

EXAMPLE

FORMATION DISCLOSURE STATEMENT

Notes to assist in completion of a formation disclosure statement.

1. DO NOT include grey boxes in your disclosure statement. The text in these boxes is to help you prepare a disclosure statement.
2. The information in this document is of a general nature and is intended only as a guide. The co-operative may need to obtain professional advice to complete a disclosure statement and draft rules
3. This document is an example for a distributing co-operative only and additional information may be required in the disclosure statement.
4. If your proposed co-operative is a non-distributing co-operative your disclosure statement will need to clearly set out if the proposed co-operative is a non-distributing co-operative with share capital or a non-distributing co-operative without share capital.
5. A disclosure statement may only include a statement by a person, or a statement said to be based on a statement by a person, if:
 - the person has consented to the statement being included in the disclosure statement in the form and context in which it is included; and
 - the disclosure statement states that the person has given this consent; and
 - the person has not withdrawn this consent before the disclosure statement is approved by, or registered with, the Registrar.
6. Your draft disclosure statement must be submitted to the Registrar with the proposed rules and prescribed application fee well in advance (and no less than 28 days) before the proposed formation meeting.

Co-operatives National Law (NSW)

CO-OPERATIVE FORMATION

DISCLOSURE STATEMENT

FOR THE FORMATION OF A
DISTRIBUTING CO-OPERATIVE

NAME OF PROPOSED CO-OPERATIVE:

DATE OF APPROVAL:

____	/	____	/	____
DD		MM		YY

**THIS DISCLOSURE STATEMENT IS VALID FOR A PERIOD
OF 6 MONTHS FROM DATE OF APPROVAL
FOR ISSUE WITHIN THE STATE OF NEW SOUTH WALES**

DISCLOSURE STATEMENT

CONTENTS

- 1. INTRODUCTION**
- 2. BACKGROUND AND DEMAND FOR SERVICES**
- 3. MEMBERSHIP**
- 4. PRIMARY ACTIVITY AND ACTIVE MEMBERSHIP**
- 5. OPERATION OF THE CO-OPERATIVE**
- 6. MANAGEMENT OF THE CO-OPERATIVE**
- 7. FINANCIAL INFORMATION**
- 8. RISKS**
- 9. ANNEXURES**
- 10. FURTHER INVESTIGATION**

DISCLOSURE STATEMENT

1. Introduction

Explanation of this statement

The Co-operatives National Law (NSW) (the CNL) requires that a disclosure statement for a proposed distributing co-operative is to be presented to the formation meeting. The disclosure statement sets out information necessary to ensure eligible members are informed of the nature and extent of their financial involvement or liability as a member of the proposed co-operative.

1.1 Name

The name of a co-operative must include the word 'Co-operative' or the abbreviation 'Co-op' or 'Coop' and must end with the word 'Limited' or 'Ltd'.

The proposed name cannot be too similar to the name of another co-operative, company or business name.

This part should set out the type of co-operative (i.e. a distributing co-operative; a non-distributing co-operative with share capital or non-distributing co-operative without share capital).

1.2 Registered office

The registered office must be in NSW: s.226 CNL.

2. Background and demand for services

2.1 Background to forming the co-operative

The promoters should describe the background to forming to the proposed co-operative and why they consider the co-operative structure to be the most suitable for the organisation.

2.2 Objects

A co-operative may have objects in addition to primary activities. If the proposed co-operative is to have objects these should be set out in the disclosure statement

2.3 Preconditions

Set out any pre-conditions that must exist for the successful commencement of activities such as minimum subscription levels, purchase of property and the capital required for the co-operative at the time of formation.

The disclosure statement must explain what happens if any pre-condition is not satisfied.

2.4 Demand for services/business plan/feasibility study

Set out any information that assists prospective members in understanding the need for the services the co-operative intends to provide. A copy of any business plan/feasibility study/market research that has been undertaken should be annexed.

3. Membership

3.1 Who can be a member

Set out any qualifications/eligibility for membership as specified in the proposed rules. This part should set out if minors can be members and joint membership is permitted.

Specify any on-going eligibility requirements (if any) to maintain membership.

3.2 Application for membership and shares

Set out the procedures to be followed by applicants for membership. Include details of documents to be completed; payment required for shares/entrance fees etc.

Note: the CNL requires certain documents be given to persons intending or applying for membership of a co-operative – see sections 68 & 122 of the CNL.

3.3 Rights and liabilities attaching to membership and shareholding

Relevant information would normally include:

- details of entrance fees, charges, annual subscriptions
- requirements of members to trade with or otherwise engage in dealings with the proposed co-operative
- details of compulsory loans or other payments that are or may be required
- returns to members – set out whether the co-operative intends to give returns to members in the form of dividends or rebates. (Note non-distributing co-operatives are prohibited from giving returns or distributions to members)
- the circumstances in which fines may be imposed on members
- liability (if any) for the debts of the co-operative and the position of members on winding up or other administration in insolvency
- the minimum number of shares for which a member must subscribe and maximum number of shares that may be held
- the amount(s) required to be paid to the proposed co-operative with respect to shares
- the rights and liabilities attached to the ownership of shares in the proposed co-operative
- rights and restrictions on transfer of shares

3.4 Voting rights of members

Set out the voting rights of members. The voting rights of joint memberships and the restrictions on voting by minors should be set out if these memberships are permitted. See sections 114 & 228 of the CNL.

3.5 Ceasing membership and forfeiture of shares

Set out circumstances in which membership ceases and where shares may be forfeited (See sections 117 & 118 of the CNL for the circumstances in which membership ceases)

4. Primary activity and active membership

4.1 Primary activities

An activity is a primary activity of the co-operative if the activity by itself or taken with another activity, amounts to the basic purpose for which the co-operative exists **and** if that activity makes a significant contribution to the business of the co-operative (ie. if the activity contributes at least 10% of the co-operative's turnover, income, expenses or surplus) to the business of the co-operative.

4.2 Active membership

Set out the requirements in order to be an active member and the consequences of inactivity.

5. Operation of the co-operative

5.1 Carrying on primary and other activities

The disclosure statement should clearly set out:

- details of the products/services the co-operative will provide for members.
- the resources that are needed to carry out the co-operative's proposed activities such as office or factory space, furniture, equipment, plant, vehicles etc.
- the role of the members in the operation of the co-operative, including supplying produce, use of common services, working for the co-operative etc.

5.2 Details of any pre-registration contracts that have been or will be entered into before registration of the co-operative

Provide details of any pre-registration contractual obligations (if any), guarantees and indemnities, contingent liabilities, unresolved or pending law suits which the co-operative will assume once formed.

5.3 Detail any contracts members will have to enter into with the co-operative

Provide details of any agreements such as supply agreements, leasing or licence arrangements that the co-operative may be required to enter or members may be required to enter.

5.4 Contracts with promoters or other parties

Provide details of any pre-registration contractual obligations (if any), guarantees and indemnities, contingent liabilities, unresolved or pending law suits which the co-operative will assume once formed.

5.5 Details of any interest of proposed directors or members in any contract or proposed contract

If any of the promoters or any of the proposed directors or members have a direct or indirect interest in any contract or proposed contract with the co-operative, (other than an interest in a contract referred to in section 211 of the CNL) the following details must be set out in this part or attached by way of annexure:

- (i) the nature of the contract
- (ii) the name of the parties to this contract
- (iii) (A) the interest, remuneration, reward or commission which any promoter or proposed director or member will be entitled to receive; or
 - (B) where the promoter or proposed director or member is a director, officer, shareholder or member of a body corporate or organisation, which is a party to the contract; the interest, remuneration, reward or commission which the body corporate or organisation will receive
- (iv) the name of each promoter or proposed director or member referred to in (iii) above, and in the case of (iii)(B), the position or office held. If yes, details must be set out in an annexure.

6. Management of the co-operative

6.1 Board of directors

Set out:

- the number of directors of the proposed co-operative
- qualifications of the directors and officers, and
- remuneration of the directors (note restrictions in section 203 of the CNL).

6.2 Election of directors

Set out:

- the term of office of the directors
- the rotation of directors, and
- any restriction in the rules on the number of consecutive terms.

6.3 First directors and officers

The names and experience of those who have consented to being nominated for election as directors are:

Set out details of the full name and address of those who have agreed in writing to become directors or other office holders in the proposed co-operative.

6.4 Day to day management

The name of the person(s) who will be responsible for day-to-day management of the co-operative and brief details of his/her experience. Specify whether management is voluntary or paid.

7. Financial information

7.1 Start up funds

Set out:

- details of start up funding capital required for the co-operative at the time of formation; the number of persons who have indicated in writing their intention to join the co-operative and the fees, subscriptions and total share capital to be subscribed by those persons
- details of the projected income and expenditure of the proposed co-operative for its first year of operation
- pro forma balance sheet
- details of grants or loans obtained or to be obtained to fund initial operations/set up costs
- the estimated cost of formation.

A statement by a person may only be included if the person consents to the form and context in which it is included and the disclosure statement states that the person has given this consent; and the person has not withdrawn this consent before the disclosure statement is approved.

7.2 Formation expenses

Set out the:

- estimated costs of formation (including a description of those expenses); and
- details of any expenses incurred prior to the formation meeting which are to be recouped once the co-operative is formed.

7.3 Returns to members

Set out if the co-operative intends to give returns to members in the form of dividends or rebates. (Note non-distributing co-operatives are prohibited from giving returns or distributions to members.)

7.4 Accounting and auditing

Set out details of the person(s) who will be responsible for general accounting and financial functions of the co-operative. In addition, set out details of the proposed auditor (if any).

State if the financial statements will be audited, reviewed or if no audit or review will be undertaken.

8. Risks

9. List of annexures

List all annexures to the disclosure statement.

10. Further investigation

Co-operatives may consider including a further section:

It is not possible for a disclosure statement to include all material relevant to the proposed co-operative's circumstances and to the circumstances of each prospective member, and advising members to make further enquiries and to obtain professional advice if they consider this is necessary.

DISCLAIMER OF LIABILITY

This disclosure statement has been approved by the Registrar of Co-operatives for the purpose of section 25(4) of the Co-operatives National Law (NSW) (the CNL). This approval is not to be taken in any way as an indication that the disclosure statement sets out all information that may be relevant to the proposal.

Approval does not relate in any way to the merits or otherwise of the co-operative's proposed activities. No responsibility as to the contents of the disclosure statement and attachments and annexures that form part of this document and the associated Rules which collectively make up the formation documentation, is to be taken by the Registrar, NSW Fair Trading or by any of its servants or agents.

The responsibility for ensuring that the CNL has been complied with in the preparation of the disclosure statement lies with those issuing the statement. Persons making false or misleading statements in a disclosure statement may be liable for criminal penalties and expose themselves to civil liability to anyone who suffers loss as a consequence.

CERTIFICATION

We the undersigned, certify that this is a copy of the disclosure statement which was presented to the formation meeting on ___/___/_____ for the purpose of forming a co-operative to be known as:

_____ Name of co-operative

_____ Chairperson of formation meeting
Signature

_____ Secretary of formation meeting
Signature

Note: This certification is signed at the Formation meeting which is held after the draft formation documentation which includes the Rules and the Disclosure Statement that have been approved by Registry Services and returned to the sponsors of the proposed co-operative.

Annexure _____

Note: This document is provided as an example only. You should include items that are appropriate to your proposed co-operative, providing details of calculations or assumptions that are used on a separate sheet.

PROJECTED INCOME AND EXPENDITURE STATEMENT		Year one 20__
FOR THE PERIOD	TO	(ie. the first year of operation)
SALES		
Less: cost of goods sold		_____
GROSS PROFIT		_____
		=====
Add: other income		_____
TOTAL INCOME		_____
		=====
Less: fixed costs		_____
operational costs		_____
OPERATING PROFIT/LOSS		_____
		=====
Less: income tax attributable to operating profit		_____
OPERATING PROFIT/LOSS AFTER TAX		_____
		=====
Less: proposed rebates/dividends		_____
RETAINED PROFITS		_____

Annexure _____

Note: This document is provided as an example only. You should include items that are appropriate to your proposed co-operative, providing details of calculations or assumptions that are used on a separate sheet.

CASH FLOW BUDGET		
FOR THE PERIOD	TO	(ie. the first year of operation)
		ESTIMATES FOR YEAR 20_____
CASH IN	OPENING BANK BALANCE	
	Issue of shares to members	_____
	Grants and subsidies	_____
	Subscriptions and donations	_____
	Commercial revenue	_____
	Loans raised	_____
	TOTAL CASH RECEIPTS	_____
CASH OUT	Materials	_____
	Wages and salaries	_____
	Transport and travel	_____
	Rent	_____
	Insurance	_____
	Repairs and maintenance	_____
	Administration expenses	_____
	Audit	_____
	Formation expenses	_____
	Interest on borrowings	_____
	Capital expenditure	_____
	Tax (net GST, PAYG, other taxes)	_____
	Sundries	_____
	TOTAL CASH PAYMENTS	_____
	CLOSING BANK BALANCE	_____