed at the Customer's Outlet to gain access. Meter readings must be supplied to the Co-operative to continue access.

A Customer must place an order for water on the Co-operative's water ordering system no less than seven days prior to the date on which the customer wishes the water to be made available.

A minimum total daily ordered volume, in the West Coleambally Channel, of Class G Water Supply of 124 ML will apply to the delivery of Class G Water.

Class G Water Supply will only be made available, in the West Coleambally Channel, during the months of November and February, or any other mutually agreed time and, if made available, will be supplied over a period of 14 consecutive days during each of those months.

The Co-operative will provide transmission losses to make Class G Water Supply available to the Member/customer in the West Coleambally Channel.

Any unutilised Class G Water Entitlements held by West Coleambally Channel Members, at the end of February may, at the discretion of the Co-operative, be utilised to service transmission losses.

Overdraws and continuous accounting Rules will not apply to Class G Water Supply.

Access to Class F water in the West Coleambally Channel will be suspended during periods where Class G Water Supply deliveries are being made by the Co-operative. The Co-operative may waive this condition during a period of high flow in the West Coleambally Channel.

The provision of Class G Water Supply will otherwise be at the discretion of the Co-operative having regard to the effect (if any) which such supply may have on the Water Entitlement in respect of the Landholding.

Annual Operating Rules for the West Coleambally Channel will be mutually agreed between West Coleambally Water Management Association (WCWMA) and the Co-operative and the Member agrees to be bound by such Rules.

Class T Water Supply

High security volumetric allocation water to be supplied for town use, as noted in the Irrigation Corporation Licence and recorded in the Register for an individual Member.

An approved Meter must be installed and functioning in the Member's Outlet to gain access.

An advance (as determined from time to time) water order must be placed on the Co-operative's water ordering system prior to gaining access.