



## Cooperative organisational structure – Fact Sheet

### What is a Cooperative?

A Cooperative is an association of people who join together voluntarily to meet common objectives through a jointly owned and democratically controlled entity. It may be trading or non-trading and may provide goods or services to its members or the public.

#### Legal basis

In Queensland, a Cooperative is formed under the provisions of the *Cooperatives Act 1997 (Qld)* (**Act**) and the *Cooperatives Regulation 1997 (Qld)* (**Regulations**). Each State and Territory has its own similar empowering legislation.

### Types of Cooperatives

#### Trading Cooperatives

There are three types of Cooperatives, Trading, Non-Trading and Non-Trading with Share Capital. Cooperatives may join together to form Associations of Cooperatives and Federations of Associations. Trading Cooperatives have share capital and allow for surplus distribution on share capital. Generally a Trading Cooperative has the profit motive as its goal. Trading Cooperatives are different from Incorporated Associations because they can provide for returns to members. In contrast to private companies, they do not have an upper limit on the amount of members they can have and their voting system is not tied to the amount of shares held by a members but rather one member has one vote.

#### Non-trading Cooperatives

Non-trading Cooperatives do not provide for returns or distributions on surpluses or share capital. The rules of the Cooperative assign a nominal value to shares. A Non-trading Cooperative can only use its profits to further their own objectives as they cannot distribute profits to members.

#### Non-trading Cooperatives with Share Capital

A Non-Trading Cooperative with Share capital is similar in nature to a Non-Trading Cooperative, except that it has additional rules in relation to shares.

### The Cooperative principles

Cooperatives aim to service the needs of members within the following broad principles:

- Voluntary and open membership;
- Democratic control by members- each member has one vote as opposed to by the percentage of shares;
- Member economic participation - focussed on servicing the needs of the members;
- Independence and autonomy: Cooperatives are autonomous and are controlled by members;
- Education and training focus;

- Cooperation among Cooperatives: Networks enhance the Cooperative movement.
- Concern for the community: Cooperatives work for the sustainable development of their community through policies drafted accepted and adhered to by their members.

## Registering a Cooperative

It may seem that a Cooperative is similar in nature to a Unlisted Public Company, however, there are significant differences in relation to the registration and rules that should be understood. One of the most significant differences is the lead time involved in the establishment of a Cooperative, as opposed to a Company where registration can be almost instant. Additionally, an Auditor is required to be appointed to Audit the Accounts of the Cooperative within one month of formation.

### Rules of the Cooperative

The Rules (also known as the Constitution) form a binding contract between the Cooperative and its members, and contain various provisions about the obligations of the parties. All Cooperative members and office holders must agree to follow the rules. The Act also provides for situations where members can be expelled.

Prior to establishment, the proposed members should discuss and agree on the rules of the Cooperative before the formation meeting, and before submitting them to the Department of Fair Trading for approval. Once the Rules are approved they must be accompanied by a by a two-third majority vote of members in the formation meeting. The Rules cannot be redrafted at the formation meetings.

### What must the rules contain?

The rules describe how the Cooperative will operate. The Rules should include information including, but not limited to:

- the primary activity of the Cooperative;
- active membership requirements;
- qualifications for members and directors;
- procedure for admission of new members;
- how share issues and fundraising will be handled;
- fines for breaking the rules;
- meeting procedures;
- treatment of surplus funds; and
- accounts and audit requirements.

*Ongoing compliance costs of a Cooperative appear to be much lower than for an Unlisted Public*

### Submitting the Rules

The Rules need to be submitted 28 days prior to the formation meeting so that Fair Trading can assess them for compliance with the provisions in the Act.

### Other documents required

Trading Cooperatives are also required to prepare and lodge with the Department of Fair Trading a Disclosure Statement. This Disclosure Statement must include information including:

- the extent of a person's financial involvement and liability as a member of the Cooperative;
- statement of the need for the Cooperative, the likely benefits expected to flow from its formation, requirements for membership and the minimum activity required to retain membership;

- A copy of the budget covering the first 12 months of operation;
- A list of proposed Directors and Officers;
- Details of the cost of formation;
- a list of the rights and responsibilities attaching to shares;
- information about any contracts required to be entered into on formation of the Cooperative;
- proof that any proposed transactions are able to be entered into on registration of the Cooperative.

### **Legal liability of Directors of a Cooperative**

Penalties apply to Directors and Officers who fail to carry out their duties in accordance with the provisions of the Act. Directors and Officers must act honestly and exercise the degree of care and diligence a reasonable person in a like position in a Cooperative would exercise in the Cooperative's circumstances.

Specific duties of Directors and Officers include:

- the duty to prevent insolvent trading;
- an obligation to act honestly; and
- an obligation not to make improper use of information or their position.

In the event that these duties are breached, the Cooperative itself may recover from the individual concerned. An Officer of a Cooperative has a right to be indemnified for certain of their acts by the Cooperative.

### **Compliance costs**

It would seem that the annual compliance costs are not dissimilar to those imposed on unlisted Public Companies as a Cooperative:

- must be audited;
- must submit an annual report to the Department of Fair Trading each year;
- may have continuous disclosure obligations; and
- must conduct annual general meetings.

However if the Cooperative plans to raise capital it would seem to be somewhat cheaper if raising capital from existing members, pursuant to the passing of a special resolution.

### **Selected Fees and charges - as at 28 October 2009**

- Application for approval of draft disclosure statement for a proposed trading Cooperative \$275.00;
- Application for approval of proposed rules for a Cooperative \$135.00;
- Notice of appointment or cessation of appointment of directors and officers \$Nil. (Less than 28 days late \$68, greater than 28 days late \$275);
- Disclosure statement - Application or request to registrar \$275.00
- Disclosure statement – Application to non-members of the Cooperative \$2350.00
- Lodging an annual report to registrar \$Nil, unless lodged late.

Various other forms may or may not be necessary in the running of the Cooperative depending on the nature and scope of its activities. Therefore it seems that when compared to a Public Unlisted Company the formation and compliance costs are lower. However, the hidden costs associated with the preparation of model rules and disclosure statements may be significantly higher. In addition the obligations imposed in

regard to fundraising appear to be much lower in relation to a Cooperative than they do for an Unlisted Public Company.

Cooperatives differ significantly to companies in their operation and the rights and obligations of the members. You should ensure that you consult with one of Rostron Carlyle's Commercial Lawyers to determine whether or not a Cooperative is a suitable structure for your needs.

"The information contained in this article is general in nature and cannot be regarded as anything more than general comment. Readers of this article should not act on the basis of this comment without consulting one of Rostron Carlyle's legal practitioners who will consider their particular circumstances".

#### Our Corporate Law Team



**Greg Rostron**

Partner

Telephone: (07) 3009 8444

[greg@rostroncarlyle.com](mailto:greg@rostroncarlyle.com)



**Malcolm Burrows**

B.Bus.,MBA.,LL.B.,GDLP.,MQLS.

Associate

Direct: (07) 3009 8438

Mobile 0419 726 535

e: [m.burrows@rostroncarlyle.com](mailto:m.burrows@rostroncarlyle.com)



**Jeremy Streten** LL.B(Hons),MQLS.

Senior Associate

Telephone: (07) 3009 840

e: [j.streten@rostroncarlyle.com](mailto:j.streten@rostroncarlyle.com)



**Mark Harley** B.IT.,LL.B.,GDLP.,MQLS.

Solicitor

Direct: 07 3009 8442

Mobile 0423 828 545

e: [m.harley@rostroncarlyle.com](mailto:m.harley@rostroncarlyle.com)

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**Rostron Carlyle**  
S O L I C I T O R S

Telephone (07) 3009 8444 Fax (07) 3009 8499

e: [mail@rostroncarlyle.com](mailto:mail@rostroncarlyle.com) website : <http://www.rostroncarlyle.com>