

Co-operatives (New South Wales) Regulation 2014

As at 31 May 2018

Part 1 – Preliminary

1 Name of Regulation

This Regulation is the *Co-operatives (New South Wales) Regulation 2014*.

2 Commencement

This Regulation commences on the day on which the *Co-operatives (Adoption of National Law) Act 2012* commences, and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation: "**CNL**" or "**the Law**" means the *Co-operatives National Law (NSW)*. "**CNR**" means the *Co-operatives National Regulations (NSW)*. "**fee unit**" --see Part 2 of Schedule 1. "**Registrar**" means the Registrar of Co-operatives (as referred to in section 24 of the Act). "**the Act**" or "**the new Act**" means the *Co-operatives (Adoption of National Law) Act 2012*. "**the old Act**" means the *Co-operatives Act 1992*.

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

Part 2 – Prescription of matters for the Act, Law and National Regulations

4 Unsuitable names for co-operatives under section 220 (5) of the Law (CNR regulation 3.7)

For the purposes of regulation 3.7 of CNR, a name is declared an unsuitable name if the Registrar is satisfied:

- (a) that the name is likely to mislead the public or others in relation to the nature, objects or functions of a co-operative or proposed co-operative or in any other respect, or
- (b) without limiting paragraph (a), that the name is identical to, or closely resembles, the name of another co-operative already registered in this jurisdiction or in a participating jurisdiction.

5 Prohibited names for corporations--exemptions (CNL section 220 (7))

(1) For the purposes of section 220 (7) of the Law, an entity is exempt from section 220

(4) of the Law 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 an Act of any jurisdiction or of the Commonwealth to use the word "co-operative" or the abbreviation "co-op" in its name, or
- (d) an entity that is exempted by the Registrar by written notice from the operation of section 220 (4) of the Law and that complies with any conditions to which the exemption is made subject.

(2) The Registrar is not to grant an exemption under subclause (1) (d) unless satisfied that the entity concerned is trading or carrying on business for the purpose of promoting the

economic interests of its members in accordance with co-operative principles or for any charitable purpose.

(3) The following provisions apply to an exemption granted by the Registrar under subclause (1) (d):

- (a) the exemption may be limited as to time, and
- (b) the Registrar may vary the conditions of the exemption, or revoke the exemption, by written notice to the entity or any member of the controlling body of the entity.

6 Restriction on use of word co-operative or similar words--persons other than co-operatives (CNL section 225 (2))

(1) For the purposes of section 225 (2) of the Law, an entity is exempt from section 225 (1) of the Law if the entity is:

- (a) an entity referred to in clause 5 (1) (a), (b) or (c), or
- (b) an entity that is exempted by the Registrar by written notice from the operation of section 225 (1) of the Law and that complies with any conditions to which the exemption is made subject.

(2) The following provisions apply to an exemption granted by the Registrar under subclause (1) (b):

- (a) the exemption may be limited as to time, and
- (b) the Registrar may vary the conditions of the exemption, or revoke the exemption, by written notice to the entity or any member of the controlling body of the entity.

7 Application for transfer (CNL section 403)

For the purposes of section 403 (b) of the Law, 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 or of the Commonwealth that provides for the incorporation of a building society, credit union or friendly society.

8 Examination of involved person--fees and expenses (CNL section 522 (4))

An involved person who attends for examination by an investigator is entitled to be paid the allowance and the expenses that would be payable for conduct money expenses and loss of time as he or she would have been entitled to on attending to give evidence, or to produce a document, at the trial of proceedings before a court.

Rule 24.20 of the *Uniform Civil Procedure Rules 2005* provides as follows: "A witness attending before an examiner to be examined, or to produce a document, is entitled to payment of the same amount for conduct money expenses and loss of time as he or she would have been entitled to on attending to give evidence, or to produce a document, at the trial of the proceedings before the court". Reference is also made to the notice setting out the scale of allowances to witnesses and published by the Attorney General in Gazette No 62 of 24 June 2011, pages 4599-4600.

9 Inspection of register of co-operatives (CNL section 601 (2))

For the purposes of section 601 (2) of the Law:

- (a) the prescribed manner in which any of the things referred in section 601 (1) of the Law may be done is by:
 - (i) lodging a request with the Registrar in the approved form, and
 - (ii) paying the relevant prescribed fee (if any) or otherwise complying with a relevant arrangement (if any) approved under section 601 (3) of the Law, and
- (b) the prescribed place at which any of the things referred to in section 601 (1) of the

Law may be done in the office of the Registrar, and

(c) the prescribed times at which any of the things referred in section 601 (1) of the Law may be done are times during the normal business hours of the office of the Registrar.

10 Procedures regarding giving of exemptions (CNL section 621)

For the purposes of section 621 of the Law, the procedure for the giving of exemptions that are provided for under the Law is as follows:

(a) an application for an exemption must be made in the approved form but, if there is no relevant approved form, the application must be made in writing,

(b) where relevant, the application must be made within a reasonable time before the event or the occurrence of the matter for which the exemption is sought,

(c) the application must be accompanied by the relevant fee prescribed by Part 3.

Part 3 – Fees

11 Fees

The fees to be paid in connection with the administration of the Act, the *Co-operatives National Law (NSW)* and the *Co-operatives National Regulations (NSW)*, including fees for the lodgment of any documents and fees for late lodgment of any documents under the Act, the *Co-operatives National Law (NSW)* and the *Co-operatives National Regulations (NSW)*, are set out in Part 1 of Schedule 1.

12 Fees with respect to the applied provisions of the Corporation Act

Fees for anything done by or in relation to the Registrar under provisions of the Corporations Act as applied under the Law 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.

13 Waiving, reducing or refunding fees

The Registrar may waive, reduce or refund any fee chargeable under Part 1 of Schedule 1 in any case or class of case if, in the opinion of the Registrar, there are special circumstances that justify this action.

Part 4 – Miscellaneous

14 General savings for repealed regulation

Subject to the local application provisions of the Act and the Law, anything done under or in consequence of the *Co-operatives Regulation 2005* and existing or continuing immediately before the commencement of relevant provisions of this Regulation continues to have the same status, operation and effect as it would have had if that Act had not been enacted.

This clause is intended to supplement clause 3 of Schedule 1 to the Act.

15 Co-operatives may continue to operate under old rules

(1) Subject to subclause (2), a co-operative may continue to operate under the rules ("old rules") applying to the co-operative that were in force immediately before the commencement of the Act.

(2) While a co-operative is operating under old rules:

(a) if there is any inconsistency between a provision of the old rules and a provision of the Act, the Law, CNR or this Regulation--the provision of the Act, the Law, CNR or this Regulation prevails, and

(b) if there is any reference in the old rules to a requirement contained in the *Co-operatives Act 1992* or the *Co-operatives Regulation 2005* --that reference is

to be read as a reference to the equivalent requirement contained in the Act, the Law, CNR or this Regulation, and

(c) if there is any reference in the old rules to:

(i) the co-operative being a trading co-operative--that reference is to be read as a reference to the co-operative being a distributing co-operative, and

(ii) the co-operative being a non-trading co-operative--that reference is to be read as a reference to the co-operative being a non-distributing co-operative.

16 Inspectors

(1) A person who was, immediately before the commencement of the new Act, an inspector for the purposes of the old Act (see section 372 of that Act) is taken, on and after that commencement, to have been duly appointed as an inspector under section 492 of the Law.

(2) A person who was, immediately before the commencement of the new Act, an investigator for the purposes of the *Fair Trading Act 1987* (see section 18 of that Act) is, on and after that commencement, taken to have been duly appointed as an inspector under section 492 of the Law.

(3) Subclauses (1) and (2) do not apply if the appointment of the person as an inspector for the purposes of the Law was terminated under the Law, or purported to have been so terminated, before the date of commencement of this clause.

(4) Subclause (2) does not apply if the appointment of the person as an investigator for the purposes of the *Fair Trading Act 1987* was terminated under that Act, or was purported to have been so terminated, before the date of commencement of this clause.

(5) A person who is, after the commencement of the new Act, appointed as an investigator under section 18 of the *Fair Trading Act 1987* is taken to have been duly appointed as an inspector under section 492 of the Law.

17 Delegations

(1) A delegation that was, immediately before the commencement of the new Act, in force under the old Act (other than section 418 of the old Act) is, on and after that commencement, taken to have been duly made under the Law.

(2) Without limiting subclause (1), a delegation that was, immediately before the commencement of the new Act, in force under the old Act (including section 418 of the old Act) continues, on and after that commencement, to be operative in relation to the following:

(a) the previous operation of the old Act or anything suffered, done or begun under the old Act,

(b) a right, privilege, obligation or liability acquired, accrued or incurred under the old Act,

(c) a penalty incurred in relation to an offence arising under the old Act,

(d) any investigation, proceedings or remedy in relation to such a right, privilege, obligation, liability or penalty,

(e) the imposition or enforcement of any such penalty, or the beginning, continuation or enforcement of any such investigation, proceedings or remedy.

(3) To avoid doubt, a delegation referred to in this clause (other than a delegation under section 418 of the old Act) may be revoked, wholly or partly, by the delegator at any time (see clause 29 of Schedule 4 to the Law).

(4) In this clause, "**delegation**" includes a sub-delegation.

18 (Repealed)

Schedule 1 Fees

(Clause 11)

Part 1 – Fees payable

Item	Column 1	Column 2	Column 3
	Provision	Type of fee	Fee (in fee units)
1	CNL s 26 (1) (b) (ii)	Application for registration of proposed co-operative--draft formation disclosure statement required under CNL s 23	3.70
2	CNL s 26 (1) (b) (ii)	Application for registration of proposed co-operative--draft formation disclosure statement not required under CNL s 23	1.06
3	CNL s 31 (b) (ii)	Application for registration of existing corporation--draft formation disclosure statement required under CNL s 23	3.70
4	CNL s 31 (b) (ii)	Application for registration of existing corporation--draft formation disclosure statement not required under CNL s 23	1.06
5	CNL s 37 (b) (ii)	Issue of duplicate certificate of registration	0.33
6	CNL s 60	Application for Registrar's prior approval of certain rule amendments	0.73
7	CNL s 63 (2)	Application for registration of rule amendment, other than where pre-approved under CNL s 60--per rule (maximum of \$158 per lodgment)	0.33
	Plus fee for late lodgment:		
	(a) within first 28 days after due date	1.06	
	(b) after first 28 days after due date	2.12	
8	CNL s 63 (4)	Application for issue of certificate of registration of rule amendment	0.33
9	CNL s 71 (1)	Application for exemption from any or all provisions of Division 2 of Part 2.4 of CNL	0.73
10	CNL s 82 (3) (a)	Application for registration of disclosure statement for compulsory share take up	2.64
11	CNL s 119 (5)	Application to extend period for carrying on business with too few members	2.64
12	CNL s 152 (3)	Application for determination of a member's eligibility to vote on an active membership resolution	2.64
13	CNL s 171	Application for exemption of co-operative from any or all provisions of Division 5 of Part 2.6 of CNL (former member entitlements)	2.64
14	CNL s 213 (1) (d)	Application for approval to keep register at another office	0.73
15	CNL s 220 (7)	Use of "Co-operative", "Co-op" etc--application for exemption by Registrar (cl 5 of this Regulation)	2.64
16	CNL s 221 (1)	Application to approve omission of "Limited" or "Ltd" in name	1.59
17	CNL s 222 (e)	Application to approve abbreviation or elaboration of name	0.33
18	CNL s 224	Application to approve change of name	2.64
19	CNL s 225 (2)	Restriction on use of "Co-operative", "Co-op" etc--application	2.64

		for exemption by Registrar (cl 6 of this Regulation)	
20	CNL s 226 (4)	Lodgment of notice of change of address	Nil
	Fee for late lodgment:		
	(a) within first 28 days after due date	1.06	
	(b) after first 28 days after due date	2.12	
21	CNL s 226 (6)	Application for exemption for a small co-operative or class of small co-operatives from CNL s 226 (3) requirement for a notice about the name of a co-operative and its registered office	0.73
22	CNL s 233 (2)	Application by member for review of voting entitlement	2.64
23	CNL s 243 (2) (c) (ii)	Filing fee for registration of special resolution--per resolution (maximum of \$158 per lodgment)	0.33
	Plus fee for late lodgment:		
	(a) within first 28 days after due date	1.06	
	(b) after first 28 days after due date	2.12	
24	CNL s 244 (3)	Application for certificate of registration of special resolution	0.33
25	CNL s 248 (3)	Application for approval of disclosure statement for special postal ballot	2.64
26	CNL s 289	Lodgment of annual financial reports by large co-operative	2.64
	Plus fee for late lodgment:		
	(a) within first 28 days after due date	1.06	
	(b) after first 28 days after due date	2.12	
27	CNL s 290	Lodgment of half-year reports by co-operative that is a disclosing entity	Nil
	Fee for late lodgment:		
	(a) within first 28 days after due date	1.06	
	(b) after first 28 days after due date	2.12	
28	CNL s 293	Lodgment of annual return by small co-operative	0.72
	Plus fee for late lodgment:		
	(a) within first 28 days after due date	1.06	
	(b) after first 28 days after due date	2.12	
29	CNL s 316 (1)	Application for exemption of certain persons (in relation to a co-operative) from all or specified requirements of "target provisions"	2.64
30	CNL s 317 (1)	Application for exemption of certain persons (in respect of a class of co-operatives) from all or specified requirements of	2.64

		"target provisions"	
31	CNL s 319 (1)	Application for exemption of certain persons from all or specified requirements of "target provisions"	2.64
32	CNL s 320 (1)	Application for exemption of certain persons (in respect of classes of audit firms or audit companies) from all or specified requirements of "target provisions"	2.64
33	CNL s 322	Application for exemption from a provision of CNR made under Part 3.3 (Financial reports and audit) of CNL	2.64
34	CNL s 337	Lodgment of disclosure documents for issue of securities other than an issue of securities under CNL s 338	23.24
35	CNL s 337	Application for exemption or modification of disclosure provisions under Chapter 6D of Corporations Act (as applied)	11.41
36	CNL s 338 (3)	Application for approval of disclosure statement for issue of non-share securities to members or employees of co-operative	2.64
37	CNL s 343 (3) (a)	Application for approval of disclosure statement for compulsory loan from members to co-operative	2.64
38	CNL s 343 (10)	Application for exemption from all or specified provisions of CNL s 343 (requirements for compulsory loans from members to co-operative)	2.64
39	CNL s 350 (1) (b) and (c)	Application for approval of the statement and terms of issue of CCUs	2.64
40	CNL s 359 (3)	Application for exemption from a provision of CNL s 248 and s 359 (requirements in respect of disposal or acquisition of significant assets)	2.64
41	CNL s 363 (2)	Application to permit a higher maximum level of share interest than 20% in particular co-operative	2.64
42	CNL s 372 (1)	Application by an individual for exemption from the restrictions on share interests, relevant interests etc	2.64
43	CNL s 374 (1) (b)	Application for approval of share offers provided for in CNL s 373 that may result in substantial change in share interest in co-operative	23.24
44	CNL s 376 (5)	Application to extend time permitted for board to consider a share offer of the kind specified in CNL s 373 (1)	0.73
45	CNL s 380 (1)	Application for exemption from a provision of Division 2 of Part 3.5 and s 248 of CNL (requirements for share offers under Division 2 of Part 3.5 of CNL)	11.41
46	CNL s 396 (2)	Application for consent to merger or transfer of engagements by way of board approval	0.73
47	CNL s 397 (2)	Application for approval of disclosure statement for purposes of a merger or transfer of engagements	2.64
48	CNL s 397 (4)	Application for exemption of co-operative from complying with CNL s 397 in relation to disclosure statement about a merger or transfer of engagements	2.64
49	CNL s 398 (1)	Application for approval of merger or transfer of engagements	0.73
50	CNL s 404 (4)	Application for exemption from a provision of CNL s 248 and s 404 (requirements for transfer of incorporation)	2.64
51	CNL s 416 (1) (a)	Application for Registrar's permission to shorten notice	0.33
52	CNL s 418 (1) (f)	Application for direction exempting from disqualification from administering compromise or arrangement	2.64
53	CNL s 424 (1) (b)	Application for Registrar's statement of no objection to	2.64

		compromise or arrangement	
54	CNL s 425 (4)	Lodgment of Supreme Court order with Registrar relating to compromise or arrangement	0.33
	Plus fee for late lodgment:		
	(a) within first 28 days after due date	1.06	
	(b) after first 28 days after due date	2.12	
55	CNL s 428 (1)	Application for Registrar's approval of explanatory statement for compromise or arrangement	11.41
56	CNL s 445 (3)	Application for exemption from a provision of CNL s 248 or s 445 (requirements for voluntary winding up)	2.64
57	CNL s 453	Application to Registrar to exercise powers in respect of property of a deregistered co-operative	2.64
58	CNL s 476 (2) (a)	Application to local Registrar to consent to merger or transfer of engagements occurring as a result of approval by special resolution or decision by the board--merger between local and participating co-operatives	0.73
59	CNL s 477 (2)	Application for approval by appropriate Registrar of disclosure statement for merger or transfer of engagements--local and participating co-operatives	2.64
60	CNL s 477 (4)	Application to appropriate Registrar for exemption from requirements of CNL s 477 applying to a merger or transfer of engagements--local and participating co-operatives	2.64
61	CNL s 478 (1)	Application for approval of merger or transfer of engagements--local and participating co-operatives	2.64
62	CNL s 531 (1) (a)	Application to Registrar for special meeting	2.64
63	CNL s 531 (1) (b)	Application to Registrar for inquiry	5.07
64	CNL s 588 (1)	Application to Registrar for a certificate stating that a thing had or had not been done within a specified period or by a specified date	0.73
65	CNL s 588 (2)	Application to Registrar for a certificate stating that requirements of the Law had or had not been complied with or had been complied with at a specified date or within a specified period	0.73
66	CNL s 588 (3)	Application to Registrar for a certificate stating that on a specified date a body was not or had ceased to be registered as a co-operative under the Law	0.42
67	CNL s 601 (1) (a)	Inspection of register of co-operatives	0.20
68	CNL s 601 (1) (b)	Inspection of documents kept by Registrar relating to a co-operative and prescribed by the National Regulations	0.20
69	CNL s 601 (1) (c)	Extract from register of co-operatives inspected under CNL s 601 (1) (a):	
	first page	0.20	
	each additional page	0.01	
70	CNL s 601 (1) (d)	Certified copy of document that may be inspected under CNL s 601 (1) (b):	
	first page	0.22	
	each additional page	0.02	
71	CNL s 601 (1) (e)	Copy of document that may be inspected under CNL s 601 (1)	

		(b):	
	first page	0.20	
	each additional page	0.01	
72	CNL s 609 (1)	Application for extension or shortening of time	0.73
73	CNL s 611 (2) (c) (iii)	Application for permission to give notice to members by newspaper	0.73
74	CNR reg 1.4 (5)	Application by co-operative for declaration that it is a small co-operative for a particular financial year	2.64
75	<i>Co-operatives (Adoption of National Law) Act 2012, Sch 1, cl 5 (1) (a)</i>	Application for approval for rules of certain co-operatives to restrict voting rights	2.64
76	<i>Co-operatives (Adoption of National Law) Act 2012, Sch 1, cl 5 (2)</i>	Application for prior approval of proposed amendment of co-operative's rules relating to cl 5 (1)	0.73

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 2017-18--\$100, and

(b) in each subsequent financial year--the amount calculated as follows:
graphic

[Note: This is a graphic. It has not been processed by the Point in Time system and may not be accurate at the selected working date.]

"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.

Fee unit amount calculated under this clause:

Financial year	Fee unit amount
2018-19	\$102.07

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.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Co-operatives (New South Wales) Regulation 2014 (44)*. LW 14.2.2014. Date of commencement, on the day on which the *Co-operatives (Adoption of National Law) Act 2012* commences, cl 2. This Regulation has been amended as follows:

2014	(602)	<i>Co-operatives (New South Wales) Amendment (Transitional) Regulation 2014</i> . LW 12.9.2014. Date of commencement, on publication on LW, cl 2.
	No 88	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2014</i> . Assented to 28.11.2014. Date of commencement of Sch 3, 8.1.2015, sec 2 (1).
2015	(287)	<i>Co-operatives (New South Wales) Amendment (Fees) Regulation 2015</i> . LW 12.6.2015. Date of commencement, 1.7.2015, cl 2.
2016	(232)	<i>Co-operatives (New South Wales) Amendment (Fees) Regulation 2016</i> . LW 11.5.2016. Date of commencement, 1.7.2016, cl 2.
2017	(207)	<i>Co-operatives (New South Wales) Amendment (Fees) Regulation 2017</i> . LW 24.5.2017. Date of commencement, 1.7.2017, cl 2.
	(521)	<i>Co-operatives (New South Wales) Amendment (Inspectors) Regulation 2017</i> . LW 22.9.2017. Date of commencement, on publication on LW, cl 2.

Table of amendments

Cl 3	Am 2014 (602), Sch 1 [1]; 2017 (207), Sch 1 [1].
Cl 11	Subst 2015 (287), Sch 1; 2016 (232), Sch 1 [1]. Am 2017 (207), Sch 1 [2].
Cl 12	Am 2016 (232), Sch 1 [2]; 2017 (207), Sch 1 [2].
Cl 13	Am 2016 (232), Sch 1 [3]; 2017 (207), Sch 1 [2].
Cl 16	Ins 2014 (602), Sch 1 [2]. Am 2017 (521), cl 3.
Cl 17	Ins 2014 (602), Sch 1 [2].
Cl 18	Ins 2014 (602), Sch 1 [2]. Rep 2014 No 88, Sch 3.
Sch 1	Ins 2016 (232), Sch 1 [4]. Subst 2017 (207), Sch 1 [3].