



# Hastings Co-operative Limited

## FIT AND PROPER POLICY

VERSION 6 – August 2021

Responsibility for this Document - The Board

Board Committee Supervising this Document – Governance Committee

Management of this Document – Governance Committee Chair

Date of written approval by the Board – *24<sup>th</sup> August 2021*

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Approved:

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Chairman of the Board of Directors

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Chairman of the Governance Committee

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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## 1. PREAMBLE

The Hastings Co-operative Limited (the Co-op) is a large retail and distribution Co-op registered under and regulated by the Co-operatives National Law<sup>1</sup> (the Law) and Regulations. The governance of the Co-op is paramount, and the application of this policy is to ensure that those persons seeking to hold office are of the highest integrity.

### 1.1 Definition of “Fit and proper”

For the purposes of this document “Fit and Proper” is taken to mean a person who is:

- Competent to operate in the role;
- Has attributes of good character, diligence, honesty, integrity and judgement;
- Is not disqualified by law to perform in the role;
- Has the skills required to enhance the operations of the Board or Management;
- Has no criminal convictions; and
- Either has no conflict of interest in performing the role, or any potential conflict of interest, can be mitigated in respect of this role.

## 2. PURPOSE

The Co-op Rules (the rules – Rule 47) require an appropriate process for the assessment of potential director candidates for election or appointment to the Board, as well as persons seeking or holding responsible person<sup>2</sup> positions within the Co-op.

## 3. SCOPE

This policy statement applies to eligible members who nominate for a position of Director and for other Board designated, responsible person positions.

### 3.1 EXCEPTIONS

There are no exceptions with compliance with this policy.

## 4. PRINCIPLES

- That nominated persons are fit and proper to hold positions of control that affect the overall performance, reputation and on-going viability of the Co-op.
- That the Co-op ensures it’s ‘Fit and Proper Policy’ is appropriate to the current circumstances of the Co-op.

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<sup>1</sup> *Co-operative (Adoption of National Law) Act 2012 – as consolidated to current date.*

<sup>2</sup> Responsible person positions are those designated by the Board and include: Co-operative Secretary, Chief Executive Officer and Financial Controller.

- That the Fit and Proper Policy must, as a minimum, address the following matters in a way that prudently minimises the risks from persons who are not fit and proper from holding a responsible position within the Co-op:
  - a. The competencies required for each position of control;
  - b. The process to be undertaken in assessing whether a person is fit and proper;
  - c. The procedures that will be undertaken if a nominated person is not considered fit and proper within the meaning of this policy;
  - d. The procedures in place to ensure that each Office Holder or nominated person is aware of and understands the 'Fit and Proper Policy';
  - e. The whistle-blowing provisions to enable breaches of this policy to be dealt with without incrimination.

## **5. OBJECTIVES**

The objective of this policy is to ensure that the Co-op complies with best practice procedures when seeking to appoint persons to positions of control. In particular, the Co-op only seeks to appoint persons who are;

- Fit for the circumstances of the Co-op.
- Proper for the circumstances of the Co-op.

## **6. CIRCUMSTANCES OF THE CO-OP**

The fit and proper circumstances of the Co-op, relevant to an assessment of the fitness of its persons in positions of control are:

### **6.1 Mutuality**

The Co-op is a large retail and distribution Co-op owned by its members who are also its customers. The Co-op;

- a) Conducts business for the benefit of its members;
- b) Encourages the involvement of its members in the affairs of the Co-op;
- c) Draws its directors from membership;
- d) Is organised based on the Principles of Mutuality.

Mutuality is evidenced in these ways:

- I. Each Member holds shares in the Co-op.
- II. As a general rule, the Co-op raises capital through retained earnings although other mechanisms to raise capital are defined in the Rules.

### **6.2 Nature of the Co-operatives Business – Size complexity and Risk**

The Co-op is a multi-faceted large retailer operating in the Hastings Valley of NSW and is considered a significant employer in the region. The Co-op's strategic direction is set by the Board on an annual basis and looks at both short and long term strategic objectives.

The business model is complex in that it operates in a number of different industries, each requiring very different skill sets. A fundamental understanding of the future direction of retail is imperative for all responsible persons.

### **6.3 Key Financial Indicators.**

The Co-op has a comprehensive financial management reporting structure that reviews key accountabilities and performance monthly. Reporting structures and mechanisms are changed over time to reflect the complexity and requirements of the Board.

## **7. CRITERIA AND PROCEDURES FOR ASSESSING FIT AND PROPER**

### **7.1 Board Responsibilities**

The board currently has a maximum of seven (7) member-elected Directors. Diversity and renewal of the board are governed by the Board Charter, Renewal Policy and skills matrix. Selection of Board candidates is based on the needs of the Co-op at the time of election. At each annual electoral cycle, the Board shall, prior to the sitting of the Nominations Committee;

- a. Provide a statement to the Chair of the Director Nominations Committee outlining the skills required for this election cycle. On an annual basis the boards skills matrix must be updated to assess any skills gaps compared to the latest strategy plan, and any internal or external changes to the operating environment.
- b. Consider the Board Renewal Policy and Board Charter when existing directors are seeking re-election.
- c. Ensure that the notice calling for nominations for the board adequately addresses the Fit and Proper requirements for the election cycle including appropriate skills.
- d. Consider nominees who have a real or perceived conflict of interest and make recommendations to the Committee if such a nominee is still considered suitable for assessment;
- e. Furnish to the committee members all necessary materials include nominee applications for committee members to make an independent assessment of the nominee;
- f. Select a date, in consultation with the external independent members of the Director Nominations committee, to interview prospective director nominees.
- g. Cause the date of the Director Nominations committee to be advertised as part of the calling for Nominations. The committee countenance a change in date or elect to sit on more than one date as required.
- h. Establish a Director Nominations Committee as per the constitution and Terms of Reference.

### **7.2 Committee Responsibilities.**

- The committee must fulfil its obligations as per clause 45, 47, Annexure A of the constitution and the Terms of Reference as approved by the full Board

### 7.3 Co-operative Secretary Responsibilities

- The Co-op Secretary acts as the conduit between the Committee and the Board and provide procedural support, minute taking and report writing.

The Secretary is responsible for the following:

- i. Preparation of the Director Nominee packs;
- ii. Preparing and publishing Call for Director Nominations;
- iii. Recording and distributing Nominee packs;
- iv. Vetting each nomination to ensure that;
  - a. The nominee and their sponsors are active members of the Co-op.
  - b. The nominee is not a bankrupt or recently discharged bankrupt.
  - c. The nominee has no adverse criminal findings.
  - d. The Nominee is not disqualified from holding such a position and has no force-able undertakings recorded.
- v. Ensure each nominee is available for the nominations committee
- vi. Advises each nominee as to the outcome of the nominations process.
- vii. Inducting elected nominees prior to first board meeting.

### 7.4 Criteria for assessment of Fit and Proper

#### 7.4.1 Directors standing for re-election

If a director indicates that they wish to stand for re-election, and are eligible in accordance with Co-op Rules, the Co-op Board will formally determine if they support that director's re-election and in doing so, will communicate to the Nominations Committee that:

- 1) The director's performance continues to be effective,
- 2) The director is independent, and
- 3) The director remains committed to the role.

If the Board considered the director suitable for re-election, the director must complete the nominations pack for existing directors. The Nominations Committee will formally consider the director's nomination in accordance with clause 7.2.

If the Board does not consider the director standing for re-election is suitable, the Chair is to advise the Director of their ineligibility to re-stand. Where such a recommendation is made, the Director is to be requested to retire at the end of their term. If the Director refuses to accept the decision, an in-camera session of the full board is to be held where a report from the Chair is to be tabled detailing the reasons why the director is not suitable for re-election. Provided the Chair's report is supported by 75% of the Directors, the Director seeking re-election will be asked to retire. In the event that the director still refuses to retire, the matter is to be dealt with in accordance with Rule 53- *Removal of a Director*.

#### 7.4.2 Director Nominees

- A. All nominees must be assessed against this policy prior to appointment to the Board.
- B. Nominees must possess the competence, character, diligence, honesty, integrity and judgement to properly perform the duties of a Director.
- C. Nominees are not disqualified from holding the position of Director.
- D. Nominee has no conflict of interest in performing the duties of the position or;  
If a nominee has a conflict, that such a conflict will not create a material risk that the nominee will fail to properly perform the duties of a director.
- E. Each Nominee is expected to have the necessary skills and knowledge to contribute to the strategic direction of the Co-op. They must have at least one or more of the core competencies as provided for in the skills matrix document.
- F. In addition, nominees are expected to have the following:
  - a. An understanding of the Co-operative Principles.
  - b. An understanding of the roles and responsibilities of directors.
  - c. An understanding of the risks and rewards of being a director.
  - d. Attributes necessary to work collaboratively and constructively with other members of the Board.
  - e. Must have the time to fully prepare for, and attend board and committee meetings, and
  - f. Must be advocate for the Co-op.
- G. Where the Nominations Committee finds the nominee ineligible to stand for election, the nominee is to be advised at the earliest opportunity.

#### **7.4.3 Annual Re-assessment**

At least annually, each sitting director must be reassessed under this policy. In deciding what enquiries to make, the Board should weigh the burden of documenting information and the risk of unnecessary disclosure against the possibility that the enquiries will uncover material information. To satisfy this balance each sitting director must;

- i. Complete an annual Fit and Proper declaration form;
- ii. Disclose any issues which may materially affect their ability to comply with this policy.

## **8. PERSONS IN RESPONSIBLE POSITIONS OTHER THAN DIRECTORS**

The persons in responsible positions for the Co-op are, the Co-operative Secretary, the Chief Executive Officer and the Financial Controller. One person may hold more than one responsible position but not all three. For example, the Chief Executive Officer may also be appointed by the Board as the Co-operative Secretary.

### **8.1 Fit and Proper requirements for Responsible Position Holders**

Each person holding a responsible position must be assessed by the Board in terms of the following criteria.

- A. Have the necessary skills and experience to perform the duties for which they have been tasked.
- B. Be employed under a formal employment contract.
- C. Have maintained any ongoing educational / development requirements associated with the position or their qualifications.
- D. Have no detrimental findings in relation to the following;
  - a. Credit Worthiness
  - b. Criminal convictions
  - c. Become subject to Bankruptcy Proceeding
  - d. Findings that result in restrictions or prevention from holding the responsible position.

### **8.2 Annual Reassessment of Responsible Position Holders.**

At least annually, each responsible position holder must be reassessed under this policy. In deciding what enquiries to make, the Board should weigh the burden of documenting information and the risk of unnecessary disclosure against the possibility that the enquiries will uncover material information. To satisfy this balance each responsible position holder must;

- i: Complete an annual Fit and Proper declaration form
- ii: Disclose any issues which may materially affect their ability to comply with this policy

### **8.3 Indemnities**

A person seeking to hold a responsible position with the Co-op must;

- Indemnify the Co-op against any loss and damages from implementation of this policy in good faith.
- Consent for the Co-op to make all reasonable enquiries relevant to the assessment under this policy.



#### **8.4 Where a responsible position holder is deemed not to meet the Fit and Proper requirements.**

If the responsible position holder is found not to be fit and proper for the position that they hold, the Co-op has the right to;

- a. Redeploy the employee to a position for which they are fit and proper; or
- b. Terminate their employment.

### **9. DEALING WITH SUBSEQUENTLY RECEIVED INFORMATION**

If, after completing the assessment of person's fitness and propriety, the Board, Nomination Committee members or Responsible Position holders become aware of additional information that is both accurate and material to the assessment of fitness and propriety, the Fit and Proper process must be re-opened for re- assessment. All additional information is to be formally provided to the Nominations Committee who will reconvene and evaluate the material and provide the person with;

- The opportunity to respond to the additional information; and
- Repeat the initial assessment of fit and proper in accordance with Clause 7.4.2.

### **10. PUBLICISING THIS POLICY**

The board requires that all persons in a responsible position are aware of and understand this policy. It is the Co-op's policy to comply with this requirement by:

- Providing a copy of this policy to all candidates for election as a Director as soon as possible after the candidate is nominated and to all other persons prior to the initial assessment of their fitness and propriety.
- Providing a copy of this policy to all persons as part of their annual re-assessment of fitness and propriety.
- Incorporating declarations of receipt, reading and understanding of this Policy as part of their employment documentation.

### **11. WHISTLE-BLOWERS**

The Co-op has a formal whistleblowers policy.

Protections provided under the Whistleblowers policy apply to this policy.

## 12. RETENTION OF DOCUMENTS

Documentation and any information provided as part of the assessment as to fitness and propriety will be retained for a reasonable time. It is the Co-op's policy to comply with this requirement by:

- Documenting all information considered in initially assessing and annual re-assessing the fitness and propriety of a person for a responsible position.
- Retaining documentation relating to the initial assessment or annual re-assessment of a person for a responsible position, for as long as the person remains in the responsible position or another responsible position with the Co-op.
- Retaining this information for three (3) years after the person ceases to be in a responsible position of the Co-op.

It is the Co-op's policy, in conformity with the National Privacy Principles, to give each applicant for a person in a responsible position, a statement setting out how the Co-op will deal with the applicant's personal information, as above.

It is also the Co-op's policy in conformity with the Law, to obtain consent from each applicant for the collection and use of information by the Co-op to comply with this policy.

***All documents associated with the nomination and appointment of a director are available from the Co-op's secretary at the Co-op's Head Office.***

***It is the Co-op's policy to provide an applicant with copies of any Declarations made by the applicant to the Co-op.***

## 13. REVIEW OF DOCUMENT

This policy is to be review annually by the Governance Committee and approved by the Board within 2 months of the Election Cycle.

- **Version Control**

<b>Version 4 May 2018</b>	<b>Co-op Secretary</b>
<b>Version 5 December 2019</b>	<b>Co-op Secretary</b>
<b>Version 6 August 2021</b>	<b>Co-op Secretary</b>