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**STRONG AND CAPABLE CO-OPERATIVE LIMITED
RULES**



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STRONG & CAPABLE CO-OPERATIVE LIMITED RULES

1. APPLICATION OF THESE RULES

1.1 These rules are the rules of the Strong and Capable Co-operative Limited.

2. DEFINITIONS

2.1 In these Rules:

- (a) **Annual Membership Fee** means the fee (if any) determined by Rule 6.2;
- (b) **Application Form** means an application form for the purpose of membership, meeting the requirements under Rule 7.1;
- (c) **Auspice Arrangement** means the contract which is to be formed between Carers SA and the Co-operative which will set out funding arrangements and any other legal obligations between the parties;
- (d) **Ballot paper** means a ballot paper in paper or electronic form;
- (e) **Board** means the board of the Co-operative;
- (f) **Buddy Up** means the pairing or grouping of Members with other Members in order for Members to share their lived experience with each other;
- (g) **Carers SA** means Carers Association of SA Incorporated (ABN 15 598 799 607) trading as "Carers SA";
- (h) **CCU** means a co-operative capital unit as defined in the CNL;
- (i) **CNL** is a reference to the Co-operatives National Law as applying in this jurisdiction from time to time;
- (j) **Co-operative** means the co-operative formed under these rules;
- (k) **Director** means a director of the Co-operative;
- (l) **Member** means a member of either class of the Co-operative;
- (m) **Membership Fee** means the fee determined pursuant to Rule 6.1;
- (n) **National Regulations** means the Co-operatives National Regulations as applying in this jurisdiction;
- (o) **NDIS** means the National Disability Insurance Scheme established under the *National Disability Insurance Scheme Act 2013* (Cth);
- (p) **Primary Carer** means the individual who has primary care of an individual with a disability;
- (q) **Provider** means any provider of disability and/or healthcare services;
- (r) **Qualifying Person** means a person who satisfies the requirements of Rule 5.2;
- (s) **Rules** means these rules of the Co-operative as amended from time to time pursuant to Rule 19;
- (t) **Standard postal times** means the times when properly addressed and prepaid letters would be delivered in the ordinary course of post; and

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- (u) **Support Requirements** mean any adjustments which may be necessary, and/or any other support the Co-operative may reasonably be able to provide to the Member.

2.2 Except so far as the contrary intention appears in these rules, words and expressions used in these rules have the same meanings as they have, from time to time, in the CNL or relevant provisions of the CNL.

3. NAME OF THE CO-OPERATIVE (CNL SS220–222 & 224)

3.1 The name of the Co-operative is Strong and Capable Co-operative Limited.

4. ACTIVE MEMBERSHIP PROVISIONS (CNL SS112(2), 144, 148 & 156–166)

4.1 Primary Activity

For the purposes of Part 2.6 of the CNL, the primary activities of the Co-operative are:

- (a) delivery of advocacy, information, and support planning and/or co-ordination from a lived experience perspective;
- (b) assistance in the establishment and maintenance of connections between Members and Providers;
- (c) delivery of peer led support to NDIS participants and others with a lived experience of disability; and
- (d) collect, analyse and distribute information regarding products and services that Members may seek to utilise in order to assist the Co-operative with the activities outlined above.

4.2 Active Membership Requirements

- (a) In order to establish and maintain active membership of the Co-operative, a Member must:
 - (i) pay an Annual Membership Fee to be applied toward the primary activities outlined in Rule 4.1; and
 - (ii) agree to actively use at least one service provided by the Co-operative during each financial year in which the Member is a member of the Co-operative.
- (b) Where possible, to support the primary activities of the Co-operative, Members are encouraged to:
 - (i) Buddy Up with and mentor new members through sharing their lived experience of disability; or
 - (ii) share their experiences with other Members via a closed Facebook group consisting of Members.
- (c) Active membership is a condition of membership and failure to maintain active membership may lead to cancellation of membership (see rule 8).

5. QUALIFICATIONS FOR MEMBERSHIP

5.1 There are two classes of membership:

- (a) people with a disability or their nominee; and
- (b) the Primary Carer of a person with a disability who uses the services of the Co-operative.

5.2 A person qualifies for membership of the Co-operative (and is known as a Qualifying Person) if the person falls within one of the classes set out in Rule 5.1 and is able to use or contribute to the services of the Co-operative.

5.3 A person may only qualify for one class of membership in their individual capacity. For clarity, this Rule does not apply to individuals who are registered holders under Rule 12.2.

6. ENTRY FEES AND REGULAR SUBSCRIPTIONS (CNL S 124)

6.1 Entry Fee

(a) The fee on application of a Qualifying Person must be tendered at a time prior to or with the application for membership.

(b) The Board may determine that there is a fee for an application for membership from time to time and if that fee is set at a sum which is greater than “zero”, then it must be tendered at a time prior to or with the application for membership.

6.2 Annual Membership Fee

The Board may in its discretion require Members to pay an Annual Membership Fee, which, if set, shall be such sum as is determined by the Board from time to time.

6.3 Publication of Fees

If the Board has, for the time being, determined that the Members should pay for a fee under this Rule 6, then such fees shall be published on the website of the Co-operative, or as the CNL otherwise requires, along with the rules of accrual and payment.

7. MEMBERSHIP APPLICATIONS

7.1 Application Lodgement

Applications for either class of membership must be lodged at the registered office in the Application Form approved by the Board, and should be accompanied by:

(a) payment of the Entry Fee set out in rule 6.1; and

(b) any and all supporting documents necessary to demonstrate that a person is a Qualifying Person, including but not limited to any Support Requirements which may be required from the Co-operative.

7.2 Board Consideration

(a) Every application for membership must be tabled for consideration by the Board.

(b) If the Board approves of the application, then:

(i) the applicant’s name;

(ii) information regarding the Support Requirements of the Member; and

(iii) any other information required under the Application Form and by the CNL,

must be entered in the register of Members within 28 days of the Board’s approval and the applicant must be notified, in writing, of the entry in the register whereby the applicant is then entitled to the privileges attaching to the membership.

(c) The Board:

(i) may, at its discretion, refuse an application for membership; and

(ii) need not assign reasons for the refusal and is entitled to inform itself and make its own inquiry into the applicant and circumstances of the application as it sees fit, without being obligated to do so.

(d) On refusal, any amounts paid by the applicant and accompanying the application for membership must be refunded by the Co-operative within 28 days without interest.

7.3 **Change of Details**

It is a duty of each Member to keep the Co-operative informed of any changes to their eligibility to be a Member under Rule 5.

8. **CESSATION OF MEMBERSHIP (CNL S 117)**

8.1 **Cessation of membership (CNL SS 117)**

A person ceases to be a Member in any of the following circumstances:

- (a) failure to maintain active membership in accordance with Rule 4.2;
- (b) the Member is the subject of a resolution by the Board that the Member's name be removed from the Member's Register for reason that the person has, in the view of the Board, as evidenced by resolution, ceased to qualify as a Member under Rule 5;
- (c) any circumstances specified in section 117 of the CNL;
- (d) the Member dies; or
- (e) the Member has resigned from the Co-operative by giving 28 days' notice in writing in a form approved by the Board outlined such resignation.

8.2 **Forfeiture and Cancellations — Inactive Members (CNL SS 156-163)**

The Board must declare the membership of a Member cancelled if:

- (a) the whereabouts of the Member are not presently known to the Co-operative and have not been known to the Co-operative for a continuous period of at least three (3) years; or
- (b) the Member is not presently active and has not been active within the meaning of Rule 4.2 in the past three (3) years.

9. **EXPULSION OF MEMBERS (CNL S 117)**

9.1 **Expulsion**

A Member may be expelled from the Co-operative by a special resolution of the Board to the effect:

- (a) that the Member has seriously or repetitively failed to discharge the Member's obligations:
 - (i) to the Co-operative under these rules; or
 - (ii) under a contract or contracts entered into with the Co-operative under section 125 of the CNL; or
- (b) that the Member has acted in a way that has:
 - (i) prevented or hindered the Co-operative in carrying out one or more of its primary activities; or

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- (ii) brought or risks bringing the Co-operative into disrepute; or
 - (iii) been contrary to one or more of the Co-operative principles as described in section 10 of the CNL and has caused the Co-operative harm; or
- (c) that in the view of the Board as evidenced by resolution, the Member has committed, or been involved in, an act, matter or thing which is detrimental to the interests of the Co-operative.

9.2 Notice of Expulsion

Written notice of the proposed Board resolution must be given to the Directors at least 28 days before the date of the meeting at which the resolution is to be moved, which states:

- (a) the allegations against the Member or proposed grounds on which the Board proposes to rely;
- (b) the proposed resolution for the Member's expulsion; and
- (c) that the Member has an opportunity at the meeting to address the allegations or basis for the proposed resolution either orally or in writing.

9.3 Board Resolution

At the Board meeting when the resolution is proposed the following procedures apply:

- (a) the Member must be afforded an opportunity to be heard and is entitled to table evidence;
- (b) if the Member fails to attend at the time and place mentioned, without reasonable excuse, the resolution and information before the Board must be considered and the Board may decide on the evidence before it, despite the absence of the Member;
- (c) the Board may be both an investigator which makes its own enquiries and the decision-maker. It may delay its decision and pursue investigation, should it resolve to do so;
- (d) once the alleged conduct and material before the Board is considered, the Board may decide to:
 - (i) expel the Member concerned; or
 - (ii) impose conditions on the continuation of the Member as a Member;as the Board sees fit.

9.4 Re-Admission of Expelled Members

An expelled Member must not be re-admitted as a member of the Co-operative unless the re-admission is approved by the Board, who may approve that re-admission subject to conditions.

10. MONETARY CONSEQUENCES OF EXPULSION OR RESIGNATION (CNL S 128)

10.1 If a Member is expelled, resigns from the Co-operative or otherwise ceases to be a Member then:

- (a) all amounts owing to the Co-operative by the former Member shall become immediately payable in full (including such amounts as are reasonably assessed by the Board as being payable by way of losses or damages resulting from the grounds for expulsion);
- (b) all benefits allocated to the Member may be set-off by the Co-operative in reduction of any sum owing by the Member;
- (c) all rights to unallocated benefits to that Member shall cease from the earliest of:

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- (i) the date of resignation; or
 - (ii) the notice issued under Rule 9.2, if such a notice was issued prior to the expulsion or resignation.

10.2 Subject to s 128 of the CNL, payment to the expelled or resigning Member of any amount owing by the Co-operative to the former Member:

- (a) must be made at the time determined by the Board, but within one year from the date of expulsion or resignation; or
- (b) may be applied at the time determined by the Board, but within one year from the date of expulsion or resignation, in the manner set out in s 128 of the CNL, subject to:
 - (i) agreement by the Board and former Member; or
 - (ii) in the event the Board considers such repayment to have an adverse affect on the financial position of the Co-operative.

11. SUSPENSION OF MEMBERS

11.1 The Co-operative may suspend a Member for not more than one year in the following circumstances:

- (a) the Member has contravened any of these Rules;
- (b) the Member fails to discharge its obligations to the Co-operative, whether under these Rules or a contract;
- (c) the Member has acted in a manner detrimental to the interests of the Co-operative.

11.2 The procedure for the suspension of a Member is the same as the procedure set out in Rule 9, but Rule 9 is to be read as though references to expulsion are references to suspension.

11.3 During the suspension, the Member:

- (a) loses any rights, except the right to vote, arising as a result of membership;
- (b) is not entitled to a refund, rebate, relief or credit for membership fees paid or payable to the Co-operative; and
- (c) remains liable for any fine that may be imposed.

12. RIGHTS AND LIABILITIES OF MEMBERS UNDER BANKRUPTCY OR MENTAL INCAPACITY (CNL SS 95, 96 AND 117)

12.1 A person's Membership ceases upon an insolvency event and the value of their membership may be transferred to the official trustee or external administrator, as the case may be under the provisions of section 95 of the CNL.

12.2 A person appointed under a law of a state or territory to administer the estate of a Member who, through mental or physical infirmity, is incapable of managing his or her affairs, may be registered as the holder of the member's Membership and the rights and liabilities of membership vest in that person during the period of the appointment.

12.3 The liabilities attaching to the Membership of a person under bankruptcy or mental incapacity continue in accordance with section 96 of the CNL.

12.4 Upon application by a person appointed to manage the affairs of a member referred to in Rule 12.2, the board may decide to suspend some or all active Membership obligations if there are grounds to believe that the member's physical or mental infirmity is temporary.

13. DISPUTES AND MEDIATION (CNL S129)

- (a) The grievance procedure set out in this Rule applies to disputes under and owing to the application of these Rules between:
 - (i) a Member and another Member; or
 - (ii) a Member (including a former member) and the Co-operative.
- (b) If a dispute arises to which this Rule applies, a party cannot commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this Rule, except where a person seeks urgent interlocutory relief.
- (c) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days of:
 - (i) the dispute coming to the attention of each party; or
 - (ii) a party giving notice, to each of the other parties involved, of the dispute or grievance.
- (d) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, the parties must, as soon as is practicable, hold a meeting in the presence of a mediator appointed by the Board, who must be suitably qualified (in the opinion of the Board) and independent of the Co-operative and the parties concerned.
- (e) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (f) The mediator, in conducting the mediation, must:
 - (i) give the parties to the mediation process every opportunity to be heard and is entitled to call witnesses and table evidence; and
 - (ii) allow due consideration by all parties of any written statement and material submitted by any party.
- (g) The mediator cannot determine the dispute.
- (h) The mediation must be confidential and without prejudice.
- (i) In the absence of an agreement to the contrary, the costs of the mediation are to be shared equally between the parties and the parties must pay the mediator in advance of any mediation meeting.
- (j) Nothing in this Rule applies to any dispute as to:
 - (i) the construction or effect of any mortgage or contract contained in any document other than these Rules; or
 - (ii) any dispute involving the expulsion or suspension of a Member or the imposition of a fine.
- (k) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the CNL or otherwise at law.
- (l) The application of this grievance procedure shall only delay the holding of a meeting of the Board to be held for the purpose of passing a resolution of which notice has been given under Rule 9.2.
- (m) Section 130 of the CNL applies if mediation does not resolve the dispute.

14. LIABILITY OF MEMBERS TO CO-OPERATIVES

14.1 Fines Payable by Members (CNL ss 56 & 126)

The Board may impose on a Member a maximum fine of \$1.00 for a contravention of these Rules.

14.2 Liability Arising from Membership (CNL ss 117(2) & 121)

A Member is liable to the Co-operative for the amount, if any, unpaid by the Member in respect of any entry fees and regular subscriptions, payable by the Member to the Co-operative under these Rules.

15. TRANSFER AND TRANSMISSION OF DEBENTURES

15.1 On the written request of the transferor of a debenture, the Co-operative must enter in the appropriate register the name of the transferee in the same way and on the same conditions as if the application for entry were made by the transferee.

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

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

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

- (a) a fee, as determined by the Board from time to time, is paid to the co-operative for the transfer of registration; and
- (b) the instrument of transfer is accompanied by the relevant debenture(s) and any other evidence the board reasonably requires (in particular, evidence showing the right of the transferor to make the transfer); and
- (c) any government stamp duty payable is paid.

15.5 All notices to transfer a debenture must be made in writing in a form approved by the Board from time to time.

16. CO-OPERATIVE CAPITAL UNITS

16.1 Issue of CCUs

- (a) The Board may confer an interest in the capital of the Co-operative by issuing CCUs in accordance with the CNL.
- (b) Each holder of CCUs is entitled to one vote per CCU held at a meeting of the holders of CCUs.
- (c) The rights of the holders of CCUs may be varied only in the way and to the extent provided by their terms of issue and only with the consent of at least 75% of those holders of CCUs who are entitled to vote.
- (d) The holder of a CCU, in their capacity as a CCU holder, does not have any of the rights or entitlements granted to a Member of the Co-operative.
- (e) The holder of a CCU is entitled to receive notice of all relevant meetings of the Co-operative and all other documents in the same manner as the holder of a debenture of the Co-operative.

16.2 Transfer and Transmission of CCUs

- (a) Subject to Rule 16.2(a), the transfer and transmission of a CCU is the same as the procedure set out in Rule 15 as though references to debenture are references to CCU.
- (b) If the terms of issue of a CCU differ from Rule 15 in respect of the procedure for the transfer or transmission of a CCU, the terms of issue of the CCU will prevail.

17. GENERAL MEETINGS, RESOLUTIONS AND VOTING

17.1 Voting rights of members

A Member is entitled to one vote only.

17.2 Annual General Meeting

An annual general meeting ("AGM") must be held each year, at a place and on a date and time decided by the Board, within five (5) months after the close of the financial year of the Co-operative or within the further time allowed by the Registrar.

17.3 Members' power to requisition a General Meeting

- (a) The Board may, whenever it considers it appropriate, call a special general meeting of the Co-operative.
- (b) The Board must call a general meeting of the Co-operative on the requisition in writing by 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.
- (c) The provisions of section 257 of the CNL apply to a meeting requisitioned by members.

Note: the Board is not required to call a general meeting of members to consider matters that are not matters for decision by the members in a general meeting

17.4 Virtual General Meetings

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, including to hear and be heard. Anyone using this technology is taken to be present in person at the meeting.

17.5 Notice of General Meetings (CNL ss 239, 254 & 611)

- (a) At least 14 days' notice of a general meeting (not including the day on which the notice is served or taken to be served but including the day for which notice is given) must be given.
- (b) Notice must be given to each Member and any other persons who are, under these Rules or the CNL, entitled to receive notices from the Co-operative.
- (c) The notice must state the place, day and hour of the meeting and include ordinary business as specified in Rule 17.6 and, for special business, the general nature of any special business.
- (d) The notice must also include any business members who have notified their intention to move at the meeting under Rule 17.4(g) (but only if the members' notification has been made under these Rules and within time).
- (e) The notice must be served in the manner provided in the CNL or Rule 20.4.
- (f) Non-receipt of the notice by a Member or group of Members does not invalidate the proceedings at the general meeting, except where a material injustice is done or the CNL or Australian law expressly invalidates the proceedings.

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- (g) Members who together are able to cast at least 20% of the total number of votes that are able to be cast at a meeting of the Co-operative and who have a resolution to submit to a general meeting must give written notice of it to the Co-operative at least 45 days before the day of the meeting.
 - (h) A resolution (including a special resolution) which is signed by 100% of the Members shall be deemed passed at a duly convened meeting of Members.

17.6 **Ordinary Business of General Meetings**

The ordinary business of the AGM must be:

- (a) to confirm minutes of the last preceding general meeting (whether annual or special); and
- (b) to receive from the Board, auditors or officers of the Co-operative:
 - (i) the financial reports of the Co-operative for the financial year as required by the CNL;
 - (ii) a report on the state of affairs of the Co-operative; and
 - (iii) to approve any payments of fees to Directors.

17.7 **Special Business of General Meetings**

- (a) The AGM may also transact special business of which notice has been given to Members under these rules.
- (b) All business of a general meeting, other than business of the AGM that is ordinary business, is special business.

17.8 **Quorum at General Meetings**

- (a) An item of business cannot be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item.
- (b) 1% of all Members entitled to exercise a vote, present in person or by proxy at a meeting constitute a quorum.
- (c) If a quorum is not present within half an hour after the appointed time for a meeting to commence, the meeting, if called on the requisition of members, must be dissolved. In any other case it must be adjourned to the same day, time and place in the next week.
- (d) If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the members present constitute a quorum.

17.9 **Chairperson at General Meetings**

- (a) The chairperson, if any, of the Board may preside as chairperson at every general meeting of the Co-operative.
- (b) If there is no chairperson, or if at a meeting the chairperson is either not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present must choose someone from their number to be chairperson (until the chairperson attends and is willing to act).
- (c) The chairperson may, with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place. However, the only business that can be transacted at an 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 just as for the original meeting. Apart from this it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

17.10 Attendance and voting at general meetings

- (a) The right to vote attaches to both classes of membership set out in Rule 5.1.
- (b) Members have only one (1) vote each.
- (c) A resolution, other than a special resolution, must be decided by simple majority.
- (d) Subject to Rules 17.10(e) and 17.10(f), a question for decision at any general meeting must be decided on a show of hands of members present (including by proxy) at the meeting.
- (e) A poll may be demanded on any question for decision.
- (f) If before a vote is taken or before or immediately after the declaration of the result on a show of hands:
 - (i) the chairperson directs that the question is to be determined by a poll; or
 - (ii) at least five (5) members present in person or represented by proxy demand a poll,the question for decision must be determined by a poll.
- (g) The poll must be taken when and in the manner that the chairperson directs.
- (h) A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
- (i) Once the votes on a show of hands or on a poll have been counted then, subject to Rule 17.10(f), a declaration by the chairperson that a resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.
- (j) The result of the vote must be entered in the minute book.

17.11 Voting on a show of hands

On a show of hands at a general meeting, each member:

- (a) present; or
- (b) represented by a non-member acting under a power of attorney; or
- (c) represented by a non-member appointed under the provisions of the CNL; or
- (d) represented by a proxy;

may exercise only one (1) vote and a person may hold multiple proxies and exercise a vote for each proxy held.

17.12 Voting on a poll

On a poll called at a general meeting, each member:

- (a) present; or
- (b) represented by a person acting under a power of attorney; or
- (c) represented by a person appointed under the provisions of the CNL; or

(d) represented by a duly appointed proxy under these Rules;

has one (1) vote.

17.13 Determining outcome where equality of votes (s228)

- (a) This Rule applies where the votes in favour and against a resolution are equal.
- (b) If the chairperson of the meeting is a Member of the Co-operative, he or she may exercise a second or casting vote.
- (c) If the chairperson is not a Member of the Co-operative or decides not to exercise a second or casting vote, the outcome of an equality of votes is taken to have been decided in the negative.

17.14 Proxy votes

- (a) So long as Section 229 of the CNL requires a proxy to be an active Member of the Co-operative (or, in the case of a co-operative group, to be entitled to represent a Member of the group), then each Proxy must be a Member.
- (b) A Member may vote by proxy at a general meeting, by postal ballot or by written resolution.
- (c) The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (d) An instrument appointing a proxy may direct the way the proxy is to vote in relation to a particular resolution and, if an instrument of proxy directs, the proxy is not entitled to vote on the resolution other than as directed in the instrument.
- (e) A person may be appointed as a proxy by more than one Member and shall carry the accumulated sum of the votes of their appointors on a poll.
- (f) An instrument appointing a proxy must be in a form pre-approved by the Board.
- (g) An instrument appointing a proxy is not valid until the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of the power or authority, are deposited, at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the registered office of the Co-operative or at another place specified for the purpose in the notice calling the meeting.
- (h) A vote given in accordance with an instrument of proxy or a power of attorney is valid despite 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 start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

17.15 Special resolutions (CNL ss238–241)

- (a) A special resolution is a resolution that is passed:
 - (i) by a two-thirds majority at a general meeting; or
 - (ii) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members; or
 - (iii) by a three-quarters majority in a special postal ballot of members.

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- (b) A notice of special resolution is required to be given to members at least 21 days before the vote or ballot time (or 28 days notice in the case of a special postal ballot).
 - (c) The notice of special resolution must state:
 - (i) the intention to propose the special resolution; and
 - (ii) the reasons for proposing the special resolution; and
 - (iii) the effect of the special resolution being passed.

17.16 Postal ballots (other than special postal ballots) (CNL ss247 & 250)

The following rule will facilitate a postal ballot in these situations.

- (a) A postal ballot must be held in respect of a special resolution where 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.
- (b) If a postal ballot is requisitioned by members under Rule 17.16(a), the requisition should specify whether the postal ballot is to be a secret ballot.
- (c) A postal ballot requisitioned under Rule 17.16(a) is to be conducted in accordance with the National Regulations and in the form and manner determined by the board.
- (d) 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 fax or other electronic means or both.
- (e) 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 has voted.
- (f) 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.
- (g) Ballot papers (in such form and with such content as the Board may approve) must be sent to all voting members giving:
 - (i) particulars of the business in relation to which the postal ballot is being conducted; and
 - (ii) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
 - (iii) notice of the closing date and closing time of the postal ballot;and must be sent to members so that they arrive (assuming standard postal times) at least 21 days before the closing date of the postal ballot.
- (h) This rule does not apply in relation to special postal ballots.

17.17 Special postal ballots (CNL ss 248 & 249)

The following rule, along with the CNL, will facilitate a special postal ballot in these situations.

- (a) A majority of 75% of Members is required to pass a special postal ballot.
- (b) Ballot papers (in such form and with such content as the Board may approve) must be sent to all voting Members so that they arrive (assuming standard postal times) at least 28 days before the closing date of the postal ballot.

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- (c) The Board may determine whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
 - (d) In the event 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 how each Member has voted.

18. BOARD OF DIRECTORS

18.1 Powers of the Board (CNL s 172)

The business of the Co-operative is to be managed by or under the direction of the Board of Directors, and for that purpose the Board has and may exercise all the powers of the Co-operative that are not required to be exercised by the Co-operative in general meeting.

18.2 Qualification of Member Directors

A person is not qualified to be a Member Director of the Co-operative unless the person is both an individual over the age of 18 years and meets the following criteria:

- (a) is a Member of the Co-operative for a minimum period of 12 months (excluding those Directors who are appointed at the formation meeting); and
- (b) is a person possessing special skills in management or other technical areas of benefit to the Co-operative as specified by the Board, including experience or qualifications in the following areas:
 - (i) Finance;
 - (ii) Legal;
 - (iii) Marketing;
 - (iv) Strategic Planning;
 - (v) People and Culture;
 - (vi) Infrastructure and Development;
 - (vii) Business/Commercial;
 - (viii) Disability and/or NDIS Lobbying;
 - (ix) Non-government Organisations;
 - (x) Volunteer Community Sector; and
 - (xi) any other related discipline or experience considered relevant at the time by the Board.

18.3 Qualification of Independent Directors

A person is not qualified to be an Independent Director of the Co-operative unless the person is both an individual over the age of 18 years and meets the following criteria:

- (a) a person possessing special skills in management or other technical areas of benefit to the Co-operative as specified by the Board, including experience or qualifications in the following areas:
 - (i) Finance;

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- (ii) Legal;
 - (iii) Marketing;
 - (iv) Strategic Planning;
 - (v) People and Culture;
 - (vi) Infrastructure and Development;
 - (vii) Business/Commercial;
 - (viii) Disability and/or NDIS Lobbying;
 - (ix) Non-government Organisations;
 - (x) Volunteer Community Sector; and
 - (xi) any other related discipline or experience considered relevant at the time by the Board; or
- (b) a person who is a nominated representative of Carers SA for the purposes of the Auspice Arrangement.

18.4 **Number of Directors**

The Board of Directors must comprise of between five (5) and ten (10) Directors as follows:

- (a) a minimum of three (3) but no more than six (6) Member Directors;
- (b) a minimum of two (2) but no more than four (4) Independent Directors;
- (c) a greater number of Member Directors than Independent Directors; and
- (d) at all times, the Board must reserve one Independent Director position for the person who, from time to time, is the nominated representative of Carers SA as outlined in Rule 18.3(b).

18.5 **Chief executive officer**

- (a) The Board may, if it considers appropriate, appoint a person to be responsible for the day to day management of the Co-operative. The person may be a director or the secretary or a member of the Co-operative or some other person.
- (b) The appointed person is the chief executive officer of the Co-operative and may be called the chief executive officer or (if a Director of the Board) the Managing Director.
- (c) The conditions and the period of appointment including termination must be decided by the Board.
- (d) The chief executive officer is not entitled to the present or to vote at a meeting of Directors on a motion concerning the conditions of their own appointment, conditions of service or termination of service.
- (e) The chief executive officer cannot be required to be an active member of the Co-operative.
- (f) In the event of any conflict between the terms of the appointment of a person as the chief executive officer and that person's obligations or privileges under the CNL, the terms of the CNL prevail over the terms of appointment.

18.6 Term of First Directors

The term of the Directors first appointed during the formation meeting (**the First Directors**) will take effect from the date upon which the formation meeting is held and terminate as follows:

- (a) one Member Director and one Independent Director will serve an initial term of not more than one (1) year;
- (b) one Member Director and one Independent Director will serve an initial term of not more than two (2) years; and
- (c) two Member Directors will be for an initial term of three (3) years,

with the term of each Director to be determined by lot during the formation meeting.

18.7 Term of Directors

- (a) The term of office of Directors elected following the term of a First Director is to commence from the AGM at which they are elected and ends on the day of the third annual general meeting thereafter.
- (b) A Director may serve no more than three terms in total, whether consecutive terms or not.

18.8 Election of Member Directors

A person becomes a Member Director when either:

- (a) the Board appoints a Member Director to fill a casual vacancy pursuant to Rule 18.10; or
- (b) the Co-operative elects that person as a Director:
 - (i) at an Annual General Meeting; or
 - (ii) at a general meeting of the Company when number falls below three Directors.

18.9 Nomination and Appointment of Member Directors

At an Annual General Meeting at which a Member Director retires or completes their term, the vacated office may be filled in the following manner:

- (a) At least six weeks before an AGM, the Board must:
 - (i) notify all members of the number of Directors retiring at the AGM; and
 - (ii) advise the members of:
 - A. their eligibility to nominate as a Director; and
 - B. the duties and responsibilities of a Director; and
 - C. the anticipated remuneration (if any); and
 - D. the nomination and election procedures.
- (b) A notice must be displayed at the place of business of the Co-operative inviting nominations of nominees to serve as Directors.
- (c) Each Member may nominate up to two Members for election. The nomination shall be delivered to the Secretary at least fifteen (15) business days (or such other time as is

allowed for by the Board) before the date fixed for the holding of the meeting at which the election is being held.

- (d) Each nomination must be accompanied by:
 - (i) the consent of the nominee to act; and
 - (ii) a written statement containing not more than one hundred words, signed by the nominee setting out the relevant skills and attributes which, in the opinion of the nominee, constitutes his or her attributes and qualifications for the position of Director of the Co-operative. This statement is referred to as a "qualification résumé".
- (e) The Board shall appoint a committee, known as the Nomination Committee which shall review all nominations and determine which nominees have the required or desired skills and/or qualifications outlined in Rule 18.2(b).
- (f) The screened nominees will be put before the Members at a general meeting for election regardless of whether there are sufficient nominees to fill the number of vacancies.
- (g) The election of Directors must be conducted at the meeting by ballot as follows:
 - (i) A returning officer is elected at the meeting. The Directors, the secretary and anyone who has an interest in the election are not eligible to be the returning officer.
 - (ii) All nominees are to be listed on the ballot form in alphabetical order.
 - (iii) The returning officer is responsible for determining the validity of and counting of the votes.
 - (iv) If there is an equality of votes, the outcome must be determined by lot.
 - (v) The returning officer is to declare the election results.
- (h) If any vacancies remain at the end of the meeting, the vacancies are to be casual vacancies and must be filled in accordance with rule 18.10(b)

18.10 Board may appoint a Member Director to fill a casual vacancy

- (a) Where a Member Director retires or otherwise ceases to be a Director:
 - (i) prior to the time at which that person would have been required to retire under Rule 18.7; or
 - (ii) pursuant to rule 18.14;

the Board may appoint a Member to fill the casual vacancy.
- (b) If, after election, the number of nominees elected as (Member) Directors, is less than the number of vacancies, the Board may fill any remaining positions (as required to form a quorum required by this Constitution).
- (b) A person appointed by the Board to fill a vacancy under this Rule 18.10 holds office until the next general meeting at which an election is being held.

18.11 Nomination and Appointment of Independent Directors

- (a) The Board may appoint Independent Directors by ordinary resolution provided that the individual meets the requirements of Rule 18.3(a).
- (b) Carers SA may appoint and remove an Independent Director under Rule 18.3(b) by notice to the Board from time to time.
- (c) An Independent Director appointed under Rule 18.11(a) holds office until they are no longer qualified as an Independent Director under Rule 18.3(b) or until they cease being a Director by operation of these Rules.

18.12 Appointment of Alternate Directors

- (a) The Board may appoint a person (an “**Alternate Director**”) to act in the place of an absent Member Director or Independent Director (the “**Principal Director**”) at any time necessary.
- (b) The order in which Alternate Directors will be so directed will be the same order in which they were appointed as Alternative Directors.
- (c) If two or more Alternate Directors were appointed on the same date, the order in which the Alternate Directors are directed to act in the place of an absent Member Director or Independent Director will occur according to alphabetical order of surname.
- (d) An Alternate Director is not qualified to act in the place of an absent Member Director unless the person is qualified for appointment as a Member Director in accordance with Rule 18.2(a) and is approved by the Board.
- (e) An Alternate Director is not qualified to act in the place of an absent Independent Director unless the person is qualified for appointment as an Independent Director in accordance with Rule 18.3 and is approved by the Board.
- (f) An Alternate Director vacates office:
 - (i) in the same or similar circumstances to those in which the Principal Director would vacate (including those prescribed by the CNL); or
 - (ii) if the Alternate Director is removed from office by the Board as Alternate Director for failure, without its leave, to attend a meeting of the Board at which the Principal Director is absent (and for that purpose the provisions of section 179(2)(b) of the CNL do not apply in relation to the Alternate Director).

18.13 Buddy Directors

- (a) A Director (**the Appointer**) may, at any time, nominate a person to be appointed their Buddy Director.
- (b) The Board may approve the appointment of a Buddy Director where the nominee is:
 - (i) of similar skill and experience to the Appointer by whom they were nominated; and
 - (ii) qualified for appointment as a Director under Rule 18.2 or Rule 18.3(a).
- (c) The term of a Buddy Director will terminate:
 - (i) at the same time as the term of the Appointer who nominated that Buddy Director;
 - (ii) by special resolution of the Board;

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- (iii) in accordance with the CNL; or
 - (iv) as otherwise directed by the Appointer.

18.14 Right to Attend and Observe Board Meetings

Unless the chairman of the Board resolves otherwise, any Alternate Director or Buddy Director may attend Board meetings as an observer but will not have any rights to vote at that meeting unless the Principal Director/Appointor is absent from the meeting.

18.15 Cessation of Directorship (CNL s 180)

- (a) The Co-operative may, by resolution made under section 180 of the CNL and with special notice as required by that section, remove a Director before the end of the Director's period of office, and may by a simple majority appoint another person in place of the removed Director.
- (b) In addition to the circumstances set out in the CNL, a Director vacates office if the Director dies.

18.16 Remuneration of Directors (CNL S 203)

Directors' remuneration must comply with the provisions of the CNL.

18.17 Proceedings of the Board (CNL SS 175 & 176)

- (a) Meetings of the Board (including meetings conducted outside Board meetings pursuant to section 176 of the CNL) are to be held as often as may be necessary for properly conducting the business of the Co-operative and must be held at least every 3 months.
- (b) A meeting may be held with one or more of the Directors participating by using a form of communication that allows reasonably contemporaneous and continuous communication between the Directors taking part in the meeting.
- (c) Questions arising at a meeting of the Board must be decided by a majority of votes.
- (d) If votes are equal, the chairperson has a second or casting vote.
- (e) Other than in special circumstances decided by the chairperson, at least 48 hours' notice must be given to the Directors of all meetings of the Board, without which the meeting cannot be held.

18.18 Quorum for Board Meetings (CNL S 175)

- (a) The quorum for a meeting of the Board is 50% of the number of Directors (or if that percentage of the number of Directors is not a whole number, the whole number next higher than one half).
- (b) For a quorum, the number of Member Directors must outnumber the Non-member Directors by at least one.

18.19 Minutes

- (a) The Board must keep minutes of meeting and in particular, of:
 - (i) all appointments of officers and employees made by the Directors;
 - (ii) the names of the Directors present at each meeting of the Board and of a committee of the Board;
 - (iii) all resolutions and proceedings at all meeting of the co-operative and of directors and of committees of directors; and

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- (iv) any declarations of interest by Directors.
 - (b) Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate was held.
 - (c) The minutes are to be signed within a reasonable time after the meeting to which they relate by either the chairperson of that meeting or the chairperson of the next meeting.

18.20 **Chairperson of Board**

- (a) The chairperson of the Board is to be appointed by the Board.
- (b) If no chairperson is elected or the chairperson is not present within 15 minutes after the time fixed 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 that meeting until the chairperson attends and is willing to act as chairperson.
- (c) The chairperson may be removed, and a new chairperson elected, by ordinary resolution of the Board.

18.21 **Delegation and Board Committees (CNL s 178)**

- (a) The Board may be resolution delegate to:
 - (i) a Director;
 - (ii) a committee of two (2) or more Directors;
 - (iii) a committee of Members of the Co-operative;
 - (iv) a committee of Members of the Co-operative and other persons if Members form the majority of persons on the committee; or
 - (v) a committee of Directors and other persons.
- (b) The Co-operative or the Board may, by resolution, revoke all or part of the delegation.
- (c) A power delegated under this rule 18.21 may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (d) A delegation under this rule 18.21 may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (e) Despite any delegation under this rule 18.21, the Board may continue to exercise the power delegated.
- (f) If a power is exercised by a Director (alone or with another Director) and the exercise of power is evidence in writing, signed by the Director in the name of the Board or in his or her own name on behalf of the Board, the power is taken to have been exercised by the Board. This is so regardless of whether a resolution delegating the exercise of the power to the Director was in force when the power was exercised, and whether or not any conditions mentioned in rule 18.21(d) were observed by the Director exercising the powers.
- (g) A committee may elect a chairperson of their meetings. If no chairperson is elected or, if at a meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- (h) A committee may meet and adjourn as it thinks appropriate. Questions arising at a meeting must be decided by a majority of votes of the members present and voting. If the votes are equal, the chairperson has a second or casting vote.

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- (i) The Board may, by resolution, appoint committees of Members or other persons or both, to act in an advisory role to the Board and committees of Directors.

19. AMENDMENTS AND COPIES OF THE RULES (CNL SS57 & 60–63)

- 19.1 Any amendment of the Rules must be approved by special resolution. However, if model rules are adopted in the manner specified under section 65(a) of the CNL, any amendments to the model rules as notified by the Registrar are included in the Co-operative's rules without the need for a special resolution.
- 19.2 A proposal to amend the Rules of the Co-operative must be made in a form approved by the Board which clearly shows the existing Rule or Rules concerned and any proposed amendment to the Rules.
- 19.3 A member is entitled to a copy of the Rules free of charge.

20. ADMINISTRATIVE MATTERS

20.1 Seal (CNL ss49 & 223)

- (a) This rule applies if the Co-operative chooses to authenticate a document under the common seal of the Co-operative.
- (b) The Co-operative's name and registration number must appear on its common seal and any official seal. The common seal must be kept at the registered office in custody as the Board directs.
- (c) The Co-operative may have one or more official seals for use outside the State or Territory in place of its common seal. Each of the additional seals must be a facsimile of the common seal with the addition on its face of the name of the place where it is to be used.
- (d) The seal of the Co-operative must not be affixed to an instrument other than under a resolution of the Board. Two directors, or one Director and the secretary, must be present and must sign all instruments sealed while they are present.

20.2 Inspection of records and registers (CNL ss214 & 215)

- (a) Members of the co-operative have free access to the records and registers referred to in section 214(1) of the CNL and they may make a copy of any entry in the registers free of charge.
- (b) Members do not have access to the minutes of board or committee meetings but may request access to any such minutes in writing addressed to the board.

20.3 Safe keeping of securities

Shares, debentures, charges and any other certificates or documents or duplicates of them pertaining to securities must be safely kept by the co-operative in the way and with the provision for their security as the board directs.

20.4 Notices to Members (CNL s 611)

- (a) This rule 20.4 is supplemental to section 611 of the CNL.
- (b) A notice or other document required to be given to Member of the Co-operative may be given by the Co-operative to any Member by any form of technology, where the Member has given consent and notified the Co-operative of the relevant contact details.
- (c) If a notice is sent by post, service is taken to be effected at the time at which the properly addressed and pre-paid letter would be delivered in the ordinary course of post. In

proving service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

- (d) A notice forwarded by some other form of technology is taken to have been served, unless the sender is notified of a malfunction in transmission, on the day of transmission if transmitted on a Business Day during Business Hours, otherwise the next following Business Day.
- (e) A notice may be given by the Co-operative to a person entitled to a share in consequence of the death, incapacity or bankruptcy of a Member by sending via post in a pre-paid letter addressed to that person by name. Alternatively, notice can be addressed to the person by the title of representative of the deceased or incapacitated person, or trustee of the bankrupt, or by any like description, and:
 - (i) the address should be supplied for the purpose by the person claiming to be entitled; or
 - (ii) in the event no such address has been supplied, the notice can be given in the manner in which it would have been given if the death, incapacity or bankruptcy had not occurred.

21. ACCOUNTING AND FINANCIAL MATTERS

21.1 Financial year

The financial year of the Co-operative begins on 1 July of a year and ends on 30 June the following year.

21.2 Accounts

- (a) The Board must have at least one financial institution account, electronic or otherwise, in the name of the Co-operative, into which all amounts received by the co-operative must be paid as soon as possible after receipt.
- (b) All cheques drawn on the accounts, and all drafts, bills of exchange, promissory notes and other negotiable instruments, of the Co-operative must be signed by two (2) authorised persons.
- (c) The operation of any electronic accounts must be restricted so that there is a requirement for authorisation by two (2) authorised persons.
- (d) For the purposes of this rule, an authorised person is:
 - (i) a Director; or
 - (ii) a person approved by the Board.

21.3 Appointing an auditor or reviewer for small co-operative (CNL s298)

- (a) If the Co-operative is a 'small co-operative' for the purposes of the CNL, the Co-operative must appoint either a reviewer or auditor in respect of its financial statements.
- (b) A reviewer or auditor appointed under this rule is to conduct a review or an audit of the Co-operative's financial statements as presented to Members.
- (c) The appointment of either a reviewer or an auditor under this rule is to be made at an Annual General Meeting.
- (d) The Co-operative may appoint another reviewer or auditor at a subsequent Annual General Meeting if there is a vacancy in the office of the reviewer or auditor.

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- (e) The provisions of section 300(2) of the CNL apply to a reviewer and/or auditor appointed under this rule in the same way (but with any necessary adaptations) as they apply to a reviewer and/or auditor appointed for a large co-operative.

21.4 Appointing an auditor or reviewer for a small co-operative if there is a direction under the CNL (CNL ss271 & 272)

- (a) If a small co-operative is directed to prepare a financial report under section 271 or 272 of the CNL and the direction requires that the financial report be audited or reviewed, the board must appoint an auditor or reviewer (as the case may be) within one month of the direction.
- (b) An auditor or reviewer appointed under this rule holds office until the financial report prepared as a result of the direction has been audited or reviewed and sent to members.

21.5 Disposal of surplus funds during a financial year (CNL ss355–358)

- (a) The Board may retain all or 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.
- (b) No part of the surplus may be paid or transferred directly or indirectly, by way of profit, to Members of the Co-operative.
- (c) A part of the surplus, but not more than 33%, arising in any year from the business of the Co-operative may be applied for charitable purposes.

21.6 Provision for loss

The Board must make appropriate provision for losses in the Co-operative's accounts and when reporting to Members is to indicate whether the loss is expected to continue and whether there is any real prejudice to the Co-operative's solvency.

21.7 Financial reports to members (CNL Part 3.3)

The Co-operative must prepare financial reports and statements in accordance with the CNL, the National Regulations and these Rules.

22. WINDING UP

22.1 Process for winding up

The winding up of the Co-operative must be in accordance with Part 4.5 of the CNL.

22.2 Co-operative not to distribute surplus property

- (a) If, on the winding-up or dissolution, there remains after the satisfaction of all its debts and liabilities any property, this must not be paid to or distributed among the members of the Co-operative but must be given or transferred to a not-for-profit with similar primary activities.
- (b) If the entity specified in Rule 22.2(a) does not exist at the time of the winding up or dissolution of the Co-operative, any surplus property after the satisfaction of all its debts and liabilities must be given or transferred to an institution or institutions:
 - (i) with objects similar to those of the Co-operative; and
 - (ii) whose constitution prohibits the distribution of its property among its members; and
 - (iii) chosen by the Members of the Co-operative at or before the dissolution or, in default, by a judge of the court with jurisdiction in the matter.

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- (c) If, on the winding up or dissolution, there remains any property after the satisfaction of all its debts and liabilities, this must not be paid to or distributed among the Members of the Co-operative but must be given or transferred to an institution or institutions:
- (i) with objects similar to those of the Co-operative; and
 - (ii) whose constitution prohibits the distribution of its property among its Members; and
 - (iii) chosen by the Members of the Co-operative at or before the dissolution or, in default, by a judge of the court with jurisdiction in the matter.