

From: "Fred T Green (DJCS)" <Fred.Green@justice.vic.gov.au>
To: "ocmail@dte.org.au" <ocmail@dte.org.au>
Subject: FW: members meetings
Date: Tue, 1 Sep 2020 23:28:44 +0000

Copy of my email to Mr Reid and his response.
Fred Green

From: Troy Reid <troy@dte.coop>
Sent: Tuesday, 1 September 2020 12:53 PM
To: Fred T Green (DJCS) <Fred.Green@justice.vic.gov.au>
Cc: DJCS-CAV-Registration (DJCS) <cav.registration@justice.vic.gov.au>; Anita J Richards (DJCS) <Anita.Richards@justice.vic.gov.au>
Subject: RE: members meetings

Hi Fred

Thank you for your response.

I now understand you are not referring to the use of voting software used for director elections and postal ballots.

Your contention appears to be specifically in regards to active member general meeting attendance using web conferencing software like Zoom.

I note you have not referenced any CNL sections specifically prohibiting the use of web conferencing software for general meetings as previously requested and therefore conclude from your email below that we are not in breach of the law (specifically the CNL) but instead you assert we are in breach of DTE rules, yet you do not reference which rules we are allegedly in breach of.

Your argument appears based on the principle that for something to be permissible in must be explicitly permitted in our rules.

Please reference any legal precedents to support this position.

Furthermore, our rules in regards to general meeting attendance and voting are as follows:

[cid:image004.jpg@01D6805E.D69BE370]

[cid:image005.jpg@01D6805E.D69BE370]

As you can see, DTE rules do not explicitly prohibit the use of web conferencing technology and in particular, rule 30 clause (1) does not discriminate between being physically present or virtually present using web conferencing technology.

Both our rules and the CNL are silent in regards to the use of web conferencing software for general meetings and the advice we have received from our solicitor and more recently the Business Council of Cooperatives and Mutuals<https://urldefense.proofpoint.com/v2/url?u=https-3A__bccm.coop_&d=DwMFAG&c=JnBkUqWXzx2bz-3a05d47Q&r=nw6gqf_I0wQJkHrut0HcNzat9mPskiyVMPiRw66Vo&s=i84wAIMaGql3Gy3uKgvQF5m7dGdqaac25wQ3boffmrc&e=> is that where a regulation is silent the courts are likely to take a permissive approach.

To quote recent correspondence received:

"I think the inspector has gone overboard in stating all the general meetings [held electronically] and [related] resolutions are invalid. These matters would need to be determined in a court. Legal action would need to be taken by a member to seek this determination. They would look at whether there was substantial injustice in

how meetings were held etc.

Per the link<https://urldefense.proofpoint.com/v2/url?u=https-3A__bccm.coop_managing-2Dyour-2Dannual-2Dgeneral-2Dmeeting-2Dduring-2Dcovid-2D1kiyVMPIRw66Vo&s=59w0uoskZ4FnzJkC84hxUEHBcwNy0fCH-ZWynAM9iTI&e=>

I provided yesterday, our view is CNL 'does not dictate the manner in which a co-operative must hold its AGM'. The AGM procedures are determined in each co-op's rules."

Additional guidance received from BCCM from its COVID-19 pandemic response<https://urldefense.proofpoint.com/v2/url?u=https-3A__bccm.coop_managing-2Dyour-2Dannual-2Dgeneral-2Dmeeting-2Dduring-2Dcovid-2D1kiyVMPIRw66Vo&s=59w0uoskZ4FnzJkC84hxUEHBcwNy0fCH-ZWynAM9iTI&e=>

include:

"Registrars cannot take action against a co-operative for a breach of its rules, they can only take action for a breach of the law. If a co-operative breaches its rules, then the members may take action against the co-operative."

"Member meetings are important for the ongoing operation of a co-operative. If you are considering using online technology to conduct an AGM either because your co-operative's rule permit online meetings, or because it is practical to do so in the circumstances then you must:

- * Ensure that your meeting notice contains clear instructions for joining the online meeting
- * Use technology that enables each member to ask questions, make comments and record their vote
- * Where decisions need to be made at the meeting, consider using a postal ballot process so that members who wish to join the meeting online will have adequate opportunity to cast their vote."

"Co-operatives with can make member decisions by circulating resolution (s246 CNL) or postal ballot (s247).

If your members need to make a particular decision in the short term then the CNL allows smaller co-operatives do this by circulating a proposal and asking for a vote if there are fewer than 50 members. All co-operatives, regardless of size can use a postal ballot process to make a decision. Using these processes is not a substitute for holding the AGM, but it may help if there is a need to make a decision urgently."

Following this best practice, the DTE Board of Directors recently decided that all resolutions to be decided by members will now be decided by postal ballot so that there is no 'Special Business' conducted at general meetings. General meeting are now limited to 'Ordinary Business' defined by DTE rules as the confirmation of previous general meeting minutes and presentation of reports.

Furthermore, it is typical within our organisation that no vote is required for the accepting of minutes and reports which are passed without objection.

Finally, for internal clarity, let me state that I am engaging in this conversation with you in response to your correspondence as an ordinary member of the cooperative, not in my capacity of Secretary or Director and that any views I have expressed, here and in my previous email to you, are my own.

Kind Regards,

Troy Reid

Director & Secretary - Down To Earth (Victoria) Co-operative Society Limited
Mb +61400124242

From: Fred T Green (DJCS)

<Fred.Green@justice.vic.gov.au<<mailto:Fred.Green@justice.vic.gov.au>>>

Sent: Monday, 31 August 2020 12:24 PM
To: Troy Reid <troy@dte.coop<mailto:troy@dte.coop>>
Subject: RE: members meetings

All I am saying Troy is that you can hold your members meetings remotely if your rules provide for this and DTE's rules do not
Regards
Fred

From: Troy Reid <troy@dte.coop<mailto:troy@dte.coop>>
Sent: Thursday, 27 August 2020 11:09 AM
To: Fred T Green (DJCS)
<Fred.Green@justice.vic.gov.au<mailto:Fred.Green@justice.vic.gov.au>>
Cc: DJCS-CAV-Registration (DJCS)
<cav.registration@justice.vic.gov.au<mailto:cav.registration@justice.vic.gov.au>>;
Anita J Richards (DJCS)
<Anita.Richards@justice.vic.gov.au<mailto:Anita.Richards@justice.vic.gov.au>>
Subject: RE: members meetings
Importance: High

Hi Fred

Thank you for your email below.

I think there may be some misunderstanding here and further clarification required from you.

The following is in respect to your phrase "holding of special general meetings electronically" which is vague and could have many different interpretations.

Currently, our cooperative conducts General Meetings and allows active members across Australia and overseas to participate in meetings using web conferencing technology called Zoom. Is this what you are referring to? If so, can you please refer to specific CNL sections that prohibits this?

In 2015 our cooperative received legal advice from its solicitor (Dr Mark Williams<https://urldefense.proofpoint.com/v2/url?u=http-3A__williamssolicitors.com_&d=DwMFAG&c=JnBkUqWXzx2bz-3a05d47Q&r=nw6gqf_I0wQJkHrut0HCzDW_k&s=0sburIvnlj0MANPJDCmpEcKnfjKbpyp1S_ivDbORgE&e=>) who confirmed for the Board of Directors back then that there was nothing in either our rules nor the CNL explicitly prohibiting the use of web conferencing technology to enable active members to participate (in discussions or casting their vote in a poll) in meetings remotely, that is, not being physically in the venue designated within the Notice of General Meeting.

Are you asserting this legal advice is wrong?

Also, our cooperative conducts director elections and postal ballots using software called ElectionBuddy<https://urldefense.proofpoint.com/v2/url?u=https-3A__electionbuddy.com_&d=DwMFAG&c=JnBkUqWXzx2bz-3a05d47Q&r=nw6gqf_I0wQJkHrut0HCzDW_k&s=3YJGAfE46lsA1CUaraRxz7Ff0X76Wgzqht-Fm2EpbCE&e=>>. Is this what you are referring to? If so, can you please refer to specific CNL section that prohibits the use of voting software for these purposes?

Or are you referring to something else altogether?

As we have a General Meeting scheduled for 17-Sep-2020 and a meeting notice deadline of 2-Sep-2020, I would appreciate your prompt reply on these matters.

Kind Regards,

Troy Reid
Director & Secretary - Down To Earth (Victoria) Co-operative Society Limited
Mb +61400124242

From: Fred T Green (DJCS)
<Fred.Green@justice.vic.gov.au<mailto:Fred.Green@justice.vic.gov.au>>
Sent: Thursday, 27 August 2020 10:07 AM
To: Troy Reid <troy@dte.coop<mailto:troy@dte.coop>>
Subject: members meetings

Mr Reid

My name is Fred Green, I am an Inspector pursuant to the Co-operatives National Law 2013 (CNL). I have received several complaints regarding the conduct of the affairs of DTE. Two of the complaints relate to the holding of special general meetings electronically. Your current registered rules with Consumer Affairs Victoria do not provide for SGM's to be held electronically neither does the CNL. As a result all of those meetings are invalid as are all the resolutions passed at those meetings.

Fred Green

Inspector

Co-operatives National Law 2013

Consumer Affairs Victoria

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30. Quorum at General Meetings

- (1) An item of business must not be transacted at a meeting of a Co-operative unless a quorum of Active Members entitled to vote is present during the transaction of that item.

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34. Attendance and voting at General Meetings

- (1) The right to vote attaches to active membership and not shareholding.
- (2) A member of the Co-operative is not entitled to vote at a meeting of the Co-operative unless that person is an active member of the Co-operative.
- (3) Subject to the Act and this rule, every active member of the Co-operative has only one vote for each motion, question or amendment at a meeting of the Co-operative.
- (4) A member of the Co-operative who is under 18 years of age is not entitled to vote.
- (5) Subject to the Act and these rules, a question for decision at a general meeting, other than a special resolution, must be determined by consensus, and if consensus is not achieved after further discussion then by a 60% majority of members present at the meeting and voting.
- (6) In accordance with section 208(2) of the Act, unless a poll is demanded by at least 5 members, a question for decision at a general meeting must be determined by a show of hands.