



New South Wales

Co-operatives (New South Wales) Regulation 2020

under the

Co-operatives (Adoption of National Law) Act 2012

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Co-operatives (Adoption of National Law) Act 2012*.

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to remake, with some changes, the *Co-operatives (New South Wales) Regulation 2014*, which will be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation—

- (a) prescribes certain matters for the purposes of the *Co-operatives National Law (NSW)* and the *Co-operatives National Regulations (NSW)*, and
- (b) prescribes fees to be paid in respect of matters arising under the *Co-operatives National Law (NSW)*, the *Co-operatives National Regulations (NSW)* and the *Co-operatives (Adoption of National Law) Act 2012*, and
- (c) makes provisions of a savings and transitional nature.

This Regulation is made under the *Co-operatives (Adoption of National Law) Act 2012*, including section 18 (the local regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*—namely, matters of a machinery nature, matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory, and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Co-operatives (New South Wales) Regulation 2020

under the

Co-operatives (Adoption of National Law) Act 2012

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Co-operatives (New South Wales) Regulation 2020*.

2 Commencement

This Regulation commences on 1 September 2020 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Co-operatives (New South Wales) Regulation 2014*, which is repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

- (1) In this Regulation—

CNL means the *Co-operatives National Law (NSW)*.

CNR means the *Co-operatives National Regulations (NSW)*.

fee unit—see Part 2 of Schedule 1.

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

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Terms used in this Regulation and also in the CNL have the same meanings in this Regulation as they have in the CNL.

- (3) Notes included in this Regulation do not form part of this Regulation.

Part 2 Prescription of matters for Act, CNL and CNR

4 Unsuitable names for co-operatives

For the purposes of section 220(5) of the CNL and regulation 3.7 of the CNR, a name is declared an unsuitable name if the Registrar is satisfied that it is likely to mislead the public.

5 Restrictions on registered names and trading names—certain exemptions

For the purposes of sections 220(7) and 225(2) of the CNL, an entity is exempt from sections 220(4) and 225(1) of the CNL if the entity is—

- (a) a co-operative housing society within the meaning of the *Co-operative Housing and Starr-Bowkett Societies Act 1998*, or
- (b) a company or society formed or incorporated under an Act before the commencement of the *Co-operation Act 1923*, or
- (c) a corporation that is allowed under a law of the Commonwealth or another jurisdiction to use the word “Co-operative” or “Cooperative”, or the abbreviation “Co-op” or “Coop”, in its name, or
- (d) a company that is permitted to use the expression “building society”, “credit union” or “credit society” under section 66 of the *Banking Act 1959* of the Commonwealth, or
- (e) a company that is a friendly society for the purposes of the *Life Insurance Act 1995* of the Commonwealth.

6 Restrictions on registered names and trading names—exemptions by Registrar

- (1) The Registrar may, by written notice to an entity, exempt that entity from section 220(4) or 225(1) of the CNL.
- (2) The written notice—
 - (a) must specify whether the exemption relates to section 220(4) or 225(1) of the CNL, or both, and
 - (b) may specify conditions (including limitations as to time) to which the exemption is subject.
- (3) The Registrar may, by further written notice to an entity exempted under subclause (1)—
 - (a) vary the conditions of the exemption, or
 - (b) revoke the exemption.
- (4) For the purposes of this clause, written notice is given to an entity if it is given to a member of the controlling body of the entity.

7 Application for transfer

For the purposes of section 403(b) of the CNL, a co-operative may apply to become registered, incorporated or otherwise established as a corporation under—

- (a) the *Associations Incorporation Act 2009*, or
- (b) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth, or
- (c) any other legislation of any jurisdiction that provides for the incorporation of a building society, credit union or friendly society.

8 Inspection of register of co-operatives

For the purposes of section 601(2) of the CNL, the prescribed manner in which any of the things referred to in section 601(1) of the CNL may be done is by—

- (a) lodging a request with the Registrar in the approved form or, if there is no relevant approved form, in writing, and
- (b) paying the relevant prescribed fee or otherwise complying with a relevant arrangement (if any) approved under section 601(3) of the CNL.

9 Procedures regarding giving of exemptions

For the purposes of section 621 of the CNL, an application for an exemption that is provided for under the CNL must be—

- (a) made in the approved form or, if there is no relevant approved form, in writing, and
- (b) accompanied by the relevant prescribed fee (if any).

10 Fees

- (1) The fees specified in Part 1 of Schedule 1 are prescribed as the fees that are payable under the Act, the CNL, the CNR and this Regulation for the matters to which they respectively relate.
- (2) Fees for anything done by or in relation to the Registrar under provisions of the Corporations Act as applied under the CNL that is not otherwise provided for in Part 1 of Schedule 1 are to be the same as the fees for chargeable matters under the *Corporations (Fees) Act 2001* of the Commonwealth and the regulations under that Act.
- (3) The Registrar may waive, reduce, postpone or refund, in whole or part, a fee payable or paid under the Act, the CNL, the CNR or this Regulation if the Registrar is satisfied it is appropriate because—
 - (a) the person who is to pay or has paid the fee is suffering financial hardship, or
 - (b) special circumstances exist.

Example of ‘special circumstances’— circumstances involving a natural disaster or recovery from a natural disaster

Part 3 Miscellaneous

11 Co-operatives may continue to operate under old rules

- (1) This clause applies to a co-operative whose existing registered rules are the registered rules that applied to the co-operative, and were in force, immediately before the commencement of the Act (the *old rules*).
- (2) A co-operative to which this clause applies may continue to operate under old rules.
- (3) While a co-operative is operating under old rules—
 - (a) the provisions of the Act, the CNL, the CNR or this Regulation prevail over the old rules in the event of an inconsistency, and
 - (b) references in the old rules to requirements in the *Co-operatives Act 1992* or the *Co-operatives Regulation 2005* are to be read as references to the equivalent requirements in the Act, the CNL, the CNR or this Regulation, and
 - (c) references in the old rules to the co-operative being a trading co-operative or a non-trading co-operative are to be read respectively as references to the co-operative being a distributing co-operative or a non-distributing co-operative.

12 Savings

Any act, matter or thing that, immediately before the repeal of the *Co-operatives (New South Wales) Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.

Note. Section 30 of the *Interpretation Act 1987* provides that the repeal of a regulation does not affect the operation of any savings or transitional provision contained in the regulation.

Schedule 1 Fees

(Clause 10)

Part 1 Fees payable

Item	Column 1 Matter for which fee payable	Column 2 Fee (in fee units)	Column 3
			Relevant section(s) of CNL
1	Registration of proposed co-operative or existing corporation—		
	(a) application for registration	0.33	26(1)(b)(ii), 31(b)(ii)
	(b) submission of draft rules	0.73	23(1)(a)
	(c) submission of draft formation disclosure statement	2.64	23(1)(b)
2	Lodgment of annual reports or annual return—		
	(a) small co-operative	0.72	293(1)
	(b) large co-operative	2.64	289(1)
3	Application for exemption from the CNL or the CNR provisions—		
	(a) Division 2 of Part 2.4	0.73	71(1)
	(b) Division 2 of Part 3.5 and section 248	11.41	380(1)
	(c) any other provision of the CNL or the CNR, unless otherwise specified under this Schedule	2.64	35(5)(a) and (b), 171(1), 220(7), 225(2), 226(6), 316(1), 317(1), 319(1), 320(1), 322(1), 343(10), 359(3), 372(1), 397(4), 404(4), 418(1)(f), 445(3), 477(4)
4	Application for prior approval of proposed rule amendment	0.73	60(3) (or clause 5(2) of Schedule 1 to the Act)
5	Rule amendment or special resolution—		
	(a) application for registration of amendment to rules (other than where pre-approved under section 60 of the CNL)	0.3 per rule up to maximum of 2.0 per lodgment	63(2)
	(b) registration of special resolution	0.3 per resolution up to maximum of 2.0 per lodgment	243(2)(c)(ii)
6	Application for registration or approval of disclosure statement	2.64	82(3)(a), 248(3), 338(3), 343(3)(a), 397(2), 477(2)

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Schedule 1 Fees

Item	Column 1 Matter for which fee payable	Column 2 Fee (in fee units)	Column 3
			Relevant section(s) of CNL
7	Name of co-operative—		
	(a) application to omit “Limited” or “Ltd”	1.0	221(1)
	(b) application for approval of abbreviation or elaboration	1.0	222(e)
	(c) application for approval of name change	2.64	224
8	Certificates—		
	(a) issue of duplicate certificate of registration	0.5	37(b)(ii)
	(b) application for certificate of registration of rule amendment or special resolution	0.5	63(4), 244(1)
	(c) application for certificate of evidence	0.5	588(1)–(3)
9	Extension or shortening of time—		
	(a) application to extend period of carrying on business with fewer than permitted members	2.64	119(5)
	(b) application to extend period for board to consider a share offer of the kind specified in s 373(1) of the CNL	2.64	376(5)
	(c) application for Registrar’s permission to shorten notice period	0.73	416(1)(a)
	(d) application to extend or shorten time	0.73	609(1)
10	Applications relating to voting—		
	(a) decision as to eligibility to vote on active membership resolution	2.64	152(3)
	(b) review of voting entitlement	2.64	233(2)
	(c) approval for rules of certain co-operatives to restrict voting rights	2.64	clause 5(1) of Schedule 1 to the Act
11	Lodgment of disclosure documents for issue of securities (other than an issue of securities under section 338 of the CNL)	23.24	337
12	Application for exemption or modification of disclosure provision under Chapter 6D of the Corporations Act (as applied)	11.41	337
13	Application for approval of the statement and terms of issue of CCUs	2.64	350(1)(b) and (c)
14	Application to permit a higher maximum level of share interest than 20% in particular co-operative	2.64	363(2)
15	Application to make share offer to which Division 2 of Part 3.5 of the CNL applies	23.24	374(1)(b)
16	Merger or transfer of engagements—		
	(a) application to Registrar for consent to approval by board resolution	0.73	396(2)

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Schedule 1 Fees

Item	Column 1 Matter for which fee payable	Column 2 Fee (in fee units)	Column 3 Relevant section(s) of CNL
	(b) application for approval	0.73	398(1)
	(c) application to local Registrar for consent to approval by special resolution or board resolution (consolidation of local co-operative and participating co-operative)	0.73	476(2)(a)
	(d) application for approval (consolidation of local co-operative and participating co-operative)	2.64	478(1)
17	Compromise or arrangement—		
	(a) application for statement of no objection	2.64	424(1)(b)
	(b) filing of Supreme Court order	0.33	425(4)
	(c) application for approval of explanatory statement	11.41	428(1)
18	Application to exercise powers in respect of property of deregistered co-operative	2.64	453
19	Application for special meeting	2.64	531(1)(a)
20	Application for inquiry	5.07	531(1)(b)
21	Register of co-operatives—		
	(a) application to inspect register	0.3	601(1)(a) and (5)(b)
	(b) application to inspect documents relating to co-operative and prescribed by the CNR	0.3	601(1)(b) and (5)(b)
	(c) application to obtain extract from register	0.3	601(1)(c) and (5)(b)
	(d) application to obtain certified copy of document—		
	(i) 20 pages or fewer	0.5	601(1)(d) and (5)(b)
	(ii) exceeding 20 pages	1.0	601(1)(d) and (5)(b)
	(e) application to obtain copy of document—		
	(i) 20 pages or fewer	0.3	601(1)(e) and (5)(b)
	(ii) exceeding 20 pages	0.8	601(1)(e) and (5)(b)
22	Lodgment of document more than 1 month after date required to be lodged under the CNL	1.06	63(2)(b), 216(2)(b), 226(4), 243(2)(a), 289(3), 293(4), 425(4)
23	Application to give notice to members by newspaper	0.73	611(2)(c)(iii)
24	Application by co-operative for declaration that it is a small co-operative for the purposes of a financial year	2.64	Regulation 1.4(5) of the CNR

Part 2 Adjustment of fees for inflation

1 Definitions

In this Part—

CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

financial year means a period of 12 months commencing on 1 July.

2 Calculation of fee unit for purposes of Regulation

- (1) For the purposes of this Regulation, a **fee unit** is—
 - (a) in the financial year 2020–21—\$105.48, and
 - (b) in each subsequent financial year—the amount calculated as follows—
$$\$100 \times A/B$$
where—

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.
B is the CPI number for the March quarter of 2017.
- (2) The amount of a fee unit is to be rounded to the nearest cent (and an amount of 0.5 cent is to be rounded down).
- (3) However, if the amount of a fee unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.

3 Rounding of fee amounts

The amount of a fee calculated by reference to a fee unit is to be rounded to the nearest dollar (and an amount of 50 cents is to be rounded down).

4 Notice of indexed fees

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to—
 - (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of that amount can be published on the NSW legislation website, and
 - (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.
- (2) This Part operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the notification or other notice required by this clause.