

CO-OPERATIVES ACT 1992 NO. 18

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Objects of this Act
4. Division of functions under this Act
5. Definitions
6. Co-operative principles
7. Subsidiaries

PART 2—FORMATION OF CO-OPERATIVES

Division 1—Incorporation of co-operatives

8. Requirements before application for registration can be made
9. Approval of disclosure statements
10. Making of application
11. Offence —allotment of shares before registration
12. Registration
13. Registered co-operative is incorporated
14. Stamp duty exemption for certain co-operatives

Division 2—Associations of co-operatives and federations of associations

15. Associations of co-operatives
16. Admission to membership of other bodies
17. Federations of associations
18. Meeting for proposed registration of association or federation
19. Application for registration
20. Registration and incorporation

Co-operatives Act 1992 No. 18

Division 3—Foreign co-operatives

- 21. Recognition of co-operatives from other jurisdictions
- 22. Registration of foreign co-operatives
- 23. Conditions of registration—compliance with Act etc.
- 24. Contravention of conditions
- 25. References to “co-operative” include foreign co-operative

Division 4—Company becoming co-operative

- 26. Application for registration as co-operative
- 27. Preconditions to registration
- 28. Registration procedure

PART 3—LEGAL CAPACITY, POWERS ETC.

Division 1—General powers

- 29. General powers etc. as a body corporate
- 30. Power to form companies, enter into joint ventures etc.

Division 2—Doctrine of ultra vires abolished

- 31. Interpretation
- 32. Objects of this Division
- 33. Legal capacity
- 34. Restrictions on co-operatives in rules
- 35. Results of contravention of restriction in rules

Division 3—Persons having dealings with co-operatives

- 36. Assumptions entitled to be made by person having dealings with co-operative
- 37. Assumptions entitled to be made by person having dealings in respect of property of co-operative
- 38. Assumptions authorised to be made
- 39. Effect of actual or constructive knowledge that assumption is not correct
- 40. Lodgment of documents etc. not to constitute constructive notice
- 41. Effect of fraud

Division 4—Special powers of co-operatives

- 42. Power to carry on business as pharmacist in open shop
- 43. Co-operatives may engage in exclusive dealing

Division 5—Restrictions on powers

- 44. Application of Corporations Law

Division 6—Authentication and execution of documents and confirmation of contracts

- 45. Contractual formalities
- 46. Execution under common seal
- 47. Authentication need not be under common seal
- 48. Co-operative may authorise person to execute deeds
- 49. Official seal
- 50. Other requirements as to consent or sanction not affected
- 51. Transitional

Co-operatives Act 1992 No. 18

Division 7—Ratification of contracts made before formation of co-operative

52. Interpretation
53. Ratification of pre-incorporation contracts within a reasonable time
54. Failure to ratify—rights of other parties
55. Proceedings for damages
56. Promoter's liability where contract ratified
57. Other parties to contract may release person responsible from liability
58. Contracts in substitution for pre-incorporation contracts
59. Effect of rights and liabilities under this Division
60. Trustee's right of indemnity
61. Manner of ratification

PART 4—MEMBERSHIP

Division 1—General

62. Becoming a member
63. Membership may be joint
64. Qualification for membership—likelihood of being active member
65. Members under 18
66. Member under 18 not under disability of infancy
67. Members of associations and federations
68. Representative of body corporate member of co-operative
69. Representative of member of association or federation
70. Circumstances in which membership ceases—all co-operatives
71. Additional circumstances in which membership ceases—co-operatives with share capital
72. Circumstances in which membership of association or federation ceases
73. Carrying on business with too few members

Division 2—Rights and liabilities of members

74. Rights of membership not exercisable until registered etc.
75. Liability of members to creditors
76. Liability of members to co-operative
77. Entry and periodic fees
78. Members etc. may be required to deal with co-operative
79. Fines payable by members
80. Charge and set-off of co-operative
81. Repayment of shares on expulsion

Division 3—Death of member

82. Transfer of share or interest on death of member
83. Transfer of small shareholdings and interests on death
84. qualification for membership not to apply to transfer of deceased member's share or interest
85. Meaning of "interest"
86. Value of shares and interests
87. Stamp Duties Act 1920
88. Co-operative protected

Co-operatives Act 1992 No. 18

Division 4—Disputes involving members

- 89. Definitions
- 90. Disputes to be determined in accordance with rules
- 91. Dispute may be referred to Registrar
- 92. Hearing of disputes by Registrar
- 93. Procedure when Registrar decides not to hear dispute
- 94. Effect and enforcement of determinations and orders
- 95. Disputes to which Part does not apply

Division 5—Oppressive conduct of affairs

- 96. Who may apply for court order
- 97. Active membership requirements not oppressive conduct
- 98. Orders that the Court may make
- 99. Basis on which Court makes orders
- 100. Winding up not to be ordered if oppressed members prejudiced
- 101. Application of winding up provisions
- 102. Changes to rules
- 103. Copy of order to be lodged with Registrar
- 104. Compliance with orders
- 105. Extended meaning of “member”

PART 5—RULES

- 106. Effect of rules
- 107. Content of rules
- 108. Purchase and inspection of copy of rules
- 109. Model rules
- 110. Rules can only be altered in accordance with this Part
- 111. Alteration by special resolution
- 112. Alteration by resolution of the board
- 113. Alteration does not take effect until registered
- 114. False copies of rules

PART 6—ACTIVE MEMBERSHIP REQUIREMENTS

Division 1—Definitions etc.

- 115. Primary activity—meaning
- 116. Active membership—explanation
- 117. Active membership provisions and resolutions—explanation

Division 2—Rules to contain active membership provisions

- 118. Number of primary activities required
- 119. Rules to contain active membership provisions
- 120. Failure to have active membership provisions
- 121. Factors and considerations for determining primary activities etc.
- 122. Regular subscription—active membership
- 123. Active membership provisions—supply or purchase of goods or produce

Division 3—Active membership resolutions

- 124. Prior approval of active membership resolutions
- 125. Appeal against refusal of approval
- 126. Notice of meeting

Co-operatives Act 1992 No. 18

Division 4—Cancellation of membership etc. of inactive members

- 127. Cancellation of membership of inactive member
- 128. Share to be forfeited if membership cancelled
- 129. Order of Council against cancellation
- 130. Deferral of forfeiture by board
- 131. Cancellation of membership prohibited in certain circumstances
- 132. Notice of intention to cancel membership
- 133. Failure to cancel membership—offence by director
- 134. Repayment of amounts due in respect of cancelled membership
- 135. Interest on deposits, debentures and CCU's
- 136. Repayment of deposits, debentures and CCU's
- 137. Register of cancelled memberships
- 138. Unclaimed Money Act 1982 not to apply

Division 5—Entitlements of former members

- 139. Former shareholders to be regarded as shareholders for certain purposes
- 140. Entitlements of former shareholders on mergers etc.
- 141. Set-off of amounts repaid etc. on forfeited shares
- 142. Entitlement to distribution from reserves
- 143. Minister may exempt co-operatives from provisions

PART 7—SHARES

Division 1—Preliminary

- 144. Share capital required except for non-profit co-operatives
- 145. Restrictions on conversion to co-operative without share capital
- 146. Nature of share in co-operative

Division 2—Issue of shares

- 147. Shares—general
- 148. Minimum number of shares to be subscribed for
- 149. Minimum paid up amount
- 150. Shares not to be issued at a discount
- 151. Issue of shares at a premium
- 152. Joint ownership of shares
- 153. Dividends etc.
- 154. Issue of shares to active members in exchange for property
- 155. Members may be required to take up additional shares
- 156. Bonus share issues

Division 3—Beneficial and non-beneficial interests in shares

- 157. Notice of non-beneficial ownership at time of transfer
- 158. Notice of non-beneficial ownership not notified at time of transfer
- 159. Registration as beneficial owner of shares notified as non-beneficially transferred
- 160. Notification of change in nature of shareholding
- 161. Presumption of awareness
- 162. Presumption that shares held non-beneficially
- 163. Noting of beneficial and non-beneficial interests in register of members
- 164. Registration as trustee etc. on death of owner of shares
- 165. Registration as administrator of estate on incapacity of shareholder
- 166. Registration as Official Trustee in Bankruptcy

Co-operatives Act 1992 No. 18

- 167. Liabilities of person registered as trustee or administrator
- 168. Notification of trusts in register of members
- 169. No notice of trust except as provided by this Division
 - Division 4—Sale etc. of shares
- 170. Sale or transfer of shares
- 171. Transfer not effective until registered
 - Division 5—Repurchase etc. of shares
- 172. Purchase and repayment of shares
- 173. Deposit, debentures or CCU's in lieu of payment when share repurchased
- 174. Cancellation of shares

PART 8—VOTING

Division 1—Voting entitlements

- 175. Voting to which this Part applies
- 176. One member one vote
- 177. Rules of co-operative formed to carry on club may restrict voting rights
- 178. Effect of relevant share and voting interests on voting rights
- 179. Restrictions on proxy voting
- 180. Effect of unpaid borrowings
- 181. Inactive members not entitled to vote
- 182. Effect of sale etc. of shares
- 183. Restriction on voting entitlement under power of attorney
- 184. Rights of representatives to vote etc.
- 185. Other entitlements etc. of members unaffected by ineligibility to vote
- 186. Vote of disentitled member to be disregarded

Division 2—Resolutions

- 187. Decisions of co-operative usually to be by ordinary resolution
- 188. ordinary resolutions
- 189. Special resolutions
- 190. How majority obtained is ascertained
- 191. Declaration of passing of special resolution
- 192. Registration of special resolution
- 193. Postal ballots
- 194. Special postal ballots
- 195. Holding of postal ballot on requisition
- 196. Resolution by circulation of document—fewer than 50 members
- 197. Circulation of members resolutions etc.

Division 3—Meetings

- 198. Holding of meetings
- 199. Quorum must be present
- 200. No entitlement to be present at meetings where membership required to be cancelled
- 201. Decision at meetings
- 202. Convening of general meeting on requisition
- 203. Minutes

Co-operatives Act 1992 No. 18

PART 9—MANAGEMENT AND ADMINISTRATION OF CO-OPERATIVES

Division 1—The Board

- 204. Board of directors
- 205. Directors to be elected
- 206. Qualification for directors (other than associations and federations)
- 207. Qualifications for directors of associations and federations
- 208. Disqualification from being a director
- 209. Meetings of the board
- 210. Transaction of business outside meetings
- 211. Deputy directors
- 212. Filling of vacancies on board
- 213. Delegation by board
- 214. Exercise of functions on behalf of board
- 215. Minister may appoint director
- 216. Election of employees as directors
- 217. Revocation of approval etc.
- 218. Removal from and vacation of office
- 219. Minutes

Division 2—Duties and liabilities of directors, officers and employees

- 220. Meaning of “officer”
- 221. Officers must act honestly
- 222. Reasonable degree of care and diligence required
- 223. Improper use of information or position
- 224. Court may order payment of compensation
- 225. Recovery of damages by co-operative
- 226. Other duties and liabilities not affected
- 227. Insurance against default by officers and employees
- 228. Indemnification of officers and auditors
- 229. Adoption of Corporations Law provisions concerning officers of co-operatives

Division 3—Restrictions on directors and officers

- 230. Directors’ remuneration
- 231. Certain persons not to manage co-operatives
- 232. Restrictions on loans to directors
- 233. Restriction on directors of certain co-operatives selling land to co-operative

Division 4—Directors’ interests in contracts etc.

- 234. Disclosure of interests in contracts, property, offices etc.
- 235. Certain interests to be disregarded
- 236. Requirements for notice
- 237. Declaration of conflict of interests
- 238. Declarations to be recorded in minutes
- 239. Division does not affect other laws or rules
- 240. Penalty
- 241. Certain interests need not be declared
- 242. Pecuniary interest disentitles director from voting

Division 5—Accounts and audit

- 243. Requirements for accounts and accounting records
- 244. Power of Registrar to grant exemptions

Co-operatives Act 1992 No. 18

- 245. Meaning of “entity” and “control”
- 246. Disclosure by directors
- 247. Protection of auditors etc.
- 248. Financial year
- Division 6—Registers, records and returns
- 249. Registers to be kept by co-operatives
- 250. Inspection of registers etc.
- 251. Notice of appointment etc. of directors and officers
- 252. Returns
- 253. List of members to be furnished at request of Registrar
- 254. Special return to be furnished at request of Registrar

- Division 7—Name and registered office

- 255. Name to include certain matter
- 256. Approval for omission of “Limited”
- 257. Use of abbreviations
- 258. Name to appear on business documents etc.
- 259. Change of name of co-operative
- 260. Restrictions on use of “co-operative” by other bodies
- 261. Registered office of co-operative

PART 10—FUNDS, PROPERTY ETC.

- Division 1—Power to raise money etc.

- 262. Meaning of obtaining financial accommodation
- 263. Fund raising to be in accordance with rules, this Act and regulations
- 264. Registrar’s directions concerning fund raising
- 265. Subordinated debt
- 266. Application of Corporations Law to issues of securities and prescribed interests
- 267. Application of Corporations Law — re-issue of redeemed debentures
- 268. Compulsory loan by member to co-operative

- Division 2—Co-operative Capital Units (CCU’s)

- 269. General nature of CCU
- 270. Division 1 applies to issue of CCU’s
- 271. CCU’s can be issued to non-members
- 272. Minimum requirements for rules concerning CCU’s
- 273. CCU’s not to be issued unless terms of issue etc. approved by Registrar
- 274. Directors’ duties concerning CCU’s
- 275. Redemption of CCU’s
- 276. Capital redemption reserve
- 277. Issue of shares in substitution for redemption

- Division 3—Charges

- 278. Registration of charges
- 279. Receivers and managers

- Division 4—Disposal of surplus from activities

- 280. Definition of “surplus”
- 281. Application of part of surplus for charitable purposes etc.
- 282. Dividends, bonuses and rebates CCU’s surplus

Co-operatives Act 1992 No. 18

- 283. Bonus or rebate can be applied as loan to co-operative or to pay for shares
 Division 5—Prudential standards etc.
- 284. Prudential standards may be prescribed
- 285. Acquisition and disposal of assets

PART 11—RESTRICTIONS ON THE ACQUISITION OF INTERESTS IN
CO-OPERATIVES

Division 1—Restrictions on share and voting interests

- 286. Notice required to be given of voting interest
- 287. Notice required to be given of substantial share interest
- 288. Requirements for notices
- 289. Maximum permissible level of share interest
- 290. Shares to be forfeited to remedy contravention
- 291. Powers of board in response to suspected contravention
- 292. Powers of Court with respect to contraventions
- 293. Co-operative to inform Registrar of interest over 20%
- 294. Co-operative to keep register
- 295. Unlisted companies to provide list of shareholders etc.
- 296. Excess share interest not to affect loan liability
- 297. Extent of operation of Division
- 298. Registrar may grant exemption from Division

Division 2—Restrictions on certain share offers

- 299. Share offers to which Division applies
- 300. Requirements to be satisfied before offer can be made
- 301. Some offers totally prohibited if they discriminate
- 302. Offers to be submitted to board first
- 303. Requisitioning of special postal ballot
- 304. Expenses involved in special postal ballots
- 305. Announcements of proposed takeovers concerning proposed company
- 306. Additional disclosure requirements for offers involving conversion to company
- 307. Consequences of prohibited offer
- 308. Council may grant exemptions

PART 12—AMALGAMATION, TRANSFER OF ENGAGEMENTS,
WINDING UP ETC.

Division 1—Amalgamation

- 309. Amalgamation of local co-operatives
- 310. Amalgamation of local and foreign co-operatives
- 311. Procedure on grant of application
- 312. Exemptions

Division 2—Transfer of engagements

- 313. Transfer of engagements
- 314. Transfer of engagements by direction of Registrar
- 315. Representations to Council on direction to transfer engagements

Co-operatives Act 1992 No. 18

Division 3—Transfer of incorporation

- 316. Application for transfer
- 317. Meaning of “new body” and “transfer”
- 318. New body ceases to be registered as co-operative
- 319. Transfer not to impose greater liability etc.
- 320. Effect of new certificate of incorporation
- 321. New body is a continuation of the co-operative
- 322. Stamp duty

Division 4—Winding up

- 323. Methods of winding up
- 324. Winding up on Registrar’s certificate
- 325. Application of Corporations Law
- 326. Restrictions on voluntary winding up
- 327. Commencement of members’ voluntary winding up
- 328. Distribution of surplus where no share capital
- 329. Liquidator—vacancymay be filled by Registrar
- 330. Limit on remuneration of liquidator
- 331. Liability of member to contribute in a winding up where shares forfeited etc.

Division 5—Official management

- 332. Official management

Division 6—Appointment of administrator

- 333. Appointment of administrator of co-operative
- 334. Effect of appointment of administrator
- 335. Revocation of appointment
- 336. Expenses of administration
- 337. Liabilities arising from administration
- 338. Council may direct revocation of administrator’s appointment

Division 7—Effect of amalgamation etc. on property, liabilities etc.

- 339. How this Division applies to an amalgamation
- 340. How this Division applies to a transfer of engagements
- 341. How this Division applies to a transfer of incorporation
- 342. Effect of amalgamation on property, liabilities etc.

Division 8—Miscellaneous

- 343. Grounds for winding up, transfer of engagements, appointment of administrator

PART 13—ARRANGEMENTS AND RECONSTRUCTIONS

Division 1—General requirements

- 344. Requirements for binding compromise or arrangement
- 345. Court ordered meeting of creditors
- 346. Registrar to be given notice and opportunity to make submissions
- 347. Results of 2 or more meetings
- 348. Persons disqualified from administering compromise etc.
- 349. Application of provisions of Corporations Law to person appointed
- 350. Copy of order to be attached to rules
- 351. Directors to arrange for reports
- 352. Power of Court to restrain further proceedings

Co-operatives Act 1992 No. 18

- 353. Restrictions on Court's power to approve compromise or arrangement—takeovers
 - Division 2—Explanatory statements
- 354. Explanatory statement required to accompany notice of meeting etc.
- 355. Requirements for explanatory statement
- 356. Contravention of Division—offence by co-operative
- 357. Provisions for facilitating reconstructions and amalgamations
 - Division 3—Acquisition of shares of dissenting shareholders
- 358. Definitions
- 359. Schemes and contracts to which Division applies
- 360. Acquisition of shares pursuant to notice to dissenting shareholder
- 361. Restrictions when excluded shares exceed 10%
- 362. Remaining shareholders may require acquisition
- 363. Transfer of shares pursuant to compulsory acquisition
- 364. Disposal of consideration for shares compulsorily acquired
 - Division 4—Miscellaneous
- 365. Notification of appointment of scheme manager
- 366. Power of Court to require reports
- 367. Effect of out-of-jurisdiction compromise or arrangement
- 368. Jurisdiction to be exercised in harmony with Corporations Law jurisdiction
- 369. Registrar may appear etc.

PART 14—SUPERVISION AND PROTECTION OF CO-OPERATIVES

Division 1—Supervision and inspection

- 370. Definitions
- 371. "Co-operative" includes subsidiaries, foreign co-operatives and co-operative ventures
- 372. Appointment of inspectors
- 373. Registrar and investigators have functions of inspectors
- 374. Inspector's certificate of authority
- 375. Inspectors may require certain persons to appear, answer questions and produce documents
- 376. Inspectors' powers of entry
- 377. Powers of inspectors on premises entered
- 378. Functions of inspectors in relation to relevant documents
- 379. Offence—failing to comply with requirements of inspector
- 380. Protection from incrimination
- 381. Search warrants
- 382. Copies or extracts of records to be admitted in evidence
- 383. Privilege
- 384. Police aid for inspectors

Division 2—Inquiries

- 385. Definitions
- 386. Appointment of investigators
- 387. Powers of investigators
- 388. Examination of involved person
- 389. Privilege

Co-operatives Act 1992 No. 18

- 390. Offences by involved person
- 391. Offences relating to documents
- 392. Record of examination
- 393. Report of investigator
- 394. proceedings following inquiry
- 395. Admission of investigator's report & evidence
- 396. Costs of inquiry

Division 3—Prevention of fraud etc.

- 397. Falsification of records
- 398. Fraud or misappropriation
- 399. Offering or paying commission
- 400. Accepting commission
- 401. False statements in loan application etc.

Division 4—Miscellaneous powers of the Registrar

- 402. Application for special meeting or inquiry
- 403. Holding of special meeting
- 404. Expenses of special meeting or inquiry
- 405. Power to hold special inquiry into co-operative
- 406. Special meeting following inquiry
- 407. Information and evidence
- 408. Enlargement or abridgment of time

PART 15—ADMINISTRATION OF THIS ACT

Division 1—The Registrar

- 409. Registrar's functions
- 410. Keeping of registers etc.
- 411. Delegation by Registrar
- 412. Approvals by Registrar
- 413. Disposal of records by Registrar

Division 2—The Council

- 414. Constitution of Council
- 415. Nominations
- 416. Minister and Registrar may attend meetings
- 417. Functions of the Council
- 418. Delegation by Council to Registrar
- 419. Appeal to Court from decision of Council

Division 3—Evidence

- 420. Certificate of incorporation
- 421. Certificate of Registrar & to when something done
- 422. Orders etc. published in the Gazette
- 423. Records kept by co-operatives
- 424. Minutes
- 425. Official certificates etc.
- 426. The Registrar
- 427. Rules
- 428. Registers

Co-operatives Act 1992 No. 18

PART 16—OFFENCES AND PROCEEDINGS

- 429. Offences by officers of co-operatives
- 430. Notice to be given of conviction for offence
- 431. Secrecy
- 432. False or misleading statements
- 433. Further offence for continuing failure to do required act
- 434. Civil remedies
- 435. Proceedings for offences etc.

PART 17—GENERAL

- 436. Interpretation of applied provisions of Corporations Law
- 437. Exemption from stamp duty
- 438. Inspection of documents
- 439. Co-operative ceasing to exist
- 440. Service of documents
- 441. Reciprocal arrangements
- 442. Translations of documents
- 443. Injunctions
- 444. Savings and transitional provisions
- 445. Amendment of other Acts
- 446. Regulations

SCHEDULE 1—MATTERS FOR WHICH RULES MUST MAKE PROVISION

SCHEDULE 2—RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES

SCHEDULE 3—REGISTRATION ETC. OF CHARGES

SCHEDULE 4—RECEIVERS AND MANAGERS

SCHEDULE 5—MEMBERS AND PROCEDURE OF THE COUNCIL

SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS

SCHEDULE 7—AMENDMENT OF OTHER ACTS

CO-OPERATIVES ACT 1992 No. 18

NEW SOUTH WALES



Act No. 18, 1992

An Act to provide for the establishment of co-operatives and the regulation of their operations; and for related purposes. [Assented to 14 May 1992]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1 . This Act may be cited as the Co-operatives Act 1992.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects of this Act

3. The objects of this Act are as follows:

- (a) to enable the formation, registration and operations of co-operatives, associations of co-operatives and federations of co-operatives;
- (b) to promote co-operative philosophy, principles, practices and objectives;
- (c) to protect the interests of co-operatives, their members and the public, in the operations and activities of the co-operatives and the co-operative sector;
- (d) to encourage and facilitate self-management and self-regulation by co-operatives, at all levels;
- (e) to encourage the development and integration of the co-operative sector.

Division of functions under this Act

4 (1) The Minister has the function of determining policies for the administration of this Act.

(2) The Registrar is to exercise the functions of Registrar in accordance with the policies determined by the Minister for the administration of this Act.

(3) The Council is, in the exercise of its functions, to have regard to the policies determined by the Minister for the administration of this Act and is to exercise its functions in a manner that is consistent with those policies.

Definitions

5. (1) In this Act:

“**accounting records**” includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

“**accounts**” means profit and loss accounts and balance-sheets and includes statements, reports and notes, other than auditors’ reports and directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance-sheets;

“**agreement**” means an agreement, arrangement or understanding:

- (a) whether formal or informal or partly formal and partly informal;
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

“**associate**” has the meaning given by Schedule 2;

“**board**” means the board of directors of a co-operative and includes a committee of management of a co-operative;

“**business document**”, in relation to a co-operative, means a document that is issued, signed or endorsed by or on behalf of the co-operative and is:

- (a) a business letter, statement of account, invoice or order for goods or services; or
- (b) a bill of exchange, promissory note, cheque or other negotiable instrument; or
- (c) a receipt or letter of credit issued by the co-operative; or
- (d) a document of a class prescribed as a class of business documents;

“**CCU**” means a co-operative capital unit, as provided for by Division 2 of Part 10;

“**co-operative**” means a body registered under this Act as a co-operative and includes an association and a federation;

“**Council**” means the Co-operatives Council constituted under this Act;

“**Court**” means the Supreme Court;

“debenture” means a document issued by a co-operative that evidences or acknowledges indebtedness of the co-operative in respect of money that is or may be deposited with or lent to the co-operative, whether constituting a charge on property of the co-operative or not, other than:

- (a) a cheque, order for the payment of money or bill of exchange; or
- (b) a promissory note having a face value of not less than \$50,000; or
- (c) any other document of a class that is prescribed as exempt from this definition,

and includes a unit of a debenture;

“director”, in relation to a co-operative, includes:

- (a) a person who occupies or acts in the position of a director or member of the board of the co-operative, whether or not the person is called a director and whether or not the person is validly appointed or duly authorised to act in the position; and
- (b) a person in accordance with whose directions or instructions the directors or members of the board of the co-operative are accustomed to act;

“foreign co-operative” means:

- (a) an organisation that is registered, incorporated or formed under, or subject to, a law in force outside the State (including outside Australia), that regulates co-operatives or organisations having attributes the same as or similar to co-operatives; or
- (b) an organisation that is constituted in the State and, in the opinion of the Registrar, is controlled by, or is operating in conjunction with, an organisation referred to in paragraph (a);

“holding co-operative”, in relation to a subsidiary, means the co-operative of which the subsidiary is a subsidiary;

“inspector” means a person appointed as an inspector under section 372;

“mortgage” includes lien, charge or other security over property;

“officer”, in relation to a co-operative, means:

- (a) a director, secretary or employee of the co-operative; or
- (b) a person who is concerned, or takes part, in the management of the co-operative, whether or not as a director; or
- (c) a receiver, or a receiver and manager, of property of the co-operative; or

- (d) an official manager or a deputy official manager of the co-operative; or
- (e) a liquidator or provisional liquidator of the co-operative; or
- (f) an administrator of the co-operative appointed under Division 6 of Part 12; or
- (g) a trustee or other person administering a compromise or arrangement made between the co-operative and another person or other persons;

“primary activity” is defined by section 115;

“principal executive officer”, in relation to a co-operative or to a subsidiary of a co-operative, means the principal executive officer of the co-operative or subsidiary for the time being, by whatever name called, and whether or not that officer is a director or the secretary;

“records” includes books, accounts, accounting records, minutes, registers, deeds, writings, documents and other sources of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means;

“Registrar” means the person for the time being holding or acting in the office of head of the Department of Local Government and Co-operatives;

“related” (in the context of related bodies corporate) has the meaning given by Schedule 2

“relevant interest” has the meaning given by Schedule 2;

“rule” means registered rule of a co-operative for the time being in force;

“share” means share in the share capital of a co-operative;

“subsidiary” is defined by section 7.

(2) Words and expressions that have a defined meaning in the Corporations Law have, when used in this Act in relation to a body corporate that is not a co-operative, the same meaning as in the Corporations Law.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- a reference to the exercise of a function includes, in relation to a
- (b) duty, a reference to the performance of the duty.

Co-operative principles

6. (1) In this Act, a reference to co-operative principles is a reference to the principles adopted by the International Co-operative Alliance, being the following principles:

Voluntary association and open membership:

Membership of a co-operative society shall be voluntary and available without artificial restriction or any social, political, racial or religious discrimination to all persons who can make use of its services and are willing to accept the responsibilities of membership.

Democratic control:

Co-operative societies are democratic organisations. Their affairs shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. Members of primary societies should enjoy equal rights of voting (one member, one vote) and participation in decisions affecting their societies. In other than primary societies the administration should be conducted on a democratic basis in a suitable form.

Limited interest on capital:

Share capital shall only receive a strictly limited rate of interest, if any.

Equitable division of surplus:

The economic results arising out of the operations of the society belong to the members of that society and shall be distributed in such a manner as would avoid one member gaining at the expense of others.

This may be done by decision of the members as follows:

- (i) by provision for development of the business of the co-operative;
- (ii) by provision of common services; or
- (iii) by distribution among the members in proportion to their transactions with the society.

Co-operative education:

All co-operative societies shall make provision for the education of their members, officers, and employees and of the general public, in the principles and techniques of co-operation, both economic and democratic.

Co-operation among co-operatives:

All co-operative organisations, in order to best serve the interests of their members and communities shall actively co-operate in every practical way with other co-operatives at local, national and international levels.

(2) In the interpretation of a provision of this Act or the regulations, a construction that would promote co-operative principles is to be preferred to a construction that would not promote co-operative principles.

(3) Any requirement in this Act that a co-operative function in accordance with co-operative principles is not to be construed:

- (a) as requiring the co-operative to function in accordance with all of the principles set out in subsection (1); or
- (b) as authorising the co-operative to contravene any other provision of this Act or of its rules.

(4) The Governor may, by order published in the Gazette, amend the principles set out in subsection (1) so as to cause those principles to be the co-operative principles adopted from time to time by the International Co-operative Alliance.

Subsidiaries

7. (1) For the purposes of this Act, a body corporate is a subsidiary of a co-operative if the co-operative:

- (a) controls the composition of the board of directors of the body (whether or not by the operation of this section); or
- (b) is able to cast, or to control the casting of, a majority of the maximum number of votes that might be cast at a general meeting of the body; or
- (c) holds more than one-half of the issued share capital of the body (excluding any part from which has been excluded any right to participate beyond a specified amount in a distribution of either profits or capital).

(2) The composition of the board of directors of a body corporate is to be taken to be controlled by a co-operative if the co-operative is able, whether with or without the concurrence of some other person, to appoint or remove a majority of the directors.

(3) A co-operative is to be taken to be able to appoint a person as a director of a body corporate if:

- (a) only the co-operative can make the appointment; or
- (b) the appointment must be made because the person is a director or other officer of the co-operative.

(4) In determining whether a body corporate is a subsidiary of a co-operative:

- (a) the co-operative is to be treated as not holding any shares, and as not having any powers, that are exercisable by it in a fiduciary capacity; and
- (b) except in the case of shares or powers in relation to which the co-operative, or a subsidiary of the co-operative, is concerned only in a fiduciary capacity, shares held, and powers exercisable, by a nominee of the co-operative or subsidiary are to be treated as being held or exercisable by the co-operative; and
- (c) shares held, and powers exercisable, by any person because of provisions of debentures of the body, or of a trust deed relating to debentures of the body, are to be disregarded; and
- (d) shares held, and powers exercisable, by a co-operative or its nominee are to be disregarded if they are held to be exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money.

PART 2—FORMATION OF CO-OPERATIVES

Division 1—Incorporation of co-operatives

Requirements before application for registration can be made

8. (1) Before an application for registration of a co-operative is made, a meeting (“**the formation meeting**”) must be held and there must be presented to the meeting in writing:

- (a) the proposed rules of the co-operative (containing active membership provisions that have been approved in writing by the Registrar); and
- (b) a separate statement of the proposed primary activity or primary activities of the co-operative and of any proposed objects of the co-operative, as specified in the proposed rules; and
- (c) a disclosure statement approved under section 9, for the purpose of ensuring that prospective members are adequately informed of the nature and extent of a person’s financial involvement or liability as a member of the co-operative.

(2) Application for registration may not be made unless at the formation meeting (or at a subsequent or adjourned formation meeting) no fewer than the required minimum number of suitably qualified persons:

- (a) approve the proposed rules with or without amendment; and

- (b) complete applications for membership; and
- (c) elect the persons to be proposed as the first directors of the co-operative.

(3) The required minimum number of persons is 5 or such fewer number as the Registrar may approve in a particular case.

(4) A person is suitably qualified only if there are reasonable grounds for believing that the person will be an active member of the proposed co-operative and, in the case of a natural person, only if the person is at least 18 years of age.

(5) The Registrar may, in a particular case and either unconditionally or subject to conditions, dispense with the requirement that a disclosure statement be presented to the formation meeting.

Approval of disclosure statements

9. (1) A draft disclosure statement must be submitted to the Registrar at least 21 days (or such shorter period as the Registrar may allow in a particular case) before the formation meeting is due to be held.

(2) The Registrar may approve the draft statement as submitted or may approve a different statement to that submitted.

(3) The Registrar approves of a disclosure statement by giving notice in writing of the approved statement to the person who submitted the draft statement to the Registrar.

(4) The Registrar is to be considered to have approved the disclosure statement as submitted to the Registrar unless at least 5 days before the formation meeting is due to be held:

- (a) the Registrar gives notice of approval of a different disclosure statement; or
- (b) the Registrar gives notice to the person who submitted the draft statement that the Registrar is still considering the matter.

Making of application

10. (1) An application for registration of a co-operative must be made in the form approved by the Registrar.

(2) The application must be lodged with the Registrar within 2 months after closure of the formation meeting for the co-operative or within such extended period as the Registrar may allow.

(3) The application must be signed by the required minimum number of suitably qualified persons who attended the formation meeting and must be accompanied by:

- (a) 2 copies of the proposed rules signed and certified by those who acted as chairperson and secretary at the formation meeting; and
- (b) a copy of the disclosure statement presented to the formation meeting signed and certified by those who acted as chairperson and secretary at the formation meeting; and
- (c) any other prescribed particulars; and
- (d) the prescribed fee.

Offence—allotment of shares before registration

11. A person who takes any money before a co-operative is registered in consideration of the allotment of any share or interest in the co-operative is guilty of an offence.

Maximum penalty: 10 penalty units.

Registration

12. (1) The Registrar may, on application being made for registration of a co-operative:

- (a) register the co-operative; or
- (b) refer the application to the Council.

(2) If the application is not referred to the Council, the Registrar must register the co-operative if satisfied that:

- (a) the co-operative will operate in accordance with co-operative principles; and
- (b) the co-operative will operate on the basis of the equality of its members, self help and being for the purpose of promoting the socio-economic well being of its members in a democratic manner; and
- (c) the rules submitted are not inconsistent with this Act and may reasonably be approved; and
- (d) the requirements of this Act and the regulations have been complied with and compliance is likely to continue; and
- (e) there is no reasonable cause for refusing registration.

(3) If the application is referred to the Council, the Council must either recommend registration or recommend refusal of registration and the Registrar is to comply with its recommendation.

(4) The Council is not to recommend refusal of registration unless satisfied that the co-operative:

- (a) would not be a genuine co-operative; or

- (b) is not designed or intended to operate in accordance with co-operative principles; or
- (c) is not designed or intended to serve fairly the interests of its members and prospective members.

Registered co-operative is incorporated

13. (1) On registering a co-operative, the Registrar is to issue it with a certificate of incorporation.

(2) A registered co-operative is a body corporate with the corporate name approved by the Registrar, as specified in the certificate of incorporation issued by the Registrar. The Registrar may refuse to approve a name that the Registrar thinks is undesirable.

Stamp duty exemption for certain co-operatives

14. (1) This section applies to a co-operative that:

- (a) has as its primary activity the providing of any community service or benefit; and
- (b) was, before it was incorporated under this Act, an unincorporated club, association or body operating to provide sporting or recreational facilities for its members and not carried on for the pecuniary profit of its members.

(2) An instrument or document transferring to such a co-operative any property which was, immediately before the co-operative was so incorporated, held by or on behalf of the unincorporated club, association or body is not chargeable with stamp duty.

Division 2—Associations of co-operatives and federations of associations

Associations of co-operatives

15. (1) There may be registered under this Act an association of co-operatives having as its members 2 or more co-operatives.

(2) The members of an association are known as “component co-operatives”.

Admission to membership of other bodies

16. If the membership of an association comprises at least 50 component co-operatives, there can be admitted to membership of the association as a component co-operative of the association a body corporate or other body:

- (a) which is incorporated or registered under any other law, whether or not a law of the State; and
- (b) which in the opinion of the board of the association is designed and intended to function in accordance with co-operative principles.

Federations of associations

17. (1) There may be registered under this Act a federation of associations.

(2) If the Registrar certifies that there is no association to which a particular co-operative could conveniently or appropriately be admitted to membership of, the co-operative may be admitted to membership of a federation.

Meeting for proposed registration of association or federation

18. Before an application for registration of an association or federation can be made:

- (a) a meeting must be held at which each body proposing to form the association or federation is represented by at least 2 people; and
- (b) there must be presented to the meeting, in writing, the proposed rules of the association or federation;
- (c) at that meeting (or at a subsequent or adjourned meeting) the proposed rules are approved (with or without amendments), 2 representatives of each body complete an application for membership on behalf of the body they represent and the persons to be proposed as the first directors of the association or federation are elected.

Application for registration

19. (1) An application for registration as an association or federation must be made in a form approved by the Registrar.

(2) The application must be lodged with the Registrar within 2 months after closure of the formation meeting or within such extended period as the Registrar may allow.

(3) The application must be accompanied by:

- (a) a certificate signed by the persons who acted as chairperson and secretary at the meeting under section 18 to the effect that the requirements of that section in relation to the meeting were complied with; and

- (b) 2 copies of the proposed rules of the association or federation signed by at least 1 representative of each co-operative or association desiring membership; and
- (c) a list containing the full name, address and occupation of each person elected as a director of the association or federation and the name of the co-operative or association of which he or she is a representative; and
- (d) the prescribed fee.

Registration and incorporation

20. (1) The Registrar must, on application, register an association or federation if satisfied that:

- (a) the association or federation has been formed in accordance with this Act; and
- (b) the rules submitted are not inconsistent with this Act and may reasonably be approved; and
- (c) there is no reasonable cause for refusing registration.

(2) On registration, the Registrar is to issue the association or federation with a certificate of incorporation.

(3) A registered association or federation is a body corporate with the corporate name approved by the Registrar, as specified in the certificate of incorporation issued by the Registrar. The Registrar may refuse to approve a name that the Registrar thinks is undesirable.

Division 3—Foreign co-operatives**Recognition of co-operatives from other jurisdictions**

21. (1) A foreign co-operative has in this jurisdiction the same legal personality, capacity, powers and status as it would have if it were a co-operative.

(2) In particular, a foreign co-operative has power to hold land in this jurisdiction.

(3) A reference in this Act or the regulations to a co-operative is to be read as including a reference to a foreign co-operative.

(4) This section operates to confer powers and authorities on a foreign co-operative that it would not otherwise have. It does not operate to impose duties on a foreign co-operative that it would not otherwise have.

Registration of foreign co-operatives

22. (1) A foreign co-operative must not do any of the following things unless it is registered under this Division and complies with any conditions of that registration under this Division:

- (a) solicit within the State for members;
- (b) provide services (other than prescribed services) to a member resident in the State;
- (c) carry on business in the State.

Maximum penalty: 50 penalty units.

(2) An application for registration is to be made to the Registrar in a form approved by the Registrar and accompanied by the fee determined by the Registrar.

(3) The Registrar must grant an application for registration if satisfied that:

- (a) the foreign co-operative carries on business for the purpose of promoting the economic interests of its members in accordance with co-operative principles; and
- (b) there are reasonable grounds for believing that, if registration is granted, the foreign co-operative will comply with the condition imposed by section 23; and
- (c) there is no reasonable ground for refusing the application.

Conditions of registration—compliance with Act etc.

23. (1) It is a condition of registration under this Division that the foreign co-operative must comply with such of the provisions of an applicable law for the foreign co-operative as are applied, with such modifications as may be prescribed, to a foreign co-operative by a regulation made for the purposes of this Division.

(2) In this section:

“applicable law”, in relation to a foreign co-operative, means any of the following laws as in force for the time being:

- (a) this Act;
- (b) a regulation under this Act;
- (c) a law of a place outside the State (including outside Australia), under which the foreign co-operative is registered, incorporated or formed or to which it is subject or under which it operates as an organisation having the attributes of a co-operative.

Contravention of conditions

24. If a foreign co-operative contravenes a condition of registration under this Division (whether imposed by section 23 or under this section) the Registrar may:

- (a) impose a condition on registration that prohibits the foreign co-operative from engaging in specified conduct or a specified activity within the State or which restricts the manner in which the foreign co-operative may engage in any such conduct or activity; or
- (b) cancel the registration by notice published in the Gazette, but only after giving the foreign co-operative reasonable notice of cancellation so as to enable the foreign co-operative to wind up its activities in the State.

References to “co-operative” include foreign co-operative

25. A reference in this Act or the regulations to a co-operative includes a reference to a foreign co-operative for the purpose of the application of provisions to a foreign co-operative pursuant to this Division.

Division 4—Company becoming co-operative**Application for registration as co-operative**

26. (1) A company under the Corporations Law may apply to be registered as a co-operative if the company has passed a special resolution under that Law in favour of the application being made and specifying the proposed rules of the co-operative.

(2) The application must be in the form approved by the Registrar and be accompanied by:

- (a) a certificate of the incorporation of the company;
- (b) 2 copies of the memorandum and articles of association of the company in force at the date of the application;
- (c) a copy of the proposed rules of the co-operative, as provided for by the special resolution;
- (d) a list containing the name, address and occupation of each director,
- (e) a list containing the name, address and occupation of each shareholder, and the number and class, if more than one class has been issued, of shares held by him or her, and
- (f) such other particulars as the Registrar may require in a particular case.

Preconditions to registration

27. A company that applies for registration as a co-operative is entitled to be registered if the Registrar is satisfied that:

- (a) the company has complied with the provisions of this Act and the regulations; and
- (b) the co-operative that will result is designed and intended to function in accordance with co-operative principles; and
- (c) the proposed rules of the co-operative comply with the requirements of this Act and are otherwise satisfactory; and
- (d) there is no reasonable cause why the company should not be registered as a co-operative under this Act.

Registration procedure

28. (1) If a company is entitled to be registered, the Registrar is to:

- (a) register the company as a co-operative; and
- (b) register the proposed rules approved by special resolution of the company as the rules of the co-operative; and
- (c) issue a certificate that the company is incorporated under this Act; and
- (d) give notice of the issue of the certificate to the Australian Securities Commission; and
- (e) publish notice of the issue of the certificate in the Gazette.

(2) As soon as notice of the issue of the certificate is given in the Gazette, the company is to be considered to be incorporated under this Act instead of under the Corporations Law and the registration of the company under that Law is to be cancelled.

(3) Incorporation under this Act does not affect the identity of the company. In particular, any right or claim for the time being subsisting against the company and any penalty for the time being incurred by the company may be enforced against it either under its former name or under its name as a co-operative as if it had not been incorporated under this Act.

(4) The corporate name of a company registered as a co-operative is the name approved by the Registrar, as specified in the certificate of incorporation issued by the Registrar.

PART 3—LEGAL CAPACITY, POWERS ETC.**Division 1—General powers****General powers etc. as a body corporate**

29. As a body corporate, a co-operative:

- (a) has perpetual succession; and
- (b) is to have a seal; and
- (c) may take proceedings and be proceeded against in its corporate name; and
- (d) may acquire by lease, purchase, exchange, donation, devise, bequest or otherwise any real or personal property and hold, dispose of and otherwise deal with any real or personal property; and
- (e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the carrying on of its activities.

Power to form companies, enter into joint ventures etc.

30. Without limiting any other provision of this Part, a co-operative has power:

- (a) to form or participate in the formation of a body corporate or unit trust;
- (b) to acquire interests in and sell or otherwise dispose of interests in bodies corporate, unit trusts and joint ventures;
- (c) to form or enter into a partnership, joint venture or other association with other persons or bodies.

Division 2—Doctrine of ultra vires abolished**Interpretation**

31. In this Division:

- (a) a reference to the doing of an act by a co-operative includes a reference to the making of an agreement by the co-operative and a reference to a transfer of property to or by the co-operative; and
- (b) a reference to legal capacity includes a reference to powers.

Objects of this Division

32. (1) The objects of this Division are:

- (a) to provide that the doctrine of ultra vires does not apply to co-operatives; and

- (b) without affecting the validity of a co-operative's dealings with outsiders, to ensure that the co-operative's officers and members give effect to provisions of the co-operative's rules relating to the primary activities or powers of the co-operative.
- (2) This Division is to be construed and have effect accordingly.

Legal capacity

33. (1) A co-operative has, both within and outside this jurisdiction, the legal capacity of a natural person and, without limiting the generality of the foregoing, has, both within and outside the State, power:

- (a) to issue and allot fully or partly paid shares in the co-operative; and
 - (b) to issue debentures of the co-operative; and
 - (c) to distribute any of the property of the co-operative among the members, in kind or otherwise; and
 - (d) to give security by charging uncalled capital; and
 - (e) to grant a floating charge on property of the co-operative; and
 - (f) to procure the co-operative to be registered or recognised as a body corporate in any place outside the State; and
 - (g) to do any other act that it is authorised to do by any other law (including a law of a place outside the State).
- (2) Subsection (1) has effect in relation to a co-operative:
- (a) subject to this Act but despite section 34 (2); and
 - (b) if the co-operative's rules contain an express or implied restriction on, or an express or implied prohibition of, the exercise by the co-operative of any of its powers—despite any such restriction or prohibition; and
 - (c) if the rules of the co-operative contain a provision stating the objects of the co-operative—despite that fact.
- (3) The fact that the doing of an act by a co-operative would not be, or is not, in its best interests does not affect its legal capacity to do the act.

Restrictions on co-operatives in rules

34. (1) A co-operative's rules may contain an express restriction on, or an express prohibition of, the exercise by the co-operative of a power of the co-operative.

- (2) A co-operative contravenes this section if:
- (a) it exercises a power contrary to an express restriction on, or an express prohibition of, the exercise of that power, being a restriction or prohibition contained in the co-operative's rules; or
 - (b) the rules of the co-operative contain a provision stating the objects of the co-operative and the co-operative does an act otherwise than in pursuance of those objects.
- (3) An officer of a co-operative who is involved in a contravention by the co-operative of this section also contravenes this section.
- (4) A person who contravenes this section is not guilty of an offence.

Results of contravention of restriction in rules

35. (1) The exercise of a power or the doing of an act in contravention of section 34 is not invalid merely because of the contravention.

(2) An act of an officer of a co-operative is not invalid merely because, by doing the act, the officer contravenes section 34.

(3) The fact that the exercise of a power or the doing of an act contravenes or would contravene section 34 may be asserted or relied on only in:

- (a) a prosecution of a person for an offence against this Act; or
- (b) an application for an order under Division 5 of Part 4 (Oppressive conduct of affairs); or
- (c) an application for an injunction under section 443 (Injunctions) to restrain the co-operative from entering into an agreement; or
- (d) proceedings (other than an application for an injunction) by the co-operative, or by a member of the co-operative, against the present or former officers of the co-operative; or
- (e) an application by the Registrar or by a member of the co-operative for the winding up of the co-operative.

(4) If (but for subsection (3)) the Court would have power under section 443 to grant, on the application of a person, an injunction restraining a co-operative, or an officer of a co-operative, from engaging in particular conduct constituting a contravention of section 34, the Court may, on the application of that person, order the co-operative or the officer to pay damages to that person or any other person.

Division 3—Persons having dealings with co-operatives**Assumptions entitled to be made by person having dealings with co-operative**

36. (1) A person having dealings with a co-operative is entitled to make (in relation to those dealings) the assumptions authorised to be made by section 38.

(2) In any proceedings in relation to those dealings, any assertion by the co-operative that the matters that the person is so entitled to assume were not correct is to be disregarded.

Assumptions entitled to be made by person having dealings in respect of property of co-operative

37. (1) A person having dealings with another person ("the apparent owner") who has acquired or purports to have acquired title to property from a co-operative (whether directly or indirectly) is entitled to make, in relation to the acquisition or purported acquisition of title from the co-operative, the assumptions authorised to be made by section 38.

(2) In any proceedings in relation to those dealings, any assertion by the co-operative or by the apparent owner that the matters that the person is so entitled to assume were not correct is to be disregarded.

Assumptions authorised to be made

38. The assumptions authorised by this section to be made are as follows:

- (a) that, at all relevant times, the co-operative's rules and the provisions of this Act have been complied with;
- (b) that a person who appears from returns lodged under this Act to be a director, the principal executive officer or a secretary of the co-operative has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, principal executive officer or secretary of a co-operative carrying on a business of the kind carried on by the co-operative;
- (c) that a person who is held out by the co-operative to be an officer or agent of the co-operative has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by an officer of the kind concerned;
- (d) that an officer or agent of the co-operative who has authority to issue a document on behalf of the co-operative has authority to warrant that the document is genuine and that an officer or agent of

the co-operative who has authority to issue a certified copy of a document on behalf of the co-operative has authority to warrant that the copy is a true copy;

- (e) that a document has been duly sealed by the co-operative if it bears what appears to be an impression of the seal of the co-operative and the sealing of the document appears to be attested by 2 persons, one of whom may (because of this section) be assumed to be a director of the co-operative and the other of whom may (because of this section) be assumed to be a director or secretary of the co-operative; and
- (f) that the directors, the principal executive officer, the secretaries, the employees and the agents of the co-operative properly perform their duties to the co-operative.

Effect of actual or constructive knowledge that assumption is not correct

39. This Division does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption, if:

- (a) the person has actual knowledge that the assumption is not correct; or
- (b) the person's connection or relationship with the co-operative is such that the person ought to know that the assumption is not correct.

Lodgment of documents etc. not to constitute constructive notice

40. (1) A person is not to be considered to have knowledge of a co-operative's rules, any of the contents of a co-operative's rules, a document, the contents of a document, or any particulars, merely because of either or both of the following:

- (a) the rules, the document or the particulars have been lodged with the Registrar;
- (b) the rules, the document or the particulars are referred to in any other document that has been lodged with the Registrar, or lodged with a person under a previous law corresponding to a provision of this Act.

(2) Subsection (1) does not apply in relation to a document, or in relation to the contents of a document, that has been lodged under Division 3 (Charges) of Part 10 to the extent that the document relates to a charge that is registrable under that Division or law.

(3) Despite subsection (1), a member of a co-operative is to be considered to have knowledge of the rules of the co-operative.

Effect of fraud

41. (1) A person's entitlement under this Division to make an assumption is not affected merely by the fact that any person:

- (a) has acted or is acting fraudulently in relation to the dealing or acquisition or purported acquisition of title to property to which the assumption relates; or
- (b) has forged a document that appears to have been sealed on behalf of a co-operative.

(2) However, the person is not entitled to make the assumption if the person has actual knowledge of that fraudulent action or forgery.

Division 4—Special powers of co-operatives

Power to carry on business as pharmacist in open shop

42. (1) A co-operative may, with the approval in writing of the Minister administering the Pharmacy Act 1964, carry on the business of a pharmacist in not more than one open shop.

(2) This section applies subject to section 27 (Pharmacist to be in charge of every pharmacy and dispensary) of that Act but applies despite any other provision of that Act.

Co-operatives may engage in exclusive dealing

43. (1) A co-operative is specifically authorised for the purposes of section 51 of the Trade Practices Act 1974 of the Commonwealth:

- (a) to do in relation to a member of the co-operative any act or thing referred to in section 47 (6) of that Act; and
- (b) to refuse to do in relation to a member of the co-operative any act or thing referred to in section 47 (7) of that Act.

(2) The rules of a co-operative may authorise the doing of, or refusal to do, by the co-operative in relation to its members any act or thing that it is authorised to do or refuse to do by this section even though, but for this section, the rules might be invalid as being in restraint of trade.

Division 5—Restrictions on powers

Application of Corporations Law

44. (1) Except as provided by this section: the Corporations Law does not apply to a co-operative.

(2) The only provisions of the Corporations Law that apply to a co-operative are provisions that:

- (a) are applied to a co-operative by this Act or by regulations made as permitted by this section; or
- (b) relate to the role of a co-operative in the formation of a company; or
- (c) relate to substantial shareholdings (by or involving a co-operative) in a company; or
- (d) confer or impose functions on a co-operative as a member, or former member, of a corporation; or
- (e) relate to dealings by a co-operative in securities of a body corporate (other than securities of the co-operative itself); or
- (f) confer or impose functions on a co-operative in its dealings with a corporation (not being dealings in securities of the co-operative).

(3) A regulation may apply to co-operatives, with or without modification, a provision of the Corporations Law, and a provision so applied has effect in accordance with the regulation.

(4) A regulation may not apply a provision, or a modified provision, of the Corporations Law if the result would be an inconsistency with the other provisions of this Act.

(5) A regulation made as permitted by this section may create an offence with a maximum penalty not exceeding the maximum penalty for the provision of the Corporations Law to which the regulation relates.

(6) This section operates in relation to an association and a federation of associations in the same way as it operates in relation to a co-operative.

Division 6—Authentication and execution of documents and confirmation of contracts

Contractual formalities

45. (1) So far as concerns the formalities of making, varying or discharging a contract, a person acting under the express or implied authority of a co-operative may make, vary or discharge a contract in the name of, or on behalf of, the co-operative as if that contract were made, varied or discharged by a natural person.

(2) The making, varying or discharging of a contract in accordance with subsection (1) is effectual in law and binds the co-operative and other parties to the contract.

(3) This section does not prevent a co-operative from making, varying or discharging a contract under its common seal.

Execution under common seal

46. A contract or other document executed, or purporting to have been executed, under the common seal of a co-operative is not invalid merely because a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in that contract or other document or in the matter to which that contract or other document relates.

Authentication need not be under common seal

47. A document or proceeding requiring authentication by a co-operative may be authenticated by the signature of an officer of the co-operative and need not be authenticated under the common seal of the co-operative.

Co-operative may authorise person to execute deeds

48. (1) A co-operative may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf.

(2) A deed signed by such an agent or attorney on behalf of the co-operative and under his, her or its seal, or under the appropriate official seal of the co-operative, binds the co-operative and has effect as if it were under the common seal of the co-operative.

(3) The authority of such an agent or attorney, as between the co-operative and a person dealing with him, her or it, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of his, her or its authority has been given to the person dealing with him, her or it.

Official seal

49. (1) A co-operative may, if authorised by its rules, have for use in place of its common seal outside the State where its common seal is kept one or more official seals, each of which must be a facsimile of the common seal of the co-operative with the addition on its face of the name of every place where it is to be used.

(2) The person affixing such an official seal must, in writing signed by the person, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

(3) A document sealed with such an official seal is to be considered to be sealed with the common seal of the co-operative.

Other requirements as to consent or sanction not affected

50. This Division does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, varying or discharging of a contract.

Transitional

51. This Division does not apply in relation to the making, varying or discharging of a contract before the commencement of this section, but applies otherwise in relation to a co-operative whether it gives its authority before, on or after that commencement.

Division 7—Ratification of contracts made before formation of co-operative

Interpretation

52. (1) A “pre-incorporation contract” is:

- (a) a contract executed by a person in the name of a co-operative that does not exist; or
- (b) a contract that a person purports to enter into as agent or trustee for a proposed co-operative.

(2) Such a person is to be considered to be “responsible” for the pre-incorporation contract,

(3) The “resulting co-operative” is a co-operative that, having regard to all the circumstances, is reasonably identifiable with the co-operative in the name of which the person executed the contract or that the person purported to enter into the contract as agent or trustee for.

Ratification of pre-incorporation contracts within a reasonable time

53. (1) The resulting co-operative may ratify a pre-incorporation contract, but only if:

- (a) the co-operative was formed within a reasonable time after the contract was entered into; and
- (b) the contract is ratified within a reasonable time after the co-operative is formed.

(2) If a pre-incorporation contract is ratified as provided by subsection (1), the co-operative is bound by and entitled to the benefit of the contract as if the co-operative had been formed before the contract was entered into and had been a party to the contract.

Failure to ratify—rights of other parties

54. (1) This section applies when a pre-incorporation contract is entered into and:

- (a) the resulting co-operative is not formed within a reasonable time after the contract is entered into; or
- (b) even though the resulting co-operative is formed within such a reasonable time, it does not ratify the contract within a reasonable time after the co-operative is formed.

(2) The other party or each of the other parties to the contract may recover damages from the person responsible, or any one or more of the persons responsible, for the pre-incorporation contract.

(3) The amount of the damages is the amount for which the party could have obtained a judgment against the co-operative if the contract could have and had been ratified in accordance with section 53 and had been discharged by a breach constituted by the refusal or failure of the co-operative to perform any obligations under the contract.

Proceedings for damages

55. (1) This section applies to proceedings brought to recover damages under section 54 in relation to a pre-incorporation contract.

(2) If the resulting co-operative has been formed, the court in which the proceedings are brought may, if it thinks it just and equitable to do so, make either or both of the following:

- (a) an order directing the co-operative to transfer or pay to a specified party to the contract specified property or a specified amount not exceeding the value of any benefit received by the co-operative as a result of the contract;
- (b) an order that the co-operative pay the whole or a specified portion of any damages that, in those proceedings, the defendant has been, or is, found liable to pay.

(3) If the court makes an order under subsection (2) (a), the court may refuse to award any damages in the proceedings or may award an amount of damages that is less than the amount that the court would have awarded if the order had not been made.

Promoter's liability where contract ratified

56. (1) This section applies when:

- (a) a co-operative ratifies a pre-incorporation contract in accordance with section 53; and
- (b) the contract is discharged by a breach of the contract constituted by a refusal or failure of the co-operative to perform all or any of its obligations under the contract; and
- (c) any one or more of the other parties to the contract brings proceedings against the co-operative for damages for breach of the contract.

(2) The court in which the proceedings are brought may, if it thinks it just and equitable to do so, order any one or more of the persons responsible for the pre-incorporation contract to pay to the person or persons by whom the proceedings are brought the whole or a specified portion of any damages that the co-operative has been, or is, found liable to pay to the person or persons by whom the proceedings are brought.

Other parties to contract may release person responsible from liability

57. (1) The other party to a pre-incorporation contract, or any of the other parties to the contract, may, by writing signed by that party, release the person responsible for the contract from any liability in relation to the contract.

(2) A party who releases the person responsible for a pre-incorporation from liability:

- (a) is not entitled to recover damages in relation to that contract from the person responsible; and
- (b) a court, in proceedings under section 55, is not to order the party responsible to pay to the party any damages, or any proportion of the damages, that the co-operative has been, or may be, found liable to pay to that party.

Contracts in substitution for pre-incorporation contracts

58. (1) This section applies when:

- (a) a pre-incorporation contract is entered into; and
- (b) the resulting co-operative is formed; and
- (c) the co-operative and the other party or other parties to the contract enter into a contract in substitution for the pre-incorporation contract.

(2) Any liabilities to which the person responsible for the pre-incorporation contract is subject under this Division in relation to the pre-incorporation contract (including liabilities under an order made by a court under this Division) are, by force of this subsection, discharged.

Effect of rights and liabilities under this Division

59. Any rights or liabilities of a person under this Division (including rights or liabilities under an order made by a court under this Division) in relation to a contract are in substitution for any other rights that the person would have, or any other liabilities to which the person would be subject, in relation to the contract.

Trustee's right of indemnity

60. (1) This section applies when:

- (a) a person purports to enter into a contract as trustee for a proposed co-operative; and
- (b) the resulting co-operative is formed within a reasonable time after the person purports to enter into the contract but does not ratify the contract within a reasonable time after the co-operative is formed.

(2) Despite any rule of law or equity, the trustee does not have any right or indemnity against the co-operative in respect of the contract.

Manner of ratification

61. For the purposes of this Division, a contract may be ratified by a co-operative in the same manner as a contract may be made by a co-operative under Division 6.

PART 4—MEMBERSHIP

Division 1—General

Becoming a member

62. (1) On the registration of a co-operative, the persons who signed the application for registration become members of the co-operative.

(2) Other persons may be admitted as members of the co-operative as provided by its rules.

(3) A body corporate is not (merely because it is a body corporate) disqualified from being a member of a co-operative unless the co-operative's rules provide that bodies corporate are disqualified from being members.

(4) If 2 or more co-operatives are amalgamated, the members of the amalgamated co-operative are:

- (a) the members of the amalgamating co-operatives; and
- (b) other persons admitted as members of the amalgamated co-operative in accordance with its rules.

Membership may be joint

63. Membership of a co-operative may be individual and, unless the rules of the co-operative provide otherwise, may be joint.

Qualification for membership—likelihood of being active member

64. (1) A person is not qualified to be admitted to membership of a co-operative unless there are reasonable grounds for believing that the person will be an active member of the co-operative.

(2) The board of a co-operative is under a duty to ensure that a person who is not qualified to be admitted to membership is not admitted.

(3) The rules of a co-operative must contain provisions that:

- (a) impose a duty on all persons who become members to become active members; and
- (b) explain the consequences of failing to become or ceasing to be an active member.

Members under 18

65. (1) A person under the age of 18 years may be a member of a co-operative unless the rules of the co-operative otherwise provide.

(2) A person under the age of 18 years is not competent to hold any office in a co-operative.

(3) A member of a co-operative who is under 18 years of age is not entitled to vote.

(4) In this section, “person” means natural person.

Member under 18 not under disability of infancy

66. (1) A person under the age of 18 years is not under the disability of infancy in relation to a civil act in which he or she participates as a member of a co-operative after the commencement of this section.

(2) In this section:

“civil act” and “participates” have the same meanings as in the Minors Property and Contracts Act 1970.

Members of associations and federations

67. (1) The members of an association are the component co-operatives by which the association is formed and any other co-operative, body corporate or other body admitted to membership in accordance with the rules of the association.

(2) The members of a federation of associations are the associations by which the federation is formed and any other associations admitted to membership in accordance with the rules of the federation, together with any co-operatives so admitted as permitted by section 16.

Representative of body corporate member of co-operative

68. (1) If a body corporate is a member of a co-operative, it may by instrument in writing served on the co-operative appoint a person to represent it in respect of its membership.

(2) The power to appoint a representative is subject to any restriction imposed by the rules of the co-operative as to the entitlement of a person to represent a body corporate.

(3) A person is not entitled to represent a body corporate if the person has been appointed to represent another body corporate and that appointment is still in force.

(4) A person is not qualified to be appointed the representative of a company that is not a listed corporation (within the meaning of the Corporations Law) unless the person is a member, executive officer or director of the company.

Representative of member of association or federation

69. (1) A member of an association or federation may, by instrument in writing served on the association or federation, appoint up to the maximum number of persons permissible under the rules of the association or federation to represent it on the association or federation.

(2) The rules of an association or federation are not to permit the appointment of more than 3 representatives of a member of the association or federation.

(3) A person is not qualified to be appointed to represent a co-operative on an association or federation unless the person is a member of the co-operative or is otherwise qualified under the rules of the association or federation.

(4) A person is not qualified to be appointed to represent an association on a federation unless the person is qualified under this section to be appointed to represent a co-operative that is a member of the association.

(5) A person appointed in accordance with this section to represent a member of an association or federation is to be considered to be that member for the purpose of voting at meetings of the association or federation.

Circumstances in which membership ceases—all co-operatives

70. (1) A person ceases to be a member of a co-operative in each of the following circumstances and as otherwise provided by this Act:

- (a) if the member's membership is cancelled under Part 6 (Active membership requirements);
- (b) if the member is expelled in accordance with the rules of the co-operative;
- (c) if the member becomes bankrupt and the trustee of the member's estate disclaims any of his or her property in accordance with the law relating to bankruptcy;
- (d) on death;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) in the case of a member that is a body corporate, if the body is dissolved.

(2) On the death of a member, the member's estate remains liable as the member until the member's personal representative or some other person is registered in the member's place.

Additional circumstances in which membership ceases—co-operatives with share capital

71. In the case of a co-operative that has a share capital, a member ceases to be a member in each of the following additional circumstances:

- (a) if the member's share is transferred to another person in accordance with the rules of the co-operative, and the transferee is registered as holder in his or her place;
- (b) if the member's share is forfeited in accordance with this Act or the rules of the co-operative;
- (c) if the member's share is sold by the co-operative under a power conferred by the rules of the co-operative, and the purchaser is registered as holder in his or her place;
- (d) if the member's share is purchased by the co-operative in accordance with the provisions of this Act;
- (e) if the amount paid up on the member's shares is repaid to the member in accordance with the rules of the co-operative.

Circumstances in which membership of association or federation ceases

72. A member of an association or federation ceases to be a member in accordance with the rules of the association or federation.

Carrying on business with too few members

73. (1) If a co-operative continues to carry on business for more than 1 month after the number of members is reduced below the minimum number of members allowed, every person who is a director of the co-operative during the time when it so continues to carry on business and who knows it is carrying on business with fewer than the minimum number of members allowed is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) Each person who is guilty of an offence under subsection (1) is also liable to satisfy all obligations of the co-operative incurred after the 1 month referred to in subsection (1), and may be sued without any other member being joined in the action.

(3) The “**minimum number of members allowed**” is:

- (a)** (except for an association or federation) 5 or such lower number as the Registrar may have approved for the formation of the co-operative; or
- (b)** 2 for an association or federation.

(4) The Registrar may, by order in writing, extend and further extend in a particular case the period of 1 month referred to in subsection (1).

Division 2—Rights and liabilities of members**Rights of membership not exercisable until registered etc.**

74. A member of a co-operative is not entitled to exercise any rights of membership until:

- (a)** the member’s name appears in the register of members; and
- (b)** the member has made such payment to the co-operative in respect of membership or acquired such share or interest as may be provided in the rules of the co-operative.

Liability of members to creditors

75. A member of a co-operative is not, as such a member, under any personal liability to a creditor of the co-operative.

Liability of members to co-operative

76. (1) A member of a co-operative is not, as such a member, under any personal liability to the co-operative, except as provided by this section.

(2) A member of a co-operative with a share capital is liable to the co-operative for the amount, if any, unpaid on the shares held by the member together with any charges payable by the member to the co-operative as required by the rules of the co-operative.

(3) A member of a co-operative without a share capital is liable to the co-operative for any charges payable by the member to the co-operative as required by the rules of the co-operative.

Entry and periodic fees

77. (1) The rules of a co-operative may require the payment by members of entry and periodic fees and may provide for the repayment of those fees on a person ceasing to be a member.

(2) A co-operative must furnish to any person intending to become a member written notice of any such fees payable by a member to the co-operative.

(3) A person who becomes a member of the co-operative is not liable to pay any entry or periodic fees except those of which the person was given written notice before becoming a member, together with any periodic fees which may be imposed by any subsequent alteration of the rules.

Members etc. may be required to deal with co-operative

78. (1) The rules of a co-operative may contain provisions that require a member to have any specified dealings with the co-operative for a fixed period and to enter into a contract for that purpose.

(2) A co-operative may, if authorised by its rules, make a contract with a member containing provisions that require the member to have any specified dealings with the co-operative for a fixed period.

(3) In particular, any such provisions of the rules or a contract may require a member:

- (a) to sell products through or to the co-operative; or
- (b) to obtain supplies or services through or from the co-operative; or
- (c) to pay to the co-operative specified sums as liquidated damages for any failure to comply with a requirement authorised by this section.

(4) Any sum so required to be paid to the co-operative as liquidated damages is for the purposes of section 80 (Charge and set off of co-operative) to be considered to be a debt due from the member to the co-operative.

(5) A contract authorised by this section is binding on the co-operative and all other parties even though but for this Act the contract would be invalid as being in restraint of trade.

(6) Rules authorised by this section are authorised even though, but for this section, the rules might be invalid as being in restraint of trade.

Fines payable by members

79. (1) A co-operative may impose a fine on a member for any infringement of the rules or by-laws of the co-operative.

(2) The rules of the co-operative must specify the maximum fine that may be imposed on a member and a fine that is greater than that maximum must not be imposed.

(3) No fine exceeding \$20 is to be imposed unless:

- (a) written notice of intention to impose the fine and the reason for it has been given to the member; and
- (b) the member has been given a reasonable opportunity to appear before the board in person (with or without witnesses), or to send to the board a written statement, for the purpose of showing cause why the fine should not be imposed.

(4) The co-operative may set off the whole or any part of the fine against any money due to the member in respect of any produce delivered by the member to the co-operative, but no part of the fine is to be set off against any advance due to the member from the co-operative in accordance with the rules against produce so delivered.

(5) A member is not to be considered to have infringed the rules of a co-operative by a failure to deliver produce to the co-operative if the failure was due to the fact that before becoming a member of the co-operative the member had bound himself or herself under the rules of another co-operative to deliver the produce to that other co-operative and had actually delivered the produce to that co-operative.

Charge and set-off of co-operative

80. (1) A co-operative has, in respect of any debt due from a member or past member to the co-operative, a charge on each of the following:

- (a) the share or interest in the capital and the credit balance and deposits of the member or past member,

(b) any dividend, interest, bonus or rebate payable to the member or past member;

(c) any entry and periodic fees required to be repaid to a member when the member ceases to be a member.

(2) The co-operative may set off any amount paid on account of that share or other thing, or any amount credited or payable to the member or past member, in or towards payment of the debt.

(3) The charge created by this section may be enforced by the appropriation by the co-operative of the thing that is subject to the charge, but only after at least 7 days' notice has been given to the member or past member.

(4) Any share in respect of which capital has been so appropriated is to be cancelled.

Repayment of shares on expulsion

81. (1) When a member is expelled from a co-operative in accordance with its rules, the co-operative is to repay to the member the amount paid up on the shares held by the member at the date of expulsion, less any amount owed by the member to the co-operative at the date of expulsion under the rules of the co-operative or any contract or otherwise.

(2) If the balance sheet of the co-operative last issued before the expulsion of a member of the co-operative disclosed a loss or deficiency, there is to be a proportionate reduction in the capital to be repaid to the member.

(3) That reduction is to be by an amount that bears to the amount of the loss or deficiency so disclosed the same proportion as the number of shares held by the member bore to the total number of shares held by all members of the co-operative as at the date of expulsion of the member.

(4) Payment of any amount due to a member under this section is to be made at such time as may be determined by the board of the co-operative, but not later than 12 months after the date of expulsion.

(5) Shares in respect of which capital has been repaid are to be cancelled.

Division 3—Death of member

Transfer of share or interest on death of member

82. On the death of a member, the board is to transfer the deceased member's share or interest in the co-operative to:

- (a) the personal representative of the deceased member; or
- (b) to such person as the deceased's personal representative may specify in an application made to the co-operative within 3 months after the death of the member.

Transfer of small shareholdings and interests on death

83. (1) If the total value of a deceased member's shares or interest in a co-operative is less than \$10,000 (or such other amount as may be prescribed), the board may, on the basis of such evidence as it considers sufficient, transfer the shares or interest in accordance with whichever of the following paragraphs is appropriate:

- (a) if the member or person dies testate—to the person who appears to the board to be entitled to the shares or interest under the will of the deceased member or person;
- (b) if the member or person dies intestate—to any person who appears to the board to be entitled to obtain a grant of administration of the estate of the deceased and that person is then to hold the shares or interest on the same trusts as if he or she had obtained such a grant.

(2) No transfer is to be made under this section after evidence has been produced to the co-operative of the grant of letters of administration of the estate, or probate of the will, of the deceased member.

(3) In this section, the “**transfer**” of an interest includes the payment of money.

Qualification for membership not to apply to transfer of deceased member's share or interest

84. Section 64 (Qualification for membership—likelihood of being active member) does not prevent the transfer of a deceased member's share or interest in a co-operative in accordance with this Division.

Meaning of “interest”

85. For the purposes of this Division, a deceased member's “**interest**” in a co-operative includes each of the following:

- the member's membership itself
- any credit balance due to the member
- any loan from or to or deposit with the co-operative
- any surplus arising on the sale by the co-operative as mortgagee of any property mortgaged by the deceased to the co-operative.

Value of shares and interests

86. The value of the shares or interest of a deceased member is to be determined for the purposes of this Division in accordance with the rules of the co-operative.

Stamp Duties Act 1920

87. The provisions of this Division are subject to section 122 (No dealings with shares etc. of deceased persons to be registered without certificate of Chief Commissioner) of the Stamp Duties Act 1920.

Co-operative protected

88. Any transfer of property made by the board of a co-operative in accordance with the provisions of this Division is valid and effectual against any demand made on the co-operative by any other person.

Division 4—Disputes involving members**Definitions**

89. In this Part:

“**member**” includes any aggrieved person who ceased to be a member in the last 3 months and any person claiming through or under a member or any such aggrieved person;

“**co-operative**” includes the board and any officer of the co-operative.

Disputes to be determined in accordance with rules

90. Any dispute between a member (in his or her capacity as a member) and the co-operative is to be determined in accordance with the rules of the co-operative except as is otherwise provided by this Part.

Dispute may be referred to Registrar

91. (1) Despite the rules of the co-operative, any party may refer the dispute to the Registrar.

(2) If the rules of the co-operative require the dispute to be referred to arbitration, the dispute is not to be referred to the Registrar until at least 1 month after it has been referred to arbitration and then only if no award has been made within that time.

(3) The Registrar may decide to hear the dispute or may decide not to hear it, and may require security for the payment of the expenses of the hearing.

Hearing of disputes by Registrar

92. (1) If the Registrar decides to hear the dispute, the Registrar may hear the dispute personally or may appoint another person to hear it.

(2) The Registrar or person appointed to hear the dispute is then to determine the dispute and may:

- (a) administer an oath and require the attendance of any party or witness, and the production of any book or document, in relation to the matter in question; and
- (b) at any stage of the hearing state a case for the opinion of the Court on any question of law arising on the hearing (and must do so if directed to do so by the Court); and
- (c) order any expenses of the hearing and any costs of the parties to be paid out of the funds of the co-operative or by a party to the dispute.

(3) A person who fails to comply with a requirement imposed on him or her under subsection (2) (a) is guilty of an offence.

Maximum penalty: 10 penalty units.

Procedure when Registrar decides not to hear dispute

93. (1) If the Registrar decides not to hear the dispute, the Registrar is to notify the parties in writing of that decision within 1 month after the dispute was referred.

(2) The dispute is then to be determined in the manner (other than by reference to the Registrar) provided by the rules of the co-operative.

(3) If the only manner provided by the rules for the hearing of the dispute is by reference to the Registrar, the dispute is to be determined by arbitration in accordance with the Commercial Arbitration Act 1984.

Effect and enforcement of determinations and orders

94. (1) Any determination or order in accordance with this Division, whether made on a reference to the Registrar or otherwise, is binding and conclusive on all the parties without appeal and is not removable into any court or restrainable by injunction.

(2) The determination or order may, on the application of any interested person, be enforced in the District Court.

(3) The District Court may give such relief and make such orders, including an order as to costs, and give such directions in relation to the matter as may be necessary.

(4) Any order made or direction given by the District Court under this section may be enforced by any process or procedure which would be applicable if the order had been made on the hearing of an action in the District Court, or by such process or procedure as the District Court may direct.

(5) The District Court may make rules of court for the practice and procedure in relation to applications to the District Court under this section.

Disputes to which Part does not apply

95. This Division does not extend to any dispute as to the construction or effect of any mortgage, or of any contract contained in any document other than the rules of the co-operative.

Division 5—Oppressive conduct of affairs

Who may apply for court order

96. The following persons may apply to the Court for an order under this Division:

- (a) the Registrar;
- (b) a member who believes that the affairs of the co-operative are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is contrary to the interests of the members as a whole;
- (c) a member who believes that an act or omission, or a proposed act or omission, by or on behalf of the co-operative, or a resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole.

Active membership requirements not oppressive conduct

97. The Court is not to make an order under this Division in respect of anything done under or for the purposes of Part 6 (Active membership requirements).

Orders that the Court may make

98. On application under this Division, the Court may make such order or orders as it thinks fit including (without being limited to) one or more of the following orders:

- (a) an order that the Registrar appoint an administrator of the co-operative;
- (b) an order that the co-operative be wound up;
- (c) an order for regulating the conduct of affairs of the co-operative in the future;
- (d) an order for the repayment of the member's shares in accordance with the provisions of this Act for repayment of share capital;
- (e) an order for the purchase of the shares of any member by the co-operative and for the reduction accordingly of the co-operative's capital;
- (f) an order directing the co-operative to institute, prosecute, defend or discontinue specified proceedings, or authorising a member or members of the co-operative to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the co-operative;
- (g) an order appointing a receiver or a receiver and manager of property of the co-operative;
- (h) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;
- (i) an order requiring a person to do a specified act or thing.

Basis on which Court makes orders

99. The Court may make an order under this Division if of the opinion:

- (a) that affairs of a co-operative are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (the "**oppressed members or members**"), whether or not in the capacity of a member or members, or in a manner that is contrary to the interests of the members as a whole; or
- (b) that an act or omission, or a proposed act or omission, by or on behalf of a co-operative, or a resolution, or a proposed resolution, of a class of members of a co-operative, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (the "**oppressed member or members**"), whether or not in the capacity of a member or members, or was or would be contrary to the interests of the members as a whole.

Winding up not to be ordered if oppressed members prejudiced

100. The Court is not to make an order under this Division for the winding up of a co-operative if it is of the opinion that the winding up of the co-operative would unfairly prejudice the oppressed member or members.

Application of winding up provisions

101. If an order that a co-operative be wound up is made under this Division, the provisions of this Act relating to the winding up of co-operatives apply, with such adaptations as are necessary, as if the order had been made or an application duly filed in the Supreme Court by the co-operative.

Changes to rules

102. If an order under this Division makes any alteration to the rules of a co-operative:

- (a) the alteration has effect as if it had been duly made by special resolution of the co-operative; and
- (b) the co-operative must not (despite any other provisions of this Act) without the leave of the Court make any further alteration to the rules inconsistent with the provisions of the order.

Copy of order to be lodged with Registrar

103. An applicant for an order under this Division must lodge an office copy of the order with the Registrar within 14 days after it is made.

Maximum penalty: 5 penalty units.

Compliance with orders

104. A person must not contravene an order under this Division that is applicable to the person.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Extended meaning of “member”

105. In this Division, a reference to a member of a co-operative includes, in the case of a co-operative that has a share capital, a reference to a person to whom a share in the co-operative has been transmitted by will or by operation of law.

PART 5—RULES**Effect of rules**

106. (1) The rules of a co-operative have the effect of a contract under seal:

- (a) between the co-operative and each member; and
- (b) between the co-operative and each director, the principal executive officer and the secretary of the co-operative; and
- (c) between a member and each other member.

(2) Under the contract, each of those persons agrees to observe and perform the provisions of the rules as in force for the time being so far as those provisions are applicable to that person.

Content of rules

107. (1) The rules of a co-operative are to set out or otherwise make provision for the matters specified in Schedule 1.

(2) The rules are to be divided into paragraphs numbered consecutively.

(3) The rules may provide for the imposition of a fine on a member for any infringement of the rules, but the fine must not exceed the maximum fine fixed by the rules of the co-operative, which itself must not exceed such amount as may be prescribed as the maximum fine.

(4) The rules may state the objects of the co-operative.

(5) The rules may contain other provisions not inconsistent with this Act or the regulations.

Purchase and inspection of copy of rules

108. (1) Any person is entitled to obtain from a co-operative a copy of its rules on payment of the amount required by the rules of the co-operative or, if the rules do not prescribe an amount, on payment of \$2.

(2) A copy of the rules of a co-operative must be made available for inspection by any person free of charge at the registered office of the co-operative during ordinary business hours.

Model rules

109. (1) The Registrar may by notification published in the Gazette approve model rules for co-operatives and amend or repeal the model rules from time to time. The model rules can make provision for anything for which the rules of a co-operative can make provision.

(2) The model rules can be of 2 types, namely model rules that automatically apply or model rules that do not apply unless adopted, and a model rule must be specified as being of one type or the other.

(3) The rules of a co-operative are to be considered to contain the provisions of the model rules that automatically apply, as in force from time to time, except to the extent that the rules of the co-operative negate the application of those rules, either expressly or by necessary intendment.

(4) The rules of a co-operative may expressly adopt all or specified provisions of the model rules that do not apply unless adopted, in which case the rules of the co-operative are to be considered to contain the provisions adopted, as in force from time to time.

Rules can only be altered in accordance with this Part

110. (1) The rules of a co-operative cannot be altered except as provided by this Part.

(2) In this Part, “alter” includes add to, substitute and rescind.

Alteration by special resolution

111. The rules of a co-operative may be altered by special resolution.

Alteration by resolution of the board

112. (1) The rules of a co-operative may be altered by a resolution passed by the board if:

- (a) the alteration does no more than give effect to a requirement, restriction or prohibition imposed by or under the authority of this Act; or
- (b) the Registrar is satisfied that approval of the alteration by the members of the co-operative is not necessary and alteration by the board would be appropriate.

(2) If the rules of a co-operative are altered pursuant to this section, the co-operative must cause the alteration to be notified in writing to its members as soon as practicable after the alteration takes effect and in any event not later than the date on which notice is given to the members of the next annual general meeting of the co-operative following the taking effect of the alteration.

Alteration does not take effect until registered

113. (1) No alteration of the rules of a co-operative takes effect unless and until it is registered by the Registrar.

(2) An application for registration of an alteration must be made in a form approved by the Registrar and must be made within 1 month or such other period as may be prescribed after the alteration is made.

(3) The Registrar is to register the alteration unless satisfied that it is contrary to this Act or to the regulations or to co-operative principles.

(4) The Registrar may refer any alteration to the Council for advice and report but is not required to follow the advice of the Council on the alteration.

(5) A certificate of registration of any alteration of the rules of a co-operative given by the Registrar is, in favour of any person advancing money to the co-operative on the faith of the certificate or in favour of any guarantor of any such advance, conclusive evidence that the alteration in the rules was duly made.

False copies of rules

114. (1) A person who gives to a member of a co-operative or to a person intending or applying to become a member of a co-operative a copy of any rules or any alterations of rules, other than those which have been duly registered, representing that they are binding on the members of the co-operative is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) Any person who makes an alteration to any of the rules of a co-operative after they have been registered and circulates them representing that they have been duly registered when they have not been is guilty of an offence.

Maximum penalty: 10 penalty units.

PART 6—ACTIVE MEMBERSHIP REQUIREMENTS

Division 1—Definitions etc.

Primary activity—meaning

115. A primary activity of a co-operative is an activity specified in the rules of the co-operative as a primary activity of the co-operative.

Active membership—explanation

116. For the purposes of this Act, a member of a co-operative is an active member of the co-operative if the member:

- (a) utilises or supports an activity of, or maintains a relationship or an arrangement with, the co-operative, in connection with the carrying

on of a primary activity of the co-operative, in the manner and to the extent which the rules of the co-operative provide is sufficient to establish active membership; or

- (b) maintains such other relationship or arrangement with the co-operative in connection with the carrying on of a primary activity of the co-operative as the regulations provide is sufficient to establish active membership.

Active membership provisions and resolutions—explanation

117. (1) Active membership provisions in the rules of a co-operative are provisions in the rules which specify:

- (a) which of the activities of the co-operative are the primary activities of the co-operative; and
- (b) the manner in which and the extent to which a member of the co-operative is required to utilise or support an activity of, or maintain a relationship or an arrangement with, the co-operative, in connection with the carrying on of a primary activity of the co-operative, in order to establish active membership of the co-operative.

(2) An active membership resolution is a resolution which would, if given effect to, make or amend active membership provisions in the rules of a co-operative.

Division 2—Rules to contain active membership provisions

Number of primary activities required

118. A co-operative must have at least 1 primary activity.

Rules to contain active membership provisions

119. (1) The board of a co-operative must ensure that the rules of the co-operative contain active membership provisions in accordance with this Part,

(2) An alteration of the rules of a co-operative effected for the purposes of this section is not an alteration which may be effected by a resolution passed by the board under section 112.

Failure to have active membership provisions

120. (1) If the rules of a co-operative do not contain active membership provisions as required by this Part, the Council may by resolution alter the rules of the co-operative so that they contain active membership provisions.

(2) The active membership provisions are to be provisions that in the opinion of the Council are appropriate to the co-operative concerned, having regard to:

- (a) the rules and activities of the co-operative; and
- (b) the membership structure of the co-operative; and
- (c) such other matters as the Council thinks are relevant.

(3) Before taking action under this section, the Council must:

- (a) give notice in writing to the co-operative concerned that it proposes to take the action; and
- (b) take into account any representations made by the co-operative concerning the matter within the time allowed by the notice for the making of representations.

(4) A resolution of the Council under this section operates to alter the rules of the co-operative accordingly, but section 113 (Alteration does not take effect until registered) applies to any such alteration.

(5) The fact that active membership provisions in the rules of a co-operative resulted from the operation of this section does not prevent the alteration of those provisions in accordance with this Act.

Factors and considerations for determining primary activities etc.

121. (1) The board of a co-operative must ensure that the relevant factors and considerations are taken into account in determining the following:

- (a) which of the activities of a co-operative are its primary activities;
- (b) the manner and extent to which a member is required to utilise or support an activity of, or maintain a relationship with, a co-operative, in connection with the carrying on of a primary activity of the co-operative, to establish active membership of the co-operative.

(2) The “**relevant factors and considerations**” are as follows:

- (a) the primary activity or (if more than one) the primary activities taken together should constitute the basic purpose for which the co-operative exists and a significant contribution to the business of the co-operative;
- (b) the manner and extent of required utilisation, support or relationship should be reasonable when considered in relation to the activities of the co-operative as a whole;
- (c) such other factors and considerations as may be prescribed.

(3) The regulations may provide for the matters to be taken into account in determining whether an activity or activities makes or make a significant contribution to the business of the co-operative and for that purpose may specify minimum percentages of turnover, minimum amounts of income or minimum amounts of business necessary to constitute “significant contribution”.

(4) Factors and considerations may be prescribed so as to apply to co-operatives generally, to a specified class of co-operatives or to a specified individual co-operative.

Regular subscription—active membership

122. (1) Active membership provisions may include provision that the payment of a regular subscription by a member of the co-operative, to be applied in connection with a primary activity of the co-operative, is sufficient to establish active membership of the co-operative.

(2) A member of a co-operative who would, on payment of such a subscription, be an active member of a co-operative is to be considered to be an active member until the subscription is due and payable.

Active membership provisions—supply or purchase of goods or produce

123. (1) This section applies to a co-operative if the primary activities of the co-operative include the supply to or purchase from the co-operative by its members of goods or produce.

(2) The only active membership provisions which may be contained in the rules of such a co-operative are:

- (a) provisions requiring a member to utilise an activity of the co-operative in connection with the carrying on of a primary activity specified in the provisions to establish active membership; and
- (b) such other active membership provisions as the Council may approve.

(3) A reference in this section, and in any active membership provisions of the rules of a co-operative, to the supply to or purchase from a co-operative by a member of goods or produce includes a reference to:

- (a) the supply to or purchase from a body corporate constituted by an Act for the purpose of the marketing of goods or produce if the body corporate in turn supplies to or purchases from the co-operative; and

- (b) the existence of a relationship or arrangement between the member and the co-operative which is prescribed by the regulations as being sufficient to establish the relationship of supplier or purchaser.

Division 3—Active membership resolutions

Prior approval of active membership resolutions

124. (1) An active membership resolution cannot be proposed at a meeting of a co-operative unless:

- (a) before the meeting, the Registrar has approved in writing of the terms of the proposed resolution; or
- (b) the active membership provisions which would result from the proposed resolution fall within guidelines approved of in writing by the Registrar before the meeting.

(2) Before giving an approval under this section, the Registrar may require additional information from the proposers of the resolution for the purpose of deciding whether or not to approve of the resolution.

(3) If the Registrar refuses approval, the Registrar must inform the co-operative in writing of the reasons for the refusal.

Appeal against refusal of approval

125. (1) The co-operative is entitled to have a decision of the Registrar to refuse approval of a proposed active membership resolution reviewed if the reason for the refusal is that the resolution would result in active membership provisions which are not appropriate for the co-operative or would result in unreasonable active membership provisions.

(2) The review is to be carried out by the Council at the request of the co-operative.

(3) The Council may recommend to the Registrar that the Registrar approve of the proposed resolution and the Registrar is to comply with such a recommendation.

Notice of meeting

126. (1) At least 21 days' written notice must be given to members of a co-operative of a meeting at which an active membership resolution is to be proposed.

(2) The notice must, in addition to the other matters required to be specified:

- (a) specify whether the member is eligible to vote on the resolution; and
- (b) specify the full text of the proposed resolution; and
- (c) contain a copy of section 127 (Cancellation of membership of inactive member).

(3) If the notice to a member states that he or she is not eligible to vote on a resolution, the member may, after endeavouring to settle the matter with the co-operative, apply to the Registrar for a determination as to the member's eligibility.

(4) The Registrar may determine the matter, on the information available to the Registrar, by direction in writing to the co-operative and the member.

(5) The Registrar's determination as to eligibility has effect but only if given before the meeting concerned is due to be held.

Division 4—Cancellation of membership etc. of inactive members

Cancellation of membership of inactive member

127. (1) The board of a co-operative is to declare the membership of a member cancelled if:

- (a) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for a continuous period of at least 2 years before that time; or
- (b) the member is not presently an active member of the co-operative and has not been an active member of the co-operative at any time during the past 2 years immediately before that time.

(2) This section applies to a member only if he or she was a member of the co-operative throughout the 2 year period in question.

(3) The question of whether a member was an active member at a particular time in the past is to be determined as if the active membership provisions concerned had been in force at that time.

(4) The board's declaration under this section has the effect of cancelling the membership concerned.

Share to be forfeited if membership cancelled

128. (1) If a co-operative has a share capital, the board of the co-operative is to declare the shares of a member to be forfeited at the same time as the member's membership is cancelled under section 127.

(2) The board's declaration has the effect of forfeiting the shares concerned.

Order of Council against cancellation

129. (1) The Council may, if satisfied in a particular case that the cancellation of a member's membership under section 127 was or would be unreasonable, direct by order in writing that the membership should not have been cancelled or should not be cancelled.

(2) While such an order is in force:

- (a) the membership concerned is not required to be cancelled and any shareholding of the member is not required to be forfeited; and
- (b) the person whose membership was cancelled is entitled to be reinstated as a member of the co-operative with all the rights and entitlements (including any shareholding) attaching to or arising from the former membership.

(3) Reinstatement of a member under this section is to be effected in accordance with the directions of the Council.

Deferral of forfeiture by board

130. The board of a co-operative is entitled to defer cancellation of a member's membership for up to 12 months (or such other period as may be prescribed) if:

- (a) the board thinks that during that period an active membership resolution may be put to the members of the co-operative; and
- (b) the effect of the resolution would be relevant to the question of whether the member is an active member.

Cancellation of membership prohibited in certain circumstances

131. Unless the regulations otherwise provide, the board of a co-operative must not declare the membership of a member to be cancelled under this Part:

- (a) if the co-operative is under official management; or
- (b) if a compromise or an arrangement is being administered in respect of the co-operative; or
- (c) if the co-operative is in the course of being wound-up; or
- (d) if an appointment of a receiver of any property of the co-operative is in force; or

- (e) if the co-operative has, for the purposes of being registered as a company under the Corporations Law, filed with the Registrar a copy of the entry made in the minute book of the co-operative under section 193 (Postal ballots); or
- (f) in such other circumstances as may be prescribed.

Notice of intention to cancel membership

132. (1) The board of a co-operative must ensure that not less than 1 month's notice of its intention to declare the membership of a member to be cancelled is given to the member:

- (a) by notice in writing sent to the member by post; or
- (b) if the member's whereabouts are unknown to the co-operative, by notice published in a newspaper circulating in the district in which the registered office of the co-operative is situated.

(2) No notice is required to be given under this section if the member's whereabouts are unknown to the co-operative and the amount required to be repaid to the member in respect of the cancelled membership (whether by reason of the cancellation of shares or otherwise) does not exceed \$50.

Failure to cancel membership—offence by director

133. If the board of a co-operative fails to cancel the membership of a member as required by this Part, a director of the co-operative who did not use all due diligence to prevent that failure is guilty of an offence.

Maximum penalty: 10 penalty units.

Repayment of amounts due in respect of cancelled membership

134. (1) If the membership of a member of a co-operative is cancelled under this Part, the co-operative must, within 12 months after the date of cancellation:

- (a) repay to the former member the amount due to the member in respect of that cancellation; or
- (b) if the board is of the opinion that repayment would adversely affect the financial position of the co-operative—apply that amount as permitted by subsection (2).

(2) The permissible methods of application of the amount due are as follows:

- (a) the co-operative may apply the amount as a deposit by the former member with the co-operative (subject to the requirements of section 135 as to interest on the deposit);

- (b) the co-operative may allot or issue debentures or CCU's of the co-operative to the former member in satisfaction of the amount;
 - (c) the co-operative may appropriate the amount due as a donation to the co-operative, but only if the former member consents in writing to the donation.
- (3) The amount due to a member in respect of the cancellation of membership includes any amount paid up in respect of shares forfeited as a result of the cancellation of membership.
- (4) If the former member is subsequently readmitted to membership, any amount held by the co-operative under this section must, if the member so requests, be applied towards the cost of admission to membership (including any subscription for share capital).

Interest on deposits, debentures and CCU's

135. (1) This section applies when the amount due to a former member under section 134 is applied as a deposit with the co-operative or the co-operative allots or issues debentures or CCU's to the former member in satisfaction of the amount.

(2) Interest is payable on the deposit, debentures or CCU's in the following circumstances:

- (a) in the case of a co-operative with a share capital—if a dividend is payable on that share capital;
 - (b) in the case of a co-operative without a share capital—if the Council directs in the particular case that interest is to be payable.
- (3) If interest is payable because a dividend is payable on share capital, the rate of interest during any period is to be:
- (a) the rate (or, where there is more than one rate, the higher or highest rate) of dividend payable in respect of that period on that share capital; or
 - (b) if the rate of dividend payable in respect of that period has not been determined—at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined.
- (4) If interest is payable by direction of the Council, the rate of interest is the rate determined by the Council from time to time and notified to the co-operative concerned.
- (5) A former member may agree to the rate of interest being less than that which would otherwise be payable under this section and may agree to no interest being paid.

(6) This section does not prevent a co-operative paying interest at a rate that is higher than that required by this section.

(7) The provisions of Part 7–12 (Offering securities for subscription or purchase) of the Corporations Law applying under section 266 of this Act do not apply to an allotment or issue of debentures under this section.

Repayment of deposits, debentures and CCU's

136. (1) A deposit, debenture or CCU to which an amount due to a former member is transferred under this Division is to be repaid to the former member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the co-operative.

(2) The deposit, debenture or CCU must in any case be repaid within 10 years (or within such shorter period as the rules of the co-operative may require) after cancellation of the member's membership.

(3) The Council may extend the period for repayment under subsection (2) if satisfied that repayment of the amount within that period would cause the co-operative financial hardship.

(4) An extension of a period by the Council is to be for such period as it considers reasonable and may be given subject to conditions.

(5) The period for repayment is extended accordingly, but only while the co-operative complies with any conditions to which the extension is subject.

(6) The Council may, on the application of the former member concerned, reduce the period for repayment under subsection (2) if satisfied that it would be reasonable in the particular case to require repayment of the amount within the shorter period.

Register of cancelled memberships

137. A co-operative is to keep a register, in a form approved by the Registrar, specifying the prescribed particulars of persons whose membership has been cancelled under this Part.

Unclaimed Money Act 1982 not to apply

138. (1) Any money that is required to be paid to a former member of a co-operative under this Division is not unclaimed money for the purposes of the Unclaimed Money Act 1982.

(2) When a person's right and title to any such money as against the co-operative is extinguished by operation of any law providing for the limitation of actions, the co-operative is entitled to credit the money to its general reserves.

Division 5—Entitlements of former members**Former shareholders to be regarded as shareholders for certain purposes**

139. (1) This section applies to a co-operative only if the co-operative has a share capital.

(2) Even though a person's shares in a co-operative have been forfeited under this Part, the person is to be regarded as the holder of shares in the co-operative (the same in all respects as those that were forfeited) for the following purposes:

- (a) the entitlements of a shareholder in respect of the purchase of shares in the co-operative pursuant to an offer described in section 299 (a), (b) or (c), or the purchase of all the shares in the co-operative, if the offer or purchase occurs within 5 years after the person's shares were forfeited;
- (b) the entitlement of a shareholder when the co-operative becomes registered as a company if the relevant special resolution under section 316 (2) is passed within 5 years after the person's shares were forfeited;
- (c) the entitlement of a shareholder to a distribution of surplus in a winding-up of the co-operative that commences within 5 years after the person's shares were forfeited.

(3) Subsection (2) (a) does not apply in respect of:

- (a) an offer described in section 299 (a) or (c) that is made by another co-operative; or
- (b) the purchase of all the shares in the co-operative by another co-operative.

(4) Subsection (2) (c) does not apply if the winding-up is for the purposes of an amalgamation under Division 1 of Part 12.

(5) To remove doubt, it is declared that the entitlement under subsection (2) (a) of a person whose shares have been forfeited does not include an entitlement to vote on any matter.

(6) This section does not apply to a forfeited shareholding in a co-operative if section 140 operates to require that forfeited shareholding to be regarded as a forfeited shareholding in another co-operative.

Entitlements of former shareholders on mergers etc.

140. (1) This section applies when a person's shares in a co-operative ("**the original co-operative**") are forfeited under this Part and within 5 years after that forfeiture:

- (a) the original co-operative becomes a subsidiary of another co-operative (“**the new co-operative**”); or
- (b) another co-operative (“**the new co-operative**”) is created as a result of an amalgamation under Division 1 of Part 12 involving the original co-operative; or
- (c) the engagements of the original co-operative are transferred to another co-operative (“**the new co-operative**”) under Division 2 of Part 12.

(2) That person is, for the purposes of the operation of section 139 (and the further operation of this section) to be regarded as having held shares in the new co-operative and as having had those shares in the new co-operative forfeited under this Part when the person’s shares in the original co-operative were forfeited.

(3) The extent of the forfeited shareholding in the new co-operative is as determined in accordance with the following:

- (a) if the entitlement of active members of the original co-operative in the circumstances concerned is solely an entitlement to be allotted shares in the new co-operative, the forfeited shareholding in the new co-operative is the shareholding to which the person would have been entitled had the person’s shares in the original co-operative not been forfeited;
- (b) in any other case, the forfeited shareholding in the new co-operative is the shareholding that is the same in all respects as the forfeited shareholding in the original co-operative.

(4) The determination under subsection (3) (a) of the person’s shareholding in the new co-operative is to be made:

- (a) solely on the basis of the person’s shareholding in the original co-operative when the shares were forfeited or (in a further operation of this section in respect of the person) when the person was first to be regarded as having a forfeited shareholding in the original co-operative; and
- (b) without regard to any additional shareholding in the original co-operative to which the person would have become entitled had the shares not been forfeited (whether as a result of any bonus share issue or otherwise).

Set-off of amounts repaid etc. on forfeited shares

141. (1) If a person has an entitlement because of the operation of section 140, the entitlement operates to extinguish any liability of the co-operative:

- (a) to repay to the person under section 134 (Repayment of amounts due in respect of cancelled membership) any amount in respect of the forfeited shares concerned; or
- (b) in respect of a deposit held by the co-operative, or debentures or CCU's allotted or issued to the person, under section 134 in respect of the forfeited shares concerned (except a liability to pay interest that is due but unpaid).

(2) If an amount has been repaid to a person under section 134 or 136, the amount repaid is to be set-off against any entitlement of the person under section 140 in respect of the forfeited shares concerned.

(3) If the amount repaid cannot be set-off against the entitlement because the entitlement is not, or is only partly, an entitlement to money, the entitlement is lost unless the person pays to the co-operative the amount repaid to the person and does so within the period required under subsection (4).

(4) If the circumstances specified in subsection (3) arise, the co-operative concerned must:

- (a) give notice in writing of the matter by post to the person concerned at the person's address last known to the co-operative, specifying a period of not less than 30 days after the notice is given during which any amount repaid must be paid to the co-operative; and
- (b) publish a general notice to that effect in a newspaper circulating in the district in which the registered office of the co-operative is situated.

Entitlement to distribution from reserves

142. A person whose membership of a co-operative has been cancelled under this Part is nevertheless to be considered to still be a member for the purposes of any distribution from reserves of the co-operative that takes place within 5 years after the person's membership was cancelled.

Minister may exempt co-operatives from provisions

143. The Minister may, after consultation with the Council, by order in writing exempt a specified co-operative or a co-operative that is a member of a specified class of co-operatives from all or specified provisions of this Division.

PART 7—SHARES**Division 1—Preliminary****Share capital required except for non-profit co-operatives**

144. (1) A co-operative must have a share capital unless the Registrar is satisfied that the co-operative will not be carried on for the pecuniary profit of its members, in which case it need not have a share capital.

(2) A co-operative may convert from being a co-operative with a share capital to being a co-operative without a share capital, and vice versa, by appropriate alteration of its rules.

(3) Conversion to a co-operative without a share capital is subject to the restrictions imposed by section 145.

Restrictions on conversion to co-operative without share capital

145. (1) Conversion to a co-operative without a share capital cannot be effected unless the Council approves in writing of the conversion but the Council's approval is not required if all the members of the co-operative have an equal shareholding.

(2) An alteration of the rules for the conversion cannot be passed until at least 2 weeks after a notice has been published in a newspaper circulating generally in the district in which the registered office of the co-operative is situated advising of the proposal to submit the proposed alteration to members of the co-operative.

(3) The Registrar may refuse to register the alteration for conversion if satisfied that:

- (a)** the holders in aggregate of not less than 10% of the number of issued shares of the co-operative object to the conversion; or
- (b)** the holders in aggregate of not less than 10% of the nominal value of all debentures, deposits and CCU's issued by the co-operative object to the conversion; or
- (c)** creditors of the co-operative to whom not less than 20% of the aggregate debt of the co-operative is owed object to the conversion.

(4) The Registrar is not to register an alteration of the rules of a co-operative for its conversion to a co-operative without a share capital unless satisfied that the co-operative is not and will not be carried on for the pecuniary profit of its members.

Nature of share in co-operative

146. (1) A share or other interest in a co-operative:

- (a) is personal property;
- (b) is transferable or transmissible as provided by this Act and the rules of the co-operative;
- (c) is, subject to the rules of the co-operative, capable of devolution by will or by operation of law.

(2) Subject to subsection (1):

- (a) the laws applicable to ownership of and dealing with personal property apply to a share or other interest of a member in a co-operative as they apply to other property; and
- (b) equitable interests in respect of a share or other interest of a member in a co-operative may be created, dealt with and enforced as in the case of other personal property.

Division 2—Issue of shares**Shares—general**

147. (1) The share capital of a co-operative varies in amount according to the nominal value of shares from time to time subscribed.

(2) Shares are to be of a fixed amount which is to be specified in the rules of the co-operative.

(3) Shares are to be of one class all ranking equally.

Minimum number of shares to be subscribed for

148. (1) A member of a co-operative with a share capital must subscribe for such minimum number of shares as may be required by the rules.

(2) The minimum number may be determined by reference to the use made by the member of the co-operative or in any other manner specified in the rules.

(3) An alteration of the rules as to the minimum number of shares to be subscribed for does not operate to require an existing member of the co-operative to subscribe for additional shares (but an existing member is not prevented from agreeing to subscribe for additional shares).

(4) This section does not affect section 155 (Members may be required to take up additional shares).

Minimum paid up amount

149. (1) No share (other than a bonus share issued under section 156) is to be allotted unless at least 10% of the nominal value of the share has been paid.

(2) Any balance unpaid in respect of shares at the time of allotment is to be paid by periodic subscriptions or in such manner as may be specified in the rules or permitted by this Act.

Shares not to be issued at a discount

150. A co-operative must not issue shares at a discount.

Issue of shares at a premium

151. (1) A co-operative may issue shares at a premium.

(2) When a co-operative issues shares for which it receives a premium, whether in cash or in the form of other valuable consideration, a sum equal to the aggregate amount or value of the premiums on those shares is to be transferred to a share premium account.

(3) The share premium account is to be regarded as paid up share capital of the company and may be applied in any one or more of the following ways:

- (a) in paying up unissued shares to be issued to members of the co-operative as fully paid bonus shares;
- (b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the co-operative;
- (c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the co-operative;
- (d) in writing off the preliminary expenses of the co-operative;
- (e) in providing for the premium payable on redemption of shares, debentures or CCU's.

Joint ownership of shares

152. A share may be held by 2 or more persons jointly, unless the rules of the co-operative provide otherwise.

Dividends etc.

153. (1) The rate of dividend to be paid to a member in respect of any share held by the member must not exceed 16% per annum or such other rate as may be fixed by the Minister by order published in the Gazette on the recommendation of the Council.

(2) An order under subsection (1) may be made so as to apply to a particular co-operative, to co-operatives of a particular class or to co-operatives generally.

(3) The rules of a co-operative may authorise the payment, in respect of shares held in excess of a specified number, of a rate of dividend that is higher than the rate of dividend payable in respect of shares not in excess of that number.

(4) The rules of a co-operative may authorise the payment of different rates of dividend on shares based on the business done by shareholders with the co-operative.

(5) Any dividend, bonus or rebate to a member must be applied to paying off any subscription or calls on shares which may at the time the dividend, bonus or rebate becomes payable be due by the member and unpaid.

Issue of shares to active members in exchange for property

154. A co-operative may, if authorised by its rules to do so, issue fully paid up shares to an active member of the co-operative the consideration for which is real or personal property of at least the value of the equivalent cash consideration.

Members may be required to take up additional shares

155. (1) The board of a co-operative may require a member to take up or subscribe for additional shares in accordance with a proposal approved by a special resolution of the co-operative.

(2) The board of a co-operative may deduct amounts in payment for any such additional shares from money due to members in respect of dealings with the co-operative, in accordance with a proposal approved by a special resolution of the co-operative.

(3) Any proposal to require a member to take up or subscribe for additional shares must:

- (a) be accompanied by a disclosure statement, approved by the Registrar, that explains the purpose for which the funds raised by the issue of the additional shares are to be used; and
- (b) clearly show the total number of additional shares to be issued and the basis on which the shares are to be apportioned amongst members.

(4) Any proposal to deduct amounts in payment for additional shares from money due to members in respect of their dealings with the co-operative must clearly show the basis on which the deductions are to be made and the time and manner of making those deductions.

(5) A proposal approved under this section is binding on all members of the co-operative at the date of the passing of the special resolution and on all persons who become members of the co-operative after that date and before the total number of shares to be issued pursuant to the proposal have been issued.

Bonus share issues

156. (1) The rules of a co-operative may authorise the issue of bonus shares to members of the co-operative if the assets of the co-operative (other than those acquired for resale at a profit):

- (a) have been sold at a profit; or
- (b) have been revalued at a greater value than that disclosed prior to the revaluation in the books of the co-operative.

(2) Bonus shares may be issued in accordance with the rules, subject to the following restrictions:

- (a) each issue must have been approved by a special resolution of the co-operative;
- (b) they are to be issued as fully paid up shares with no payment required to be made by a member of the co-operative to whom they are issued;
- (c) they are to be issued only in respect of shares that are fully paid up as at the date of issue of the bonus shares;
- (d) the total nominal value of bonus shares issued by a co-operative during any 12 month period must not exceed 20% or such other percentage as may be prescribed of the nominal value of the issued share capital of the co-operative immediately before the date of issue of the bonus shares.

(3) Notice of the meeting or postal ballot at which a resolution is to be proposed as a special resolution for the purpose of approving a bonus share issue must be accompanied by:

- (a) a statement of the value of the assets concerned as disclosed in the books of the co-operative before the sale or revaluation; and
- (b) if the issue arises from, or partly from, a sale of assets, a statement of the price for which the assets were sold; and

- (c) if the issue arises from, or partly from, a revaluation of assets, a certificate of value of the assets, being a certificate furnished in respect of a valuation made not more than 12 months before the date of the notice by a prescribed person or a person having prescribed qualifications; and
- (d) particulars of acquisitions of shares in the co-operative made during the 3 years immediately preceding the date of the notice by or on behalf of each of its directors and his or her spouse and the father, mother, children, brothers and sisters of each such director and spouse; and
- (e) a certificate signed by 2 directors of the co-operative stating that to the best of their knowledge and belief the issue of bonus shares would not be imprudent and that no circumstances are known to them as to why the issue should not take place; and
- (f) a statement by the co-operative's auditor as to whether or not the issue of the bonus shares would, in his or her opinion, be prudent and reasonable.

Division 3—Beneficial and non-beneficial interests in shares

Notice of non-beneficial ownership at time of transfer

157. (1) If it may reasonably be expected (having regard to all relevant circumstances) that on registration of a transfer of shares the transferee will hold some or all of the shares non-beneficially, the instrument of transfer must include a “**non-beneficial ownership notice**”.

(2) A non-beneficial ownership notice is a notice that:

- (a) contains a statement to the effect that, on registration of the transfer, the transferee will hold particular shares non-beneficially; and
- (b) sets out particulars of those shares; and
- (c) is signed by or on behalf of the transferee.

(3) The transferee is guilty of an offence if this section is not complied with when an instrument of transfer of shares is lodged by or on behalf of the transferee with the co-operative for registration of the transfer.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

(4) An offence under this section does not affect the validity of the registration of a transfer of shares.

Notice of non-beneficial ownership not notified at time of transfer

158. (1) If on the registration of an instrument of transfer of shares the transferee holds non-beneficially any of the shares transferred, notice of that fact must be given to the co-operative except in respect of any shares for which particulars were set out in a non-beneficial ownership notice under section 157 included in the instrument of transfer.

(2) The notice must:

- (a) set out the name and address of the transferee; and
- (b) contain a statement to the effect that, as from registration of the transfer, the transferee holds the shares non-beneficially; and
- (c) set out particulars of those shares; and
- (d) be signed by or on behalf of the transferee.

(3) The notice must be given within 14 days after the registration of the transfer (even if before the end of that 14 days the transferee begins to hold any of the relevant shares beneficially).

(4) The transferee is guilty of an offence if this section is not complied with.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

Registration as beneficial owner of shares notified as non-beneficially transferred

159. (1) If an instrument of transfer of shares lodged with a co-operative includes a non-beneficial ownership notice (section 157) in respect of particular shares (“**the relevant shares**”) but on registration of the transfer the transferee holds some or all of the relevant shares beneficially, notice of that fact must be given to the co-operative.

(2) The notice must:

- (a) set out the name and address of the transferee; and
- (b) contain a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially; and
- (c) set out particulars of the relevant shares; and
- (d) be signed by or on behalf of the transferee.

(3) The notice must be given within 14 days after the registration of the transfer (even if before the end of that 14 days the transferee begins to hold any of the relevant shares non-beneficially).

(4) The transferee is guilty of an offence if this section is not complied with.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

Notification of change in nature of shareholding

160. (1) If the nature of a person's shareholding in a co-operative changes by reason of the person commencing to hold any shares beneficially that the person currently holds non-beneficially or commencing to hold any shares non-beneficially that the person currently holds beneficially, the person must notify the change to the co-operative.

(2) The notice must:

- (a) set out the name and address of the person; and
- (b) contain a statement to the effect that, as from the time of the change, the person holds the shares beneficially or non-beneficially (as appropriate); and
- (c) specify the time of the change and set out particulars of the shares affected; and
- (d) be signed by or on behalf of the person.

(3) The notice must be given within 14 days after the change (even if before the end of that 14 days another such change affecting any of the shares occurs).

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

Presumption of awareness

161. For the purposes of this Division, a person is, unless the contrary is established, to be presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person was aware at that time, but only if the employee or agent has duties or acts in relation to the transfer to, or ownership by, the person of a share or shares in the co-operative concerned.

Presumption that shares held non-beneficially

162. (1) A person is to be taken to hold particular shares non-beneficially whenever the person:

- (a) holds the shares in a capacity other than that of sole beneficial owner; or

(b) without limiting paragraph (a), holds the shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person.

(2) A person is to be considered to hold shares beneficially at a particular time unless the person holds the shares non-beneficially at that time.

Noting of beneficial and non-beneficial interests in register of members

163. (1) The register of members kept by a co-operative must contain a statement of the shares that each member holds beneficially and of the shares that each member holds non-beneficially.

(2) In determining for the purposes of an entry in the register whether a member of a co-operative holds shares beneficially or non-beneficially, regard is to be had only to the following information:

- (a) information contained in a non-beneficial ownership notice under section 157 included in an instrument of transfer registered by the co-operative;
- (b) information contained in a notice given to the co-operative under any other provision of this Division.

Registration as trustee etc. on death of owner of shares

164. (1) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a co-operative may be registered as the holder of that share as trustee, executor or administrator of that estate.

(2) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a co-operative may, with the consent of the co-operative and of the registered holder of that share, be registered as the holder of that share as trustee, executor or administrator of that estate.

Registration as administrator of estate on incapacity of shareholder

165. (1) This section applies to a person ("**the appointed person**") who is appointed under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of another person ("**the incapable person**").

(2) If the incapable person is the registered holder of a share in a co-operative, the appointed person may be registered as the holder of that share as administrator of the estate of the incapable person.

(3) If the incapable person is entitled in equity to a share in a co-operative, the appointed person may, with the consent of the co-operative and of the registered holder of that share, be registered as the holder of the share as administrator of the estate of the incapable person.

Registration as Official Trustee in Bankruptcy

166. (1) This section applies when a share in a co-operative that is the property of a bankrupt vests by force of the Bankruptcy Act 1966 of the Commonwealth in the Official Trustee in Bankruptcy.

(2) If the bankrupt is the registered holder of the share, the Official Trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.

(3) If the bankrupt is entitled in equity to the share, the Official Trustee may, with the consent of the co-operative and of the registered holder of the share, be registered as the holder of that share as the Official Trustee in Bankruptcy.

Liabilities of person registered as trustee or administrator

167. (1) A person registered under section 164, 165 or 166 is, while so registered, subject to the same liabilities in respect of the share as those to which he, she or it would have been subject if the share had remained, or had been, registered in the name of the dead person, the incapable person or the bankrupt.

(2) The person registered is subject to no other liabilities in respect of the share.

Notification of trusts in register of members

168. Shares held by a trustee in respect of a particular trust may, with the consent of the co-operative, be marked in the register of members in such a way as to identify the shares as being held in respect of the trust.

No notice of trust except as provided by this Division

169. Except as provided in this Division:

- (a) no notice of a trust, whether express, implied or constructive, is to be entered on a register or be receivable by the Registrar; and
- (b) no liabilities are affected by anything done under a provision of this Division; and
- (c) nothing done under a provision of this Division affects a co-operative with notice of a trust.

Division 4—Sale etc. of shares**Sale or transfer of shares**

170. A share in a co-operative cannot be sold or transferred except:

- (a) in accordance with Division 3 of Part 4 on the death of a member;
- (b) to a person appointed to administer the estate of a shareholder under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs; or
- (c) with the consent of the board, to any person if there are reasonable grounds for believing that the person will be an active member of the co-operative.

Transfer not effective until registered

171. A transferor of a share remains the holder of the share until the transfer is registered and the name of the transferee is entered in the register of members in respect of the share.

Division 5—Repurchase etc. of shares**Purchase and repayment of shares**

172. (1) The rules of a co-operative may authorise the co-operative to:

- (a) purchase any share of a member in the co-operative at the request of the member; and
- (b) repay to a member, with the member's consent, the whole or any part of the amount paid up on any share held by the member when the sum repaid is not required for the activities of the co-operative.

(2) The amount paid by a co-operative under this section in purchasing shares or repaying any amount paid up on shares, or both, in any financial year of the co-operative must not exceed the sum of:

- (a) 5% of the nominal value of the issued share capital of the co-operative immediately before the commencement of that financial year; and
- (b) the amount of any additional share capital of the co-operative subscribed for during that year.

(3) The Council may by order in writing exempt a co-operative from the operation of subsection (2) in respect of a particular financial year, either unconditionally or subject to conditions.

(4) The amount paid for a share when it is repurchased may be an amount that is less than the nominal value of the share but only if the books of the co-operative disclose that the amount paid is the net shareholder's equity per share in the undertaking of the co-operative.

Deposit, debentures or CCU's in lieu of payment when share repurchased

173. (1) If a co-operative repurchases a share of a member but the board is of the opinion that payment of the repurchase price would adversely affect the financial position of the co-operative, the co-operative may instead of paying it to the member:

- (a) apply the amount as an interest bearing deposit by the member with the co-operative; or
- (b) allot or issue debentures or CCU's of the co-operative to the member in satisfaction of the amount.

(2) Such a deposit, debenture or CCU bears interest during any period:

- (a) in the case of a co-operative with share capital, at the rate (or, where there is more than one rate, at the higher or highest rate) of dividend payable in respect of that period on the share capital of the co-operative; or
- (b) if the rate of dividend payable in respect of that period has not been determined—at the rate (or the higher or highest rate) payable in respect of the immediately preceding period for which a rate has been determined; or
- (c) in the case of a co-operative without share capital, at such rate as may be directed in respect of the co-operative by the Council by order published in the Gazette; or
- (d) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a), (b) or (c)—at that higher rate.

(3) Such a deposit, debenture or CCU is to be repaid to the member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the co-operative.

(4) Such a deposit, debenture or CCU must in any case be repaid within 10 years (or within such shorter period as the rules of the co-operative may require) after the repurchase of the shares concerned.

Cancellation of shares

174. A co-operative is to cancel any share purchased by or forfeited to the co-operative in accordance with this Act or the rules of the co-operative.

PART 8—VOTING**Division 1—Voting entitlements****Voting to which this Part applies**

175. This Part applies to all voting, whether at meetings, in ballots (including postal ballots) or by circulated resolution.

One member one vote

176. (1) Each member of a co-operative has 1 vote only.

(2) A right to vote is a personal right and is not attached to or conferred by any share in the co-operative.

(3) In the case of joint membership, the joint members have 1 vote only between them and that vote may be exercised (subject to the grant of any proxy or power of attorney) only by whichever of the joint members is the member whose name appears first in the register of members.

(4) Except as specifically authorised by this Act, the rules of a co-operative must not contain a provision that restricts the voting rights of members.

Rules of co-operative formed to carry on club may restrict voting rights

177. (1) The rules of a co-operative which has as a primary activity the operation, maintenance or carrying on of a club may provide for different classes of membership and restrict the voting rights attaching to membership of those different classes, but only if:

- (a) the Council approves of the provisions concerned; and
- (b) the membership of the class or classes entitled to full voting rights constitutes at least 40% of the total membership of the co-operative.

(2) Any such provision in the rules of a co-operative must not be amended except with the approval of the Council.

Effect of relevant share and voting interests on voting rights

178. (1) A member of a co-operative is not entitled to vote if another person (whether or not a member of the co-operative) has a relevant interest in any share held by the member or in the right to vote of the member.

(2) A member who is not entitled to vote because of this section may apply to the Council for a review of the matter.

(3) The Council may order that the member is entitled to vote if it is satisfied in the circumstances of the case that loss of the right to vote would be unjust or unreasonable, and any such order of the Council has effect accordingly.

Restrictions on proxy voting

179. (1) Voting by proxy at a meeting is permissible only if the rules of the co-operative allow it.

(2) A person may not act as a proxy unless he or she:

(a) is an active member of the co-operative; or

(b) in the case of an association or a federation, is entitled to represent a component co-operative or association of the association or federation on the association or federation.

(3) A person may not act as proxy for more than 5 persons on any one occasion.

Effect of unpaid borrowings

180. A member who has borrowed from a co-operative any money which is still unpaid is not entitled to vote on any question in respect of which the member's right to vote is excluded by the rules of the co-operative.

Inactive members not entitled to vote

181. A member is not entitled to vote if the member is not an active member of the co-operative.

Effect of sale etc. of shares

182. A member of a co-operative who has sold or transferred, or disposed of the beneficial interest in, the member's shares, or agreed to do any of those things, is not entitled to vote.

Restriction on voting entitlement under power of attorney

183. A person is not entitled to exercise, under a power of attorney, the power of a member of a co-operative to vote if the person has that power in respect of another member of the co-operative under another power of attorney.

Rights of representatives to vote etc,

184. A person appointed as provided by this Act to represent a member of a co-operative, association or federation:

- (a) is entitled to receive notice of all meetings in the same manner as the member represented; and
- (b) is entitled to exercise the same rights to vote as the member represented; and
- (c) is eligible to be elected to the board of directors if the member represented holds such qualifications as may be required for holding office as a director (other than any relating to age).

Other entitlements etc. of members unaffected by ineligibility to vote

185. A provision of this Act which disentitles a member of a co-operative to vote (either generally or in relation to a particular matter) does not affect any other right, entitlement, obligation or duty of the member as a member.

Vote of disentitled member to be disregarded

186. Any vote cast by or on behalf of a member of a co-operative when not entitled to vote is to be disregarded.

Division 2—Resolutions**Decisions of co-operative usually to be by ordinary resolution**

187. Except as otherwise provided in this Act or by the rules of the co-operative, every question for decision by a co-operative is to be determined by ordinary resolution.

Ordinary resolutions

188. An ordinary resolution is a resolution of a co-operative which is passed by a simple majority at a general meeting of the co-operative or in a postal ballot of members.

Special resolutions

189. (1) A special resolution is a resolution which is passed either by a two-thirds majority at a general meeting or by a three-quarters majority in a postal ballot of members.

(2) A special resolution may be passed by a postal ballot only if the rules of the co-operative so permit or this Act requires the special resolution to be passed at a postal ballot (including a special postal ballot).

How majority obtained is ascertained

190. (1) A resolution is passed by a particular majority at a meeting if that majority of the members of the co-operative who, being entitled to do so, vote in person or (if proxies are allowed) by proxy at the meeting vote in favour of the resolution.

(2) A resolution is passed by a particular majority in a postal ballot if that majority of the members of the co-operative who, being entitled to do so, cast formal votes in the postal ballot vote in favour of the resolution.

(3) A resolution is not to be considered to have been passed as a special resolution unless notice specifying the intention to propose the resolution as a special resolution has been duly given in accordance with this Act and the rules of the co-operative.

Declaration of passing of special resolution

191. (1) At any meeting for the purpose of passing a resolution as a special resolution, unless a poll is demanded, a declaration by the chairperson of the meeting that the resolution has been carried as a special resolution is conclusive evidence of the fact.

(2) A declaration by the returning officer for a postal ballot to pass a resolution as a special resolution that the resolution has been carried as a special resolution is conclusive evidence of the fact.

Registration of special resolution

192. (1) A special resolution does not take effect unless and until it is registered by the Registrar.

(2) An application for registration of a special resolution must be made in a form approved by the Registrar and must be made within 1 month or such other period as may be prescribed after the resolution is passed.

(3) The application must be accompanied by a copy of the resolution, signed by the chairperson of the meeting or the returning officer for the postal ballot, and countersigned by the secretary.

(4) If the Registrar is satisfied that the co-operative has complied with the provisions of this Act and the regulations, and that the resolution is not contrary to this Act or the regulations, the Registrar is to register the resolution.

(5) A certificate of registration of a special resolution given by the Registrar is, in favour of any person advancing money to the co-operative on the faith of the certificate or in favour of any guarantor of any such advance, conclusive evidence that the resolution was duly passed.

(6) This section does not apply to a special resolution altering the rules of a co-operative, as to which see section 113 (Alteration does not take effect until registered).

Postal ballots

193. (1) A postal ballot may be held as provided by the rules of a co-operative and is to be conducted in accordance with the regulations.

(2) On the declaration by the returning officer of the result of the ballot, the secretary of the co-operative is to make an entry in the minute book of the co-operative showing:

- (a) the number of formal votes cast in favour of the proposal concerned; and
- (b) the number of formal votes cast against the proposal; and
- (c) the number of informal votes cast.

Special postal ballots

194. (1) A special postal ballot is a postal ballot that is conducted as required by this section.

(2) The ballot must not be held less than 1 month after notice of the ballot is given to members so as to enable sufficient time for a meeting to discuss the proposal that is the subject of the ballot to be convened and held (whether by the board or on the requisition of members).

(3) The co-operative must send to each member (along with any other material required to be sent in connection with the postal ballot) a disclosure statement approved by the Registrar and containing information concerning:

- (a) the financial position of the co-operative;
- (b) the interests of the directors of the co-operative in the proposal with which the ballot is concerned, including any interests of the directors in another organisation concerned in the proposal;

- (c) any compensation or consideration to be paid to officers or members of the co-operative in connection with the proposal; and
- (d) such other matters as the Registrar directs.

(4) If the Registrar so requires, the statement is to be accompanied by a report made by an independent person approved by the Registrar concerning such matters as the Registrar directs.

Holding of postal ballot on requisition

195. (1) The board must conduct a postal ballot (including a special postal ballot) for the purpose of the passing of a special resolution on the requisition of:

- (a) any 50 or more members of the co-operative; or
- (b) any members who together are able to cast at least 5% of the total number of votes able to be cast at a meeting of the co-operative.

(2) A member is not entitled to be a requisitioning member unless the member is an active member.

(3) The following provisions apply to a requisition for a postal ballot:

- (a) it must specify the proposed special resolution to be voted on;
- (b) it must be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members);
- (c) it must be served on the co-operative by being lodged at the registered office of the co-operative.

(4) The postal ballot must be conducted as soon as practicable and in any case must be conducted within 2 months after the requisition is served.

Resolution by circulation of document—fewer than 50 members

196. (1) This section applies to a resolution that is required or permitted by this Act or the rules of the co-operative to be passed at a general meeting of a co-operative and includes a resolution appointing an officer or auditor or approving of or agreeing to any act, matter or thing but does not include a resolution of which special notice is required or that is required to be passed by a majority other than a simple majority.

(2) If all the members of a co-operative that has fewer than 50 members have signed a document containing a statement that they are in favour of a resolution to which this section applies in terms set out in the document, a resolution in those terms is to be considered to have been

passed at a general meeting of the co-operative held on the day on which the document was signed and at the time at which the document was last signed by a member or, if the members signed the document on different days, on the day on which, and at the time at which, the document was last signed by a member.

(3) The co-operative is to be considered to have held a general meeting at that time on that day and the document is to be considered to constitute a minute of that meeting.

(4) This section does not apply in relation to a document unless the document has been signed by each person who was a member of the co-operative at the time the document was last signed.

(5) For the purposes of this section, 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more members are together to be taken to constitute 1 document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.

(6) Any document that is attached to a document signed as mentioned in subsection (2) and is signed by the member or members who signed the last-mentioned document is, for the purposes of this Act, to be considered to have been laid before the co-operative at the general meeting referred to in that subsection.

(7) Nothing in this section affects or limits any rule of law relating to the effectiveness of the assent of members of a co-operative given to a document, or to any act, matter or thing, otherwise than at a general meeting of the co-operative.

Circulation of members resolutions etc.

197. (1) A co-operative must, on the requisition in writing of at least 10 members or of members who together are able to cast at least 5% of the total number of votes able to be cast at a meeting of the co-operative:

- (a) give to members of the co-operative entitled to have notice of the next annual general meeting sent to them notice of any resolution that may properly be moved and is intended to be moved at that meeting; and
- (b) circulate to members of the co-operative entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) Unless the co-operative otherwise resolves, the cost of doing so is to be paid by the requisitioning members.

(3) Notice of such a resolution is to be given to each member of the co-operative:

- (a) in the case of a member entitled to be sent notice of the meeting—by serving a copy of the resolution on the member in any manner permitted for service on the member of notice of the meeting; and
- (b) in the case of any other member—by giving notice of the general effect of the resolution in any manner permitted for giving the member notice of meetings of the co-operative.

(4) A statement referred to in subsection (1) is to be circulated, to each member of the co-operative entitled to be sent notice of the meeting, by serving a copy of the statement on the member in any manner permitted for service on the member of notice of the meeting.

(5) A copy or notice that subsection (3) or (4) requires to be served or given is to be served or given in the same manner and, so far as practicable, at the same time as notice of the meeting and, if it is not practicable for it to be served or given at that time, it is to be served or given as soon as practicable after that time.

(6) A co-operative is not bound under this section to give notice of any resolution or to circulate any statement unless:

- (a) a copy of the requisition signed by the requisitioning member or members (or, if there are 2 or more requisitioning members, 2 or more copies that between them contain the signatures of all the requisitioning members) is deposited at the registered office of the co-operative:
 - (i) in the case of a requisition requiring notice of a resolution—not less than 6 weeks before the meeting; and
 - (ii) in the case of any other requisition—not less than 1 week before the meeting; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the co-operative's expenses in giving effect to the requisition.

(7) If, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the co-operative, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection is to be considered to have been properly deposited for the purposes of this section.

(8) A co-operative is not bound under this section to circulate any statement if, on the application either of the co-operative or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(9) The Court may order the costs of the co-operative or of the other person on an application under subsection (8) to be paid in whole or in part by the requisitioning member or members, even though they are not parties to the application.

(10) Despite anything in the co-operative's rules, the business that may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section, and, for the purposes of this subsection, notice is to be considered to have been so given despite the accidental failure to give notice to a member or members.

(11) If this section is contravened, the co-operative and any officer of the co-operative who is involved in the contravention are each guilty of an offence.

Maximum penalty: 10 penalty units.

(12) A member is not entitled to be a requisitioning member unless the member is an active member.

Division 3—Meetings

Holding of meetings

198. (1) The annual general meeting of a co-operative must be held within 5 months after the close of the financial year of the co-operative or within such further time as may be prescribed.

(2) Any other meetings of a co-operative are to be held or may be called as provided by the rules of the co-operative.

Quorum must be present

199. At any meeting of a co-operative no item of business is to be transacted unless a quorum of members is present during the time when the meeting is considering that item, and the quorum is to be as required by the rules of the co-operative.

No entitlement to be present at meetings where membership required to be cancelled

200. At any meeting of a co-operative, a member whose membership is required to be cancelled under Part 6 (Active membership requirements) is not entitled to be present.

Decision at meetings

201. (1) Every question for decision by a meeting of a co-operative is to be determined by a majority of members present in person at the meeting and voting, but this is subject to the other provisions of this Act and to the rules of the co-operative.

(2) Unless a poll is demanded by at least 5 members, the question is to be determined by a show of hands.

(3) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to an additional or casting vote.

Convening of general meeting on requisition

202. (1) Despite anything in the rules of a co-operative, the board must convene a general meeting of the co-operative on the requisition in writing of:

- (a) any 50 or more members of the co-operative; or
- (b) any members who together are able to cast at least 5% of the total number of votes able to be cast at a meeting of the co-operative.

(2) A member is not entitled to be a requisitioning member unless the member is an active member.

(3) The following provisions apply to a requisition for a general meeting:

- (a) it must state the objects of the meeting;
- (b) it must be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members);
- (c) it must be served on the co-operative by being lodged at the registered office of the co-operative.

(4) The meeting must be convened and held as soon as practicable and in any case must be held within 2 months after the requisition is served.

(5) If the board does not convene the meeting within 21 days after the requisition is served, the following provisions apply:

- (a) the requisitioning members (or any of them representing at least half their aggregate voting rights) may convene the meeting in the same manner as nearly as possible as meetings are convened by the board;
- (b) for that purpose they may request the co-operative to supply a written statement setting out the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the co-operative;
- (c) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made;
- (d) the meeting convened by the requisitioning members must be held not later than 3 months after the requisition is served;
- (e) any reasonable expenses incurred by the requisitioning members because of the board's failure to convene the meeting must be paid by the co-operative;
- (f) any such amount required to be paid by the co-operative is to be retained by the co-operative out of any money due from the co-operative by way of fees or other remuneration in respect of their services to such of the directors as were in default.

Minutes

203. Minutes of each meeting of the co-operative are to be kept and confirmed as prescribed. Minutes are to be kept in the English language.

PART 9—MANAGEMENT AND ADMINISTRATION OF CO-OPERATIVES

Division 1—The Board

Board of directors

204. (1) The business and operations of a co-operative are to be managed and controlled by a board of directors, and for that purpose the board has and may exercise the powers of the co-operative as if they had been expressly conferred on the board by a general meeting of the co-operative.

(2) The powers of the board are subject to any restrictions imposed by this Act or by the rules of the co-operative.

(3) The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

(4) If a person who vacates office as director purports to do an act as director, that act is valid, in relation to a person dealing with the co-operative in good faith and for value and without actual knowledge of the circumstance because of which the vacation of office occurred, as if that office had not been vacated.

(5) This section does not affect the operation of Division 3 (Persons having dealings with co-operatives) of Part 3.

Directors to be elected

205. (1) The directors are to be elected in the manner specified in the rules of the co-operative. In addition, the directors of an association or federation may be elected in the manner provided by the regulations.

(2) A co-operative must have at least 3 directors.

(3) Each director must be a natural person who is at least 18 years of age.

(4) The first directors of the co-operative are to be elected at the meeting for its formation except in the case of a company which becomes registered under this Act, in which case the directors holding office at the date of registration are to be the first directors.

(5) The Registrar is not to register a rule that specifies the manner of election of directors or any alteration of such a rule unless the Registrar approves of the manner of electing directors that will result from the rule or alteration.

Qualification for directors (other than associations and federations)

206. (1) This section does not apply to an association or federation.

(2) A person is not eligible to be elected as a director of a co-operative unless the person:

- (a) is an active member of the co-operative; or
- (b) holds such other qualifications as may be specified in the rules of the co-operative as qualifying a person to be a director;
- (c) is eligible for election as provided by section 216 (Election of employees as directors).

(3) For each director who is not an active member of the co-operative there must be at least 3 directors who are active members.

(4) A director who is an active member of the co-operative is to be counted for the purposes of subsection (3) even though he or she was elected as provided by section 216 (Election of employees as directors).

(5) A person is to be considered to be an active member of a co-operative for the purposes of election as a director if the person is a director, executive officer or member of a body corporate which is an active member of the co-operative and has been appointed by the body corporate to represent it as a director of the co-operative.

Qualifications for directors of associations and federations

207. (1) A person is not eligible to be elected as a director of an association unless the person is a member of a component co-operative of the association or is otherwise qualified under the rules of the association to be a director.

(2) A person is not eligible to be elected as a director of a federation unless the person is a member of a component co-operative of an association which is a member of the federation or is otherwise qualified under the rules of the federation to be a director.

Disqualification from being a director

208. (1) A person is disqualified from being a director of a co-operative if:

- (a) the person is an insolvent under administration (as defined in the Corporations Law); or
- (b) the person is a mentally incapacitated person or the subject of an order under a law of another State or of a Territory relating to mental health; or
- (c) the person has been convicted of an offence and that conviction disqualifies a person from being a director, as provided by subsection (2).

(2) Each of the following convictions disqualifies a person from being a director:

- conviction for any offence if the person is sentenced to a period of imprisonment without the option of a fine;
- conviction on indictment for an offence against a law of the State or a law of any other place, in connection with the promotion, formation or management of a body corporate;
- conviction for an offence against a law of the State or a law of any other place involving fraud or dishonesty that is punishable by imprisonment for a period of at least 6 months;
- conviction for a contravention of section 232, 590, 591, 592, 595, 996 or 1307, of Part 6.6, or Division 2 of Part 7.11 of the Corporations Law, or of a previous law corresponding to any of those provisions.

Meetings of the board

209. (1) Meetings of the board are to be held as often as may be necessary for properly conducting the business and operations of the co-operative and must in any case be held at least quarterly.

(2) A quorum of a meeting of the board is as provided by the rules of the co-operative, but must be more than half the number of directors.

(3) The chairperson of the board may be elected either by the board or at a general meeting of the co-operative, and is to be elected, hold office, and retire, and may be removed from office, as provided by the rules of the co-operative.

Transaction of business outside meetings

210. (1) The board of a co-operative may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the board, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the board.

(2) The board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purpose of the approval of a resolution or the holding of a meeting under this section, the chairperson of the board and each member of the board have the same voting rights as they have at an ordinary meeting of the board.

(4) A resolution approved under subsection (1) is to be recorded in the minutes of the meetings of the board.

(5) Papers may be circulated among members of the board for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

Deputy directors

211. (1) In the absence of a director from a meeting of the board, a person appointed by the board in accordance with the rules of the co-operative, association or federation concerned to act as a deputy for that director may act in the place of that director.

(2) The rules of the co-operative, association or federation may include provisions regulating the term of office, vacation of or removal from office, and remuneration of a deputy.

Filling of vacancies on board

212. (1) A casual vacancy on the board of a co-operative (being a vacancy under section 218) is to be filled by election by the members held:

- (a) at a meeting of the co-operative; or
- (b) by means of a postal ballot; or
- (c) in the manner specified in the rules of the co-operative for the ordinary election of directors; or
- (d) in such other manner as the Registrar may approve in a particular case.

(2) If at any time the number of directors of a co-operative is the same as or less than the number of directors required to constitute a quorum of the board:

- (a) the board may appoint sufficient directors so that the number of directors is 1 more than a quorum; and
- (b) for the purpose only of enabling the board to make such an appointment, the number of directors required to constitute a quorum is the number of directors at that time.

(3) Subsection (2) does not affect the requirement that a casual vacancy on the board be filled.

(4) The term of office of a director appointed under this section to fill a vacancy is the remainder of the vacating director's term of office.

Delegation by board

213. (1) If the rules of a co-operative so provide, the board may, by resolution, delegate to a director or committee of 2 or more directors the exercise of such of the board's functions (other than this power of delegation) as are specified in the resolution.

(2) The co-operative or the board may, by resolution, revoke wholly or in part any such delegation.

(3) A function, the exercise of which has been delegated under this section, may be exercised from time to time in accordance with the terms of the delegation while the delegation remains unrevoked.

(4) A delegation under this section may be made subject to conditions or limitations as to the exercise of any of the powers delegated, or as to time or circumstance.

(5) Despite any delegation under this section, the board may continue to exercise all or any of the functions delegated.

Exercise of functions on behalf of board

214. (1) If a function is exercised by a director either alone or with another director or other directors and the exercise of the function is evidenced in writing, signed by the director in the name of the board or in his or her own name on behalf of the board, the function is to be considered to have been exercised by the board.

(2) This applies whether or not a resolution delegating the exercise of the function to the director was, when the power was exercised, in force and whether or not any conditions or limitations on the delegation were observed by the director exercising the function.

(3) An instrument purporting to be signed by a director as referred to in subsection (1) is in all courts and before all persons acting judicially to be received in evidence as if it were an instrument executed by the co-operative under seal.

(4) Until the contrary is proved, the instrument is to be taken to be an instrument signed by a delegate of the board under this section.

Minister may appoint director

215. (1) The Minister may, from time to time, by notification published in the Gazette, appoint a person to be a director of 'any co-operative which is indebted to the Crown in respect of a loan or grant of money.

(2) The provisions of this Act (other than this section) and of the rules of the co-operative relating to the qualification, disqualification, remuneration, removal from office and term of office of directors and to the vacation of office by directors do not apply to or in respect of a director appointed under this section.

(3) A director appointed under this section holds office as an additional director and is not to be counted in ascertaining the number of directors for the election of whom provision is made in the rules of the co-operative or in ascertaining whether a quorum is present at any meeting of the board.

(4) A director appointed under this section has all the powers, rights, authorities, functions, privileges, immunities, duties, obligations and liabilities of a director elected in accordance with the rules of the co-operative, except as provided by subsection (2).

(5) A director appointed under this section is, unless he or she is an officer of the Public Service or a member of the Legislative Council or of the Legislative Assembly of New South Wales, to be paid such fees, allowances and expenses as the Governor may, either generally or in any particular case, approve.

(6) Those fees, allowances and expenses are to be paid by the co-operative unless the Minister otherwise directs in a particular case.

Election of employees as directors

216. (1) An employee of a co-operative may be elected as a director of the co-operative as provided by this section even if he or she is not a member of the co-operative.

(2) The rules of a co-operative may provide for 1 employee of the co-operative to be nominated by the directors of the co-operative for election by the members of the co-operative as a director of the co-operative and, if so nominated, to be so elected.

(3) The rules of:

- (a) a co-operative the primary activity of which is or includes the provision of employment for its members within any business, trade or industry carried on by the co-operative; or
- (b) a co-operative approved by the Council,

may provide that all directors of the co-operative or such number of those directors as may be specified in or determined in accordance with the rules are to be or, as may be determined by the rules, may be employees of the co-operative.

(4) The rules of a co-operative to which subsection (3) applies may make provision as referred to in subsection (3) or as referred to in subsection (2), or both.

(5) If the rules of a co-operative to which subsection (3) (a) applies provide for the election of employees of the co-operative as directors of the co-operative, any member of the co-operative may, in accordance with the rules, nominate an employee of the co-operative for election as a director of the co-operative.

(6) An employee of a co-operative approved by the Council as referred to in subsection (3) (b) is not to be elected as a director of the co-operative except in such manner, if any, and in accordance with such conditions, if any, as may be determined from time to time by the Council and of which notice in writing has been served on the co-operative.

(7) In this section, “employee”, in relation to a co-operative, includes a person, or the employee of a person, who provides the co-operative with secretarial and administrative services.

(8) The removal of a director elected as provided by this section does not operate to terminate or otherwise affect the person’s employment on which qualification for election was based, unless the conditions of the person’s employment otherwise provide.

Revocation of approval etc.

217. (1) If the Registrar is of the opinion that a co-operative has ceased to have as a primary activity the provision of employment for its members within any business, trade or industry carried on by the co-operative, the Registrar is to serve notice in writing on the co-operative accordingly.

(2) The Registrar's notice is to specify the date on which each director of the co-operative who is an employee of the co-operative elected otherwise than in accordance with the rules of the co-operative referred to in section 216 (2) is to vacate office as a director.

(3) The Council may revoke an approval under section 216 (3) at any time by notice in writing served on the co-operative and if the Council does so an employee of the co-operative must not (except in accordance with rules of the co-operative referred to in section 216 (2)) be elected as a director of the co-operative.

(4) The office of a director of a co-operative on which a notice under subsection (1) or (3) has been served is, if the director is an employee of the co-operative elected otherwise than in accordance with rules of the co-operative referred to in section 216 (2), vacated on the date specified in the notice unless (before that date) the Council has approved the co-operative under section 216 (3).

(5) The office of a director of a co-operative elected in accordance with section 216 (2) is vacated if the director ceases to hold the qualification by virtue of which the director was elected.

(6) In this section, “**employee**”, in relation to a co-operative, has the same meaning as in section 216.

Removal from and vacation of office

218. (1) The directors hold office and must retire, and may be removed from office, as provided by the rules of the co-operative.

(2) A director vacates office in such circumstances (if any) as are provided in the rules of the co-operative and in any of the following cases:

- (a) if the director is disqualified from being a director as provided by section 208;
- (b) if the director absents himself from 3 consecutive ordinary meetings of the board without its leave;
- (c) on the expiration of 1 month's notice in writing of the director's intention to resign office, given by the director to the board;

- (d) if the director is removed from office by ordinary resolution of the co-operative;
- (e) if the person ceases to hold the qualification by reason of which the person was qualified to be a director;
- (f) if the director becomes an employee of the co-operative (unless elected under section 216);
- (g) if an administrator of the co-operative's affairs is appointed under Division 6 of Part 12;
- (h) as provided by section 217.

Minutes

219. Minutes of each meeting of the board are to be kept and confirmed as prescribed. The minutes are to be kept in the English language.

Division 2—Duties and liabilities of directors, officers and employees

Meaning of “officer”

220. In this Division:

“**officer**”, in relation to a co-operative, means:

- (a) a director or secretary of the co-operative; or
- (b) a person who is concerned, or takes part, in the management of the co-operative, whether or not as a director;
- (c) a receiver, or receiver and manager, of property of the co-operative, or any other authorised person who enters into possession or assumes control of property of the co-operative for the purpose of enforcing any charge; or
- (d) an official manager or a deputy official manager of the co-operative; or
- (e) a liquidator of the co-operative; or
- (f) an administrator appointed to conduct the affairs of the co-operative under Division 6 of Part 12; or
- (g) a trustee or other person administering a compromise or arrangement made between the co-operative and another person or other persons.

Officers must act honestly

221. (1) An officer of a co-operative must at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office, both in the State and elsewhere.

(2) The penalty applicable to a contravention of this section is:

- (a)** if the contravention was committed with intent to deceive or defraud the co-operative, members or creditors of the co-operative or creditors of any other person or for any other fraudulent purpose—200 penalty units or imprisonment for 5 years, or both;
or
- (b)** otherwise—50 penalty units.

Reasonable degree of care and diligence required

222. (1) An officer of a co-operative must at all times exercise a reasonable degree of care and diligence in the exercise of his or her powers and the discharge of his or her duties, both in the State and elsewhere.

Maximum penalty: 10 penalty units.

(2) An officer is not liable to be convicted for a contravention of this section if the co-operative has resolved by ordinary resolution to forgive the contravention.

Improper use of information or position

223. (1) An officer or employee or former officer or employee of a co-operative must not make improper use of information acquired by reason of his or her position as such an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.

(2) An officer or employee of a co-operative must not make improper use of his or her position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.

Court may order payment of compensation

224. (1) If the court that convicts a person for a contravention of a provision of this Division is satisfied that a co-operative has suffered loss or damage as a result of the act or omission that constituted the offence, the court may (in addition to imposing a penalty) order the convicted person to pay a specified amount of compensation to the co-operative.

(2) Any such order may be enforced as if it were a judgment of that court.

Recovery of damages by co-operative

225. (1) If a person contravenes a provision of this Division in relation to a co-operative, the co-operative may, whether or not the person has been convicted of an offence in respect of that contravention, recover an amount from the person as a debt due to the co-operative.

(2) The amount that the co-operative is entitled to recover from the person is:

- (a) if the person or any other person made a profit as a result of the contravention—an amount equal to that profit; and
- (b) if the co-operative has suffered loss or damage as a result of the contravention—an amount equal to that loss or damage.

Other duties and liabilities not affected

226. This Division has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of the person's office or employment in relation to a co-operative and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

Insurance against default by officers and employees

227. A co-operative must effect and maintain a policy of insurance for the indemnity of the co-operative against any pecuniary loss to the co-operative resulting from any act of fraud or dishonesty committed:

- (a) by any officer of, or other person employed by, the co-operative in connection with his or her duties; or
- (b) if a person contracts to provide a secretarial or administrative service to the co-operative—by that person or any of his or her employees in connection with the provision of any such service.

Indemnification of officers and auditors

228. (1) Any provision, whether contained in the rules or in a contract with a co-operative or elsewhere, for exempting any officer or auditor of the co-operative from, or indemnifying the officer or auditor against, any liability that by law would otherwise attach to the officer or auditor in respect of any negligence, default, breach of duty or breach of trust of which the officer or auditor may be guilty in relation to the co-operative is void.

(2) Subsection (1) does not apply in relation to a contract of insurance.

(3) Despite subsection (1), a co-operative may, pursuant to its rules or otherwise, indemnify an officer or auditor against any liability incurred by the officer or auditor in defending any proceedings, whether civil or criminal, in which judgment is given in the officer's or auditor's favour or in which the officer or auditor is acquitted or in connection with any application in relation to any such proceedings in which relief is under this section granted to the officer or auditor by the court.

(4) If in proceedings for negligence, default or breach of duty against an officer or auditor of a co-operative it appears to the court that the person is or may be liable in respect of the negligence, default or breach of duty but acted honestly and reasonably and that, having regard to all the circumstances of the case (including those connected with the person's appointment), the person ought fairly to be excused for the negligence, default or breach of duty, the court may relieve the person, either wholly or partly, from the person's liability on such terms as the court thinks fit.

(5) If an officer or auditor of a co-operative has reason to believe that any claim will or might be made against him or her in respect of any negligence, default or breach of duty in relation to the co-operative, the person may apply to the Court for relief, and the Court then has the same power to relieve the person as it would have under this section if it had been a court before which proceedings against the officer or auditor for negligence, default or breach of duty had been brought.

(6) If any case to which subsection (4) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if satisfied that the defendant should in pursuance of that subsection be relieved either wholly or partly from the liability sought to be enforced against him or her, withdraw the case in whole or in part from the jury and direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.

(7) In this section, "officer" includes an employee of a co-operative and any other person empowered under the rules of the co-operative to give directions in regard to the business of the co-operative.

Adoption of Corporations Law provisions concerning officers of co-operatives

229. (1) The provisions of sections 589–598 and 1307 of the Corporations Law apply to and in respect of a co-operative in the same way as they apply to and in respect of a company.

(2) Those provisions so apply with such modifications as may be prescribed and as if:

- (a) a reference in those provisions to a company were a reference to a co-operative; and
- (b) a reference in those provisions to the Commission were a reference to the Registrar; and
- (c) the reference in section 591 to section 289 were a reference to the provision of this Act relating to the keeping of accounts of a co-operative.

Division 3—Restrictions on directors and officers

Directors' remuneration

230. (1) A director of a co-operative must not be paid any remuneration for his or her services as a director other than remuneration of such amount as may be approved at a general meeting of the co-operative.

(2) The total amount of the remuneration payable in any year to the directors of a co-operative must not exceed the maximum amount (if any) fixed from time to time by the Council.

Certain persons not to manage co-operatives

231. (1) A person must not without the leave of the Court be a director of or in any way (whether directly or indirectly) concerned in or take part in the management of a co-operative if the person:

- (a) is an insolvent under administration; or
- (b) was convicted of an offence within the past 5 years (whether before or after the commencement of this section) and that conviction disqualifies a person from being a director, as provided by section 208; or
- (c) was released from prison within the past 5 years if the sentence of imprisonment was in respect of a conviction referred to in paragraph (b).

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) In any proceeding for a contravention of this section, a certificate by a prescribed authority stating that a person was released from prison on a specified date is evidence that the person was released from prison on that date.

(3) When granting leave under this section, the Court may impose such conditions or restrictions as it thinks fit and a person must not contravene any such condition or restriction.

(4) A person intending to apply for leave of the Court under this section must give not less than 21 days' notice to the Registrar of the person's intention to apply.

(5) The Court may at any time, on the application of the Registrar, revoke leave granted by the Court under this section.

(6) Expressions used in this section have the same meaning as in the Corporations Law.

Restrictions on loans to directors

232. (1) Except as provided by this section, a co-operative must not (whether directly or indirectly) make a loan to or give a guarantee or provide security in connection with a loan made or to be made by another person to:

- (a) a director of the co-operative, a spouse of such a director, or a relative of such a director or spouse; or
- (b) a director of a body corporate that is related to the co-operative, a spouse of such a director, or a relative (within the meaning of the Corporations Law) of such a director or spouse; or
- (c) a trustee of a trust under which a person referred to in paragraph (a) or (b) has a beneficial interest if the loan is made to the trustee in the capacity as trustee; or
- (d) a trustee of a trust under which a body corporate has a beneficial interest, if a person referred to in paragraph (a) or (b) has, or 2 or more such persons together have, a relevant interest or relevant interests (within the meaning of the Corporations Law) in shares in the body corporate the nominal value of which is not less than 10% of the nominal value of the issued share capital of the body corporate, being a loan made to the trustee in the capacity as trustee; or
- (e) a body corporate, if a person referred to in paragraph (a) or (b) has, or 2 or more such persons together have, a relevant interest or relevant interests (within the meaning of the Corporations Law) in shares in the body corporate the nominal value of which is not less than 10% of the nominal value of the issued share capital of the body corporate.

(2) Subsection (1) does not apply to:

- (a) anything done by a co-operative to provide a person with funds to meet expenditure incurred or to be incurred by the person for the purposes of the co-operative or for the purpose of enabling the person properly to perform duties as an officer of the co-operative; or
- (b) anything done by a co-operative to provide a person who is engaged in the full-time employment of the co-operative with funds to meet expenditure incurred or to be incurred by the person in purchasing or otherwise acquiring premises to be used by the person as the person's principal place of residence.

(3) Subsection (2) does not authorise the making of a loan, the entering into any guarantee or the provision of any security except:

- (a) with the prior approval of the co-operative given at a general meeting of the co-operative at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security are disclosed; or
- (b) on condition that, if the making of the loan, the giving of the guarantee or the provision of the security is not approved by the co-operative at or before the next annual general meeting of the co-operative, the loan be repaid or the liability under the guarantee or security be discharged within 6 months after the conclusion of that meeting.

(4) A co-operative that makes a loan, gives a guarantee or provides security in contravention of this section is not guilty of an offence but a person involved in the contravention is guilty of an offence.

Maximum penalty:

- (a) if the offence was committed with intent to deceive or defraud the co-operative, members or creditors of the co-operative or creditors of any other person or for any other fraudulent purpose—200 penalty units or imprisonment for 5 years, or both; or
- (b) otherwise—50 penalty units.

(5) It is a defence to a prosecution for a contravention of this section if it is proved that the defendant had no knowledge of the making of the loan, the giving of the guarantee or the provision of the security.

(6) Nothing in this section prevents the co-operative from recovering the amount of, or of any interest on, any loan made, or any amount for which it becomes liable under any guarantee given or in respect of any security provided, contrary to this section.

(7) If a person has made a loan in relation to which a co-operative has given a guarantee or provided security in contravention of this section, the person may enforce the guarantee or security against the co-operative only if:

- (a) a certificate signed by a director and a secretary of the co-operative certifying that the co-operative was not prohibited by this section from giving the guarantee or providing the security was given to the person before the guarantee was given or the security was provided; and
- (b) the person did not know, and had no reason to believe, that the certificate was incorrect.

(8) A director or secretary of a co-operative must not give such a certificate to a person knowing that it is false.

Maximum penalty: 10 penalty units.

Restriction on directors of certain co-operatives selling land to co-operative

233. A director of a co-operative the primary activity of which is or includes the acquisition of land in order to settle or retain people on the land and of providing any community service or benefit must not sell land to the co-operative except pursuant to and in accordance with a special resolution of the co-operative.

Division 4—Directors' interests in contracts etc.

Disclosure of interests in contracts, property, offices etc.

234. (1) A director of a co-operative who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the co-operative must, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature and extent of the interest at a meeting of the directors.

(2) A director is not required to disclose the nature and extent of an interest that consists only of being a member or creditor of a body corporate that is interested in a contract or proposed contract with the co-operative if the interest of the director may properly be regarded as not being a material interest.

Certain interests to be disregarded

235. (1) A director of a co-operative is not to be taken to be, or to have been at any time, interested in a contract or proposed contract merely because:

- (a) if the contract or proposed contract relates to a loan to the co-operative—the director has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or
- (b) if the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a body corporate that is related to the co-operative—the director is a director of that body corporate.

(2) This section has effect not only for the purposes of this Act but also for the purposes of any rule of law, but does not affect the operation of any provision in the rules of a co-operative.

Requirements for notice

236. (1) A director may give a general notice to the other directors of a co-operative to the effect that the director is an officer or member of a specified body corporate or a member of a specified firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with that body corporate or firm.

(2) Such a general notice is a sufficient declaration of interest in relation to any contract so made or proposed to be made if:

- (a) the notice states the nature and extent of the director's interest in the body corporate or firm; and
- (b) when the question of confirming or entering into the contract is first taken into consideration, the extent of the director's interest in the body corporate or firm is not greater than is stated in the notice; and
- (c) the notice is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

Declaration of conflict of interests

237. (1) A director of a co-operative who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director must declare at a meeting of the directors of the co-operative the fact and the nature, character and extent of the conflict.

(2) If the director holds the office or possesses the property concerned when the person becomes a director, the declaration must be made at the first meeting of directors held after:

- (a) the person becomes a director; or

- (b) the relevant facts as to the holding of the office or the possession of the property come to the person's knowledge,

whichever is later.

(3) If the director begins to hold the office or comes into possession of the property after becoming a director, the declaration must be made at the first meeting of directors held after the relevant facts as to the holding of the office or the possession of the property come to the director's knowledge.

Declarations to be recorded in minutes

238. Every declaration under this Division is to be recorded in the minutes of the meeting at which it was made.

Division does not affect other laws or rules

239. Except as provided in section 235, this Division is in addition to, and not in derogation of, the operation of any rule of law or any provision in the rules of the co-operative restricting a director from having any interest in contracts with the co-operative or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as a director.

Penalty

240. A director who contravenes this Division is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

Certain interests need not be declared

241. The interest in a contract or proposed contract that a director is required by this Division to declare does not include an interest in:

- (a) a contract or proposed contract for the purchase of goods by the director from the co-operative; or
- (b) a contract or proposed contract for the sale of agricultural products or live stock by the director to the co-operative; or
- (c) a contract or proposed contract that, pursuant to the rules of the co-operative, may be made between the co-operative and a member, or
- (d) a contract or proposed contract of a class of contracts prescribed for the purposes of this section,

but only if the contract is made in good faith, in the ordinary course of the business of the co-operative, and on such terms as are usual and proper in similar dealings between the co-operative and its members.

Pecuniary interest disentitles director from voting

242. (1) A director of a co-operative must not vote on any question involving a matter in which the director, or any body corporate of which the director is the appointed representative, has (otherwise than as a member and in common with the other members of the co-operative) any direct or indirect pecuniary interest.

(2) This section does not extend to or in respect of a vote relating to a transaction referred to in section 241.

(3) Any vote cast in contravention of this section is not to be counted.

Division 5—Accounts and audit

Requirements for accounts and accounting records

243. (1) A co-operative must:

- (a) keep accounting records and prepare accounts and consolidated accounts as required by the regulations; and
- (b) ensure that those accounts are audited in accordance with the regulations.

Maximum penalty: 20 penalty units.

(2) Without limiting the matters for which regulations under this section may make provision, the regulations may make provision for or with respect to the following:

- (a) any matter for which provision is made by or under Parts 3.6 (Accounts) and 3.7 (Audit) of the Corporations Law (including the conferring of jurisdiction on a court);
- (b) requiring accounts and consolidated accounts to be prepared in accordance with any accounting standards in force for the purposes of Parts 3.6 and 3.7 of the Corporations Law (with or without modifications specified in the regulations);
- (c) requiring the submission of accounts or consolidated accounts to the Australian Accounting Standards Board;
- (d) requiring the adoption by a co-operative of the same financial year for each entity that the co-operative controls;
- (e) prescribing the qualifications and the functions of auditors of the accounts of a co-operative and providing for the appointment, the holding of office by, the remuneration of and the removal of auditors;

- (f) the duties of directors of a co-operative in relation to the preparation, the auditing and the laying before meetings of members of accounts and consolidated accounts, including the reports to be prepared by directors in relation to those accounts and consolidated accounts;
- (g) the sending of copies of accounts and reports in relation to accounts to members.

(3) The regulations may make provision for a matter for which the Corporations Law makes provision by adopting (with or without modification) provisions of the Corporations Law.

Power of Registrar to grant exemptions

244. (1) The Registrar may, by order in writing, exempt a co-operative or any class of co-operatives from compliance with all or specified provisions of the regulations made for the purposes of this Part.

(2) Any such exemption:

- (a) may be given subject to conditions; and
- (b) may be limited as to time; and
- (c) may be varied, suspended or revoked by the Registrar by a further order in writing.

(3) An order under this section takes effect:

- (a) if it applies to a particular co-operative—when the order is served on the co-operative; or
- (b) if it applies to a class of co-operatives—when the order is published in the Gazette.

Meaning of “entity” and “control”

245. In this Division, the terms “entity” and “control” have the same meanings in relation to a co-operative as they have under the Corporations Law in relation to a corporation.

Disclosure by directors

246. The directors of a co-operative must make such disclosures in relation to the affairs of the co-operative and of any entity that the co-operative controls as may be required by the regulations.

Maximum penalty: 20 penalty units.

Protection of auditors etc.

247. (1) An auditor of a co-operative has qualified privilege in proceedings for defamation in respect of:

- (a) any statement that the auditor makes, orally or in writing, in the course of his or her duties as auditor; or
- (b) the giving of any notice, or the sending of any copy of accounts, consolidated accounts or a report, to the Registrar under this Act.

(2) A person has qualified privilege in proceedings for defamation:

- (a) in respect of the publishing of any document prepared by an auditor in the course of the auditor's duties and required by or under this Act to be lodged with the Registrar, whether or not the document has been so lodged; or
- (b) in respect of the publishing of any statement made by an auditor as mentioned in subsection (1).

(3) This section does not limit or affect any right, privilege or immunity that an auditor or other person has, apart from this section, as defendant in proceedings for defamation.

Financial year

248. (1) The financial year of a co-operative is to end on such day in each calendar year as is provided for by the rules of the co-operative.

(2) The first financial year of a co-operative may extend from the date of its registration to a date not later than 18 months from the date of its registration.

(3) On an alteration of the rules of a co-operative altering its financial year, the alteration may provide either that the financial year current at the date of alteration is to be extended for a period not exceeding 6 months or that the financial year next following the financial year that is so current is to be a period exceeding 12 months but not exceeding 18 months.

Division 6—Registers, records and returns**Registers to be kept by co-operatives**

249. (1) A co-operative must keep the following registers in the English language:

- (a) a register of members, directors and shares (if any);
- (b) a register of any loans to, securities given by, debentures issued by and deposits received by the co-operative;

- (c) a register of any loans made by or guaranteed by the co-operative, and of any securities taken by the co-operative;
- (d) a register of CCU's issued by the co-operative;
- (e) a register of memberships cancelled under Part 6 (Active membership requirements);
- (f) a register of fixed assets of the co-operative;
- (g) such other registers as the regulations may require.

(2) The registers must be kept in such manner and contain such particulars as may be prescribed.

Maximum penalty: 20 penalty units.

Inspection of registers etc.

250. (1) A co-operative must have at its registered office and available during normal office hours for inspection by any member or creditor free of charge the following:

- (a) a copy of this Act and the regulations;
- (b) a copy of the rules of the co-operative;
- (c) a copy of the accounts of the co-operative and of each subsidiary of the co-operative, in respect of the financial year of the co-operative or subsidiary then last past, together with any report of the auditors or directors of the co-operative or subsidiary concerning those accounts;
- (d) the register of directors, members and shares;
- (e) the register of loans to, securities given by, debentures issued by and deposits received by the co-operative;
- (f) the register of CCU's issued by the co-operative;
- (g) such other registers as the regulations provide are to be open for inspection under this section.

(2) Any person is entitled to inspect the register of members, directors and shares of a co-operative during the normal office hours of the co-operative.

(3) A person who is entitled under this section to inspect a register of a co-operative is in addition entitled to make a copy of entries in the register and to do so free of charge unless the rules of the co-operative require a fee to be paid, in which case on payment of the required fee.

(4) A co-operative is guilty of an offence if it fails to permit a person to exercise an entitlement that the person has under this section or fails to give the person all reasonable assistance in the exercise of such an entitlement.

(5) A co-operative must have at its office and available during normal office hours for inspection by any member free of charge the minutes of the meetings of the co-operative.

Maximum penalty: 20 penalty units.

Notice of appointment etc. of directors and officers

251. (1) A co-operative must give notice to the Registrar of the appointment of a person as a director, principal executive officer or secretary of the co-operative or any subsidiary of the co-operative, and of the cessation of any such appointment.

(2) The notice must be in writing in the prescribed form, must be given within 14 days after the appointment or cessation of appointment and must specify the prescribed particulars of the appointment or cessation of appointment.

Maximum penalty: 20 penalty units.

Returns

252. A co-operative must send to the Registrar at least 14 days before each annual general meeting of the co-operative is held each of the following:

- (a) a list in the prescribed form specifying the directors and the principal executive officers of the co-operative and of each subsidiary of the co-operative, as at the date of the return;
- (b) a copy of the accounts of the co-operative in respect of its financial year then last past;
- (c) a copy of the accounts of each subsidiary of the co-operative in respect of the financial year of the subsidiary then last past;
- (d) a copy of any report by the auditors or directors of the co-operative or subsidiary on the accounts referred to in paragraphs (b) and (c);
- (e) a return in the prescribed form containing such other particulars as may be prescribed.

Maximum penalty: 20 penalty units.

List of members to be furnished at request of Registrar

253. A co-operative must at the request in writing of the Registrar send to the Registrar within such time and in such manner as the Registrar specifies a full list of the members of the co-operative and of each subsidiary of the co-operative, together with such particulars with regard to those members as the Registrar specifies in the request.

Maximum penalty: 20 penalty units.

Special return to be furnished at request of Registrar

254. The Registrar may by direction in writing require a co-operative to furnish to the Registrar a special return in the form, within the time, and relating to the subject-matter, specified by the Registrar, and the co-operative must comply with the direction.

Maximum penalty: 20 penalty units.

Division 7—Name and registered office**Name to include certain matter**

255. (1) The name of a co-operative may consist of words, numbers or a combination of both.

(2) The name of a co-operative must include the word “Co-operative” or the abbreviation “Co-op.”.

(3) The word “Limited” or the abbreviation “Ltd.” must be the last word of the name.

Approval for omission of “Limited”

256. (1) In the case of a co-operative the rules of which prohibit the payment of dividends or the distribution of assets to members, the Registrar may by order in writing, approve of the omission from the name of the word “Limited”.

(2) Such an approval may be granted subject to conditions and the conditions to which an approval is subject may be varied from time to time by the Registrar by notice in writing to the co-operative.

(3) Any conditions to which the Registrar’s approval is subject are binding on the co-operative and must, if the Registrar so directs, be inserted in the rules of the co-operative.

(4) The rules of the co-operative may be altered by special resolution to give effect to any such direction.

(5) The Registrar may at any time by notice in writing to the co-operative revoke an approval under this section but only after giving the co-operative an opportunity to make submissions to the Registrar on the matter.

(6) An approval under this section operates to exempt the co-operative from the requirement that the word “Limited” form part of its name.

Use of abbreviations

257. A description of a co-operative is not inadequate or incorrect merely because of one or more of the following:

- (a) the use of the abbreviation “Co-op.” instead of the word “Co-operative” in the co-operative’s name;
- (b) the use of the abbreviation “Ltd.” instead of the word “Limited” in the co-operative’s name;
- (c) the use of the symbol “&” instead of the word “and” in the co-operative’s name;
- (d) the use of any of those words instead of the corresponding abbreviation or symbol in the co-operative’s name;
- (e) the use of any abbreviation or elaboration of the name of the co-operative that is approved in a particular case or for a particular purpose by the Registrar in writing.

Name to appear on business documents etc.

258. (1) The name of a co-operative must appear in legible characters:

- (a) on its seal; and
- (b) in all notices, advertisements and other official publications of the co-operative; and
- (c) in all its business documents.

(2) If subsection (1) is contravened, the co-operative is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) If an officer of a co-operative or a person on its behalf:

- (a) uses any seal of the co-operative; or
- (b) issues or authorises the issue of any notice, advertisement or other official publication of the co-operative; or
- (c) signs or authorises to be signed on behalf of the co-operative any business document of the co-operative,

in or on which the co-operative’s name does not appear in legible characters is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) Any officer or person who so signs or authorises to be signed any such business document that is a bill of exchange, cheque, promissory note or order for money or goods is also to be personally liable for the amount to the holder thereof, unless the amount is duly paid by the co-operative.

(5) A director of a co-operative who knowingly authorises or permits a contravention of this section is guilty of an offence.

Maximum penalty: 20 penalty units.

(6) This section does not prevent a business name under which a co-operative carries on business and which has been approved of in writing by the Registrar from appearing (in addition to its name) on or in any notices, advertisements and other official publications and business documents of the co-operative.

Change of name of co-operative

259. (1) A co-operative may by special resolution change its name to a name approved by the Registrar. A change of name must be advertised as prescribed.

(2) A change of name does not take effect until:

- (a) the Registrar has noted the change on the certificate of incorporation of the co-operative; or
- (b) the certificate of incorporation is surrendered to the Registrar and a replacement certificate of incorporation is issued in the new name.

(3) A change of name by a co-operative does not affect:

- (a) the identity of the co-operative; or
- (b) the exercise of any rights, or the enforcement of any obligations, by or against the co-operative or any person; or
- (c) the continuation of any legal proceedings by or against the co-operative.

(4) Any legal proceedings that might have been continued or commenced by or against the co-operative in its former name may be continued or commenced by or against the co-operative in its new name.

(5) The Registrar may refuse to approve a change of name if the Registrar thinks the new name is undesirable.

(6) The Registrar may direct a co-operative to change its name if the Registrar is of the opinion that the name is so similar to that of another co-operative that it is likely to deceive.

Restrictions on use of “co-operative” by other bodies

260. (1) A body corporate that uses the word “co-operative”, or any word or words importing a similar meaning, in its name is guilty of an offence unless it is exempted by subsection (3).

Maximum penalty: 100 penalty units.

(2) If an unincorporated organisation uses the word “co-operative”, or any word or words importing a similar meaning, in its name, each member of the controlling body of the organisation is guilty of an offence unless the organisation is exempted by subsection (3).

Maximum penalty: 50 penalty units.

(3) A body corporate or unincorporated organisation is exempt from the operation of subsection (1) or (2) if:

- (a) it is a co-operative registered under this Act; or
- (b) it is the Farmers and Settlers Co-operative Insurance Company of Australia Limited; or
- (c) it is a foreign co-operative registered under section 22; or
- (d) it is exempted by the regulations from the operation of subsection (1) or (2) and complies with any conditions to which the exemption is made subject; or
- (e) it is exempted by the Registrar in writing from the operation of subsection (1) or (2) and complies with any conditions to which the exemption is subject.

(4) The Registrar is not to grant an exemption under this section unless satisfied that the body or organisation 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. The expression “charitable purpose” includes any benevolent, philanthropic or patriotic purpose.

(5) An exemption granted by the Registrar may be limited as to time.

(6) The Registrar may vary the conditions of an exemption or revoke an exemption by giving notice in writing of the variation or revocation to the body or any member of the controlling body of the organisation.

Registered office of co-operative

261. (1) A co-operative must have a registered office and the rules of the co-operative must state the address of the registered office.

(2) A co-operative must, at the premises of its registered office, publicly and conspicuously display a notice stating the name of the co-operative and identifying the premises as its registered office.

(3) Not later than 14 days after changing the address of its registered office, a co-operative must give the Registrar written notice of the new address.

Maximum penalty: 20 penalty units.

PART 10—FUNDS, PROPERTY ETC.

Division 1—Power to raise money etc.

Meaning of obtaining financial accommodation

262. A reference in this Division to the obtaining of financial accommodation includes a reference to the borrowing or raising of money by any means.

Fund raising to be in accordance with rules, this Act and regulations

263. (1) A co-operative must not:

- (a) obtain financial accommodation; or
- (b) give security for the repayment of money,

except as authorised by its rules and in accordance with any requirements or restrictions imposed by this Act or the regulations.

(2) The regulations may impose requirements and restrictions on the obtaining of financial accommodation and the giving of security for the repayment of money by a co-operative.

(3) A member or other person from whom a co-operative obtains financial accommodation is not required to see to its application and is not affected or prejudiced by the fact that in doing so the co-operative contravened the provisions of this or any other section of this Act or the rules of the co-operative.

Registrar's directions concerning fund raising

264. (1) The Registrar may by written notice served on a co-operative give a direction to the co-operative as to the manner in which it is to exercise its functions in connection with the activities of the co-operative in obtaining financial accommodation.

(2) Such a direction may make provision for any one or more of the following matters:

- (a) requiring the co-operative to cease obtaining financial accommodation or to cease obtaining financial accommodation in a particular way;

- (b) requiring the co-operative to repay in accordance with the direction all or part of financial accommodation obtained;
- (c) requiring the co-operative to re-finance in a specified manner financial accommodation repaid in accordance with the Registrar's direction;
- (d) the manner in which the co-operative is permitted to invest or utilise the proceeds of financial accommodation it obtains.

Subordinated debt

265. (1) A co-operative has power to incur subordinated debt.

(2) Subordinated debt is debt incurred under an agreement whereby, in the event of the winding up of the co-operative, any claim of the creditor against the co-operative in respect of the debt is to rank in priority:

- (a) equally with the claim of any other creditor who is a party to a similar agreement; and
- (b) except as provided by paragraph (a), after the claims of any other creditor of the co-operative and before the claims of members to repayment of any share capital in the co-operative.

(3) Any such agreement has effect despite the provisions of Division 6 (Proof and ranking of claims) of Part 5.6 of the Corporations Law (as applying under Division 4 of Part 12 of this Act).

Application of Corporations Law to issues of securities and prescribed interests

266. (1) The provisions of Part 7.12 (Offering securities for subscription or purchase) of the Corporations Law apply to and in respect of a co-operative as if it were a company, subject to the following:

- (a) the provisions of the Part do not apply to or in respect of an offer of shares in, deposits with, or CCU's issued by a co-operative;
- (b) in their application to an offer of debentures of a co-operative, references in those provisions to the Commission are to be read as references to the Registrar;
- (c) the provisions apply with such modifications as may be prescribed.

(2) In subsection (1):

“offer” means make available, offer for subscription or purchase or issue an invitation to subscribe for or buy.

(3) The Registrar is not to grant an exemption under section 1084 of the Corporations Law in relation to any provision of Division 2 (Prospectuses) of Part 7.12 of that Law (or a regulation for the purposes

of such a provision), except in accordance with guidelines issued from time to time by the Council.

(4) Expressions used in this section have the same meaning as in the Corporations Law.

Application of Corporations Law—re-issue of redeemed debentures

267. The provisions of section 1051 (Re-issue of redeemed debentures) of the Corporations Law apply to and in respect of debentures issued by a co-operative to any of its members as if a co-operative were a company.

Compulsory loan by member to co-operative

268. (1) If a co-operative is authorised by its rules to raise money on loan, the co-operative may require its members to lend money, with or without security, to the co-operative, in accordance with a proposal approved by a special resolution of the co-operative.

(2) The proposal must not require a loan to be for a term exceeding 5 years or such other term as may be prescribed.

(3) The rate of interest payable by a co-operative in respect of the loan is not to exceed such rate as is prescribed for the purposes of this section unless in a particular case the Council approves of a higher rate being paid.

(4) If the proposal so allows, the board of the co-operative may, in accordance with the terms of the proposal, deduct the money required to be lent by a member to the co-operative from money due from the co-operative to the member in respect of his or her dealings with the co-operative.

(5) The proposal must clearly show:

- (a) the total amount of the loan to be raised by the co-operative; and
- (b) the basis on which the money required to be lent by each member is to be calculated.

(6) A proposal to deduct money as referred to in subsection (4) must in addition clearly show:

- (a) the basis on which the money is to be deducted; and
- (b) the time and manner of making the deductions.

(7) When approved the proposal is binding on all members of the co-operative at the date of the passing of the special resolution and on all persons who become members of the co-operative after that date and

before the total amount of the loan to be raised pursuant to the proposal has been raised.

Division 2—Co-operative capital units (CCU's)

General nature of CCU

269. (1) A co-operative capital unit is an interest issued by a co-operative conferring an interest in the capital (but not the share capital) of the co-operative.

(2) A CCU:

- (a)** is personal property;
- (b)** is transferable or transmissible as provided by this Act and the rules of the co-operative, subject to the terms of issue of the CCU;
- (c)** is, subject to the rules of the co-operative, capable of devolution by will or by operation of law.

(3) Subject to subsection (2):

- (a)** the laws applicable to ownership of and dealing with personal property apply to a CCU as they apply to other property; and
- (b)** equitable interests in respect of a CCU may be created, dealt with and enforced as in the case of other personal property.

(4) A transferor of a CCU remains the holder of the CCU until the transfer is registered and the name of the transferee is entered in the register of CCU holders in respect of the CCU.

Division 1 applies to issue of CCU's

270. (1) The issuing of CCU's is to be considered to be the obtaining of financial accommodation and accordingly Division 1 applies to the issue of CCU's.

(2) For the purpose of Division 1, a CCU is to be considered to be a debenture.

CCU's can be issued to non-members

271. CCU's may be issued to persons whether or not they are members of the co-operative.

Minimum requirements for rules concerning CCU's

272. The rules of a co-operative that permit the co-operative to issue CCU's must contain provision to the effect of the following provisions

and must not contain provisions that are inconsistent with the following provisions:

- each holder of a CCU is entitled to one vote only at a meeting of the holders of CCU's;
- the rights of the holders of CCU's may be varied only in the manner and to the extent provided by their terms of issue and only with the consent of at least 75% of the holders of CCU's given in writing or at a meeting;
- the holder of a CCU has, in the person's capacity as such a holder, none of the rights or entitlements of a member of the co-operative;
- the holder of a CCU is entitled to receive notice of all meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative.

CCU's not to be issued unless terms of issue etc. approved by Registrar

273. (1) A co-operative is not to issue CCU's unless:

- (a) the terms of issue have been approved by a special resolution of the co-operative; and
- (b) the issue is made pursuant to an offer accompanied by a copy of a statement approved by the Registrar for the purposes of the issue; and
- (c) the Registrar approves of the terms of the issue.

(2) The terms of issue must detail whether or not there is any of the following entitlements:

- entitlement to repayment of capital;
- entitlement to participate in surplus assets and profits;
- entitlement to interest on capital (whether cumulative or non-cumulative interest);
- entitlement to priority of payment of capital and dividend in relation to shares in the co-operative.

(3) The statement approved by the Registrar for the purposes of the issue is to set out the terms of the issue, the rights of the holders of CCU's, the terms of redemption and the manner of transferability of CCU's.

(4) The Registrar is not to approve of the terms of issue unless satisfied that they will not result in a failure to comply with co-operative principles and are not contrary to the rules of the co-operative or this Act.

Directors' duties concerning CCU's

274. In discharging their duties, it is proper for the directors of a co-operative to take into account that the holders of CCU's have none of the rights and entitlements of, and are not entitled to be regarded as, members of the co-operative.

Redemption of CCU's

275. (1) The redemption of CCU's is not to be considered to be a reduction in the share capital of the co-operative.

(2) A co-operative may redeem CCU's but only on such terms and in such manner as is provided by the terms of their issue and only if they are fully paid up.

(3) CCU's may not be redeemed except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of shares, or an approved issue of CCU's, made for the purpose of the redemption.

(4) An issue of CCU's is an "approved issue" for the purposes of subsection (3) if there is the same entitlement to priority of payment of capital and dividend in relation to shares in the co-operative as there was for the redeemed CCU's.

(5) Any premium payable on redemption is to be provided for out of profits or out of the CCU premium account or share premium account.

Capital redemption reserve

276. (1) This section applies if CCU's are redeemed otherwise than out of proceeds of a fresh issue of shares.

(2) Out of profits that would otherwise have been available for dividends there is to be transferred to a reserve called the capital redemption reserve a sum equal to the nominal amount of the CCU's redeemed and the provisions of this Act relating to the reduction of share capital of a co-operative apply as if the capital redemption reserve were paid-up share capital of the co-operative.

(3) The capital redemption reserve may be applied in paying up unissued shares of the co-operative to be issued to members of the co-operative as fully-paid bonus shares.

Issue of shares in substitution for redemption

277. (1) If a co-operative has redeemed or is about to redeem CCU's held by an active member of the co-operative, it may:

- (a) issue shares to the member up to the sum of the nominal value of the CCU's redeemed or to be redeemed, as if those CCU's had never been issued; or
- (b) pay up amounts unpaid on shares held by the member up to the sum of the nominal value of the CCU's redeemed or to be redeemed, as if those CCU's had never been issued.

(2) This section applies only if the terms of issue of the CCU's provide for the conversion of CCU's held by an active member of the co-operative into shares of the co-operative.

Division 3—Charges

Registration of charges

278. Schedule 3 has effect but does not apply to:

- (a) a mortgage, charge or encumbrance that is over specific land and is registered under the Real Property Act 1900 or Division 1 of Part 23 of the Conveyancing Act 1919; or
- (b) a mortgage, charge or encumbrance over a specific lease, claim or tenement under the laws relating to mining.

Receivers and managers

279. Schedule 4 has effect.

Division 4—Disposal of surplus from activities

Definition of “surplus”

280. In this Division, “**surplus**”, in relation to a co-operative, means the surplus after making proper allowance for depreciation in value of the property of the co-operative and for contingent liability for loss.

Application of part of surplus for charitable purposes etc.

281. (1) The rules of a co-operative may authorise the co-operative to apply a part of the surplus arising in any year from the business of the co-operative for any charitable purpose or for promoting co-operative principles or any community advancement but must limit the amount that may be so applied to a specified proportion of that surplus. The expression “charitable purpose” includes any benevolent, philanthropic or patriotic purpose.

(2) If so authorised by its rules, a co-operative may so apply a part of that surplus that does not exceed that proportion.

Dividends, bonuses and rebates from surplus

282. (1) If authorised by the rules of the co-operative, any part of the surplus arising in any year from the business of the co-operative may:

- (a) be paid to a member by way of dividend in respect of the shares held by the member; or
- (b) be paid to a member by way of bonus or rebate based on the business done by the member with the co-operative;
- (c) be credited to any employee who is not a member, but is qualified to be a member, by way of bonus in proportion to his or her salary or wages at a rate equal to the rate of bonus or rebate paid to a member on the business done by the member with the co-operative;
- (d) be credited to any person who is not a member, but is qualified to be a member, by way of bonus or rebate in proportion to the business done by him or her with the co-operative.

(2) A bonus or rebate may be credited to any employee or person who is not a member only until the amount credited is equal to the nominal value of the minimum number of shares (if any) for which a member is required by the rules to subscribe and in or towards payment for such minimum number of shares to be issued to him or her on application as provided by the rules.

(3) Nothing in this section precludes the payment of a bonus to an employee in accordance with the terms of his or her employment.

Bonus or rebate can be applied as loan to co-operative or to pay for shares

283. The amount of any bonus or rebate payable to a member under section 282 (Dividends, bonuses and rebates payable from surplus) may, with the consent of the member, be applied:

- (a) in payment for the issue to the member of fully paid up shares; or
- (b) in payment for the issue to the member of CCU's; or
- (c) as a loan to the co-operative.

Division 5—Prudential standards etc.**Prudential standards may be prescribed**

284. (1) Regulations may be made for or with respect to the following matters:

- (a) the value of unencumbered assets, or values of specified classes of unencumbered assets, that a co-operative is required to have;

- (b) the value of liabilities, or values of specified classes of liabilities, that a co-operative is permitted to have;
- (c) the ratio of assets to capital and reserves that a co-operative is required to maintain;
- (d) requiring assets of a co-operative to be held as liquid assets;
- (e) the value or kind of assets of a co-operative that are required to be held as liquid assets;
- (f) other matters relating to liquid assets of a co-operative;
- (g) the imposition of other prudential requirements on co-operatives for the protection of members or creditors of co-operatives.

(2) Without affecting the generality of subsection (1), regulations under this section may be made by reference to any of the following:

- (a) different classes of assets or liabilities;
- (b) proportions of assets or liabilities;
- (c) when a liability falls due;
- (d) the activities of the co-operative;
- (e) any other relevant factors.

(3) Regulations for the purposes of this section may provide for the following:

- (a) the classification of assets of a co-operative as unencumbered assets or liquid assets, or otherwise;
- (b) the determination of the value of the assets and liabilities of a co-operative;
- (c) the adjustment of the value of assets of a co-operative in order to determine their value at a later time;
- (d) weightings to be given to assets for the purpose of calculating the ratio of assets to capital and reserves.

(4) A co-operative must:

- (a) comply with regulations made under this section; and
- (b) take all reasonable steps to remedy any contravention of those regulations by the co-operative.

Maximum penalty: 100 penalty units.

(5) If a co-operative contravenes subsection (4), a director of the co-operative who:

- (a) failed to take all reasonable steps to prevent the contravention; or
- (b) by a wilful act or omission caused the contravention,

is guilty of an offence.

Maximum penalty: 50 penalty units.

Acquisition and disposal of assets

285. (1) A co-operative must not do any of the following things except as approved by special resolution by means of a special postal ballot:

- (a) sell or lease the undertaking, or any part of the undertaking, of the co-operative as a going concern;
- (b) acquire from or dispose to a director or employee of the co-operative, or a relative (within the meaning of the Corporations Law) of such a director or employee or the spouse of such a director or employee, of any property the value of which represents 5% or more of the total value of all the assets of the co-operative;
- (c) acquire an asset if the acquisition would result in the co-operative commencing to carry on an activity that is not one of its primary activities;
- (d) dispose of an asset if the disposal would result in the co-operative ceasing to carry on any primary activity of the co-operative, or in the ability of a co-operative to carry on any primary activity of the co-operative being substantially impaired, either generally or in a particular geographical region.

(2) The Council may by order in writing exempt a co-operative from compliance with all or specified provisions of this section and section 194 (Special postal ballots) in relation to any matter to which this section applies and may grant such an exemption unconditionally or subject to conditions.

(3) If a co-operative contravenes this section, each person who is a member of the board of the co-operative is guilty of an offence unless the person satisfies the court that he or she used all due diligence to prevent the contravention by the co-operative.

Maximum penalty: 50 penalty units.

PART 11—RESTRICTIONS ON THE ACQUISITION OF INTERESTS IN CO-OPERATIVES**Division 1—Restrictions on share and voting interests****Notice required to be given of voting interest**

286. (1) A person (whether or not a member of the co-operative) must give notice in writing to a co-operative within 5 business days after becoming aware that the person has a relevant interest in the right to vote of a member of the Co-operative.

(2) A person (whether or not a member of the co-operative) who has ceased to have a relevant interest in the right to vote of a member of a co-operative must give notice in writing to the co-operative within 5 business days after becoming aware of that fact.

Maximum penalty: 20 penalty units.

(3) Section 178 provides for the effect of a person having a relevant interest in the right to vote of a member of a co-operative.

Notice required to be given of substantial share interest

287. (1) A person must give notice in writing to a co-operative within 5 business days after becoming aware that the person has a substantial share interest in the co-operative.

(2) A person who has a substantial share interest in a co-operative must give notice in writing to the co-operative within 5 business days after becoming aware that a substantial change has occurred in that share interest.

(3) A person who has ceased to have a substantial share interest in a co-operative must give notice in writing to the co-operative within 5 business days after becoming aware that the person has ceased to have that interest.

Maximum penalty (subsections (1)–(3)): 20 penalty units.

(4) A person has a “**substantial share interest**” in a co-operative if the nominal value of the shares in the co-operative in which the person has a relevant interest represents 5% or more of the nominal value of the issued share capital of the co-operative.

(5) A “**substantial change**” takes place in a person’s share interest in a co-operative if there is an increase or decrease in the number of shares in the co-operative in which the person has a relevant interest and the increase or decrease represents at least 1% of the nominal value of the issued share capital of the co-operative.

Requirements for notices

288. A notice required under this Division must:

- (a) be in the prescribed form; and
- (b) specify the prescribed particulars of the interest or change being notified.

Maximum permissible level of share interest

289. (1) A person is not to have a relevant interest in shares of a co-operative the nominal value of which exceeds 20% of the nominal value of the issued share capital of the co-operative.

(2) The Council may by order published in the Gazette specify a maximum greater than 20% as the maximum for the purposes of subsection (1) in respect of a particular person, a particular co-operative, a particular class of co-operatives or co-operatives generally, and such an order operates to vary that percentage accordingly.

(3) The maximum of 20% specified by subsection (1) may be increased in respect of a particular person by special resolution of the co-operative concerned passed by means of a special postal ballot, but the resolution does not have effect unless it is approved by the Council or the person concerned is another co-operative.

Shares to be forfeited to remedy contravention

290. (1) If a person has a relevant interest in a share of a co-operative in contravention of this Division, the board of the co-operative is to declare to be forfeited sufficient of the shares in which the person has a relevant interest to remedy the contravention.

(2) The shares to be forfeited are:

- (a) the shares nominated by the person for the purpose; or
- (b) in the absence of such a nomination—~~the~~ shares in which the person has had a relevant interest for the shortest time.

(3) A declaration of the board that shares are forfeited operates to forfeit the shares concerned.

(4) Sections 134–136 (which concern the repayment of amounts due on shares forfeited under the active membership provisions) apply to and in respect of shares forfeited under this section as if the shares had been forfeited under Part 6 (Active membership requirements).

Powers of board in response to suspected contravention

291. (1) If the board of a co-operative is satisfied on reasonable grounds that a person has contravened section 287 in respect of the co-operative, the board may do either or both of the following:

- (a) refuse to register any share transfer involving the person;
- (b) suspend any specified rights or entitlements that a person has as a member of the co-operative or attaching to any shares of the co-operative in which the person has a relevant interest.

(2) The board may request a person who it suspects has a relevant interest in any shares of the co-operative to furnish specified information to the board concerning that interest and a failure by the person to comply with such a request constitutes reasonable grounds for being satisfied that the person has contravened section 287.

Powers of Court with respect to contraventions

292. (1) If a person has contravened section 287 in respect of a co-operative, the Court may, on the application of the co-operative or the Registrar, make such order or orders as it thinks just, including (without limiting the generality of the foregoing):

- (a) a remedial order; and
- (b) for the purpose of securing compliance with any other order made under this section, an order directing the co-operative or any other person to do or refrain from doing a specified act.

(2) An order may be made whether or not the contravention continues.

(3) The proof to the satisfaction of the Court at the hearing of the application that:

- (a) a person has a relevant interest in a share of a co-operative because an associate of the person has a relevant interest in a share; and
- (b) the associate became entitled to that relevant interest within 6 months before the application was filed with the Court,

is evidence (in the absence of evidence to the contrary) that the associate was an associate of the person from the time the person first had the relevant interest until the date of the hearing.

Co-operative to inform Registrar of interest over 20%

293. (1) A co-operative must inform the Registrar in writing within 14 days after the board becomes aware that:

- (a) a particular person has a relevant interest in shares of the co-operative the nominal value of which exceeds 20% of the nominal value of the issued share capital of the co-operative; or
- (b) there has been a change in the number of shares in which such a person holds a relevant interest.

(2) The notification must give details of the relevant interest concerned or of the change concerned.

Co-operative to keep register

294. (1) A co-operative must keep a register of notifiable interests in which is to be entered in alphabetical order the names of persons from

whom the co-operative has received a notification under this Division together with the information contained in the' notification.

- (2) The register is to be open for inspection:
- (a) by any member of the co-operative free of charge; and
 - (b) by any other person on payment of such fee (if any) as the co-operative may require, not exceeding the prescribed maximum fee.

Unlisted companies to provide list of shareholders etc.

295. (1) This section applies to a company (within the meaning of the Corporations Law) that is not a listed corporation (within the meaning of that Law).

(2) A company to which this section applies that is a member of a co-operative must furnish to the co-operative a list showing:

- (a) the name of each member of the company as at the end of the financial year of the company and the number of shares in the company held by each member; and
- (b) the name of each person who has a relevant interest (within the meaning of the Corporations Law) in any share of the company together with details of that interest; and
- (c) the name of each person who is an associate (within the meaning of the Corporations Law) of the company.

(3) Such a list is to be furnished within 1 month after the end of each financial year of the company and within 1 month after a request for the list is made in writing to the company by the Registrar.

(4) The details to be shown on the list are to be those details as at the end of the financial year concerned or, if the list is provided at the request of the Registrar, as at the date specified in the request.

(5) The Registrar can make such a request at any time but only if of the opinion that the company is or may be involved in a suspected contravention of a provision of this Division.

Excess share interest not to affect loan liability

296. (1) This section applies if a co-operative has made a loan to a member and the member had or has a relevant interest in shares of the co-operative in contravention of this Division.

(2) Until the amount lent to the member has been repaid to the co-operative (with any interest payable), the member is liable to make to the co-operative the payments which the member would be liable to make if all the shares concerned were lawfully held by the member.

(3) Any security for the repayment of the loan is not affected by a contravention of this Division.

Extent of operation of Division

297. The provisions of this Division:

- (a) apply to all natural persons, whether resident in the State or in Australia or not and whether Australian citizens or not, and to all bodies corporate or unincorporated, whether incorporated or carrying on business in the State or in Australia or not; and
- (b) extend to acts done or omitted to be done outside the State, whether in Australia or not.

Registrar may grant exemption from Division

298. The Registrar may grant exemption from the operation of this Division in a particular case or class of cases. An exemption must be in writing and may be unconditional or subject to conditions.

Division 2—Restrictions on certain share offers

Share offers to which Division applies

299. (1) This Division applies to the following offers to purchase shares in a co-operative:

- (a) an offer made as part of a proposal for, or that is conditional on, the sale of the undertaking or any part of the undertaking, as a going concern, of the co-operative;
- (b) an offer made as part of a proposal for, or that is conditional on, the registration of the co-operative as a company under the Corporations Law;
- (c) an offer made as part of a proposal for, or that is conditional on, the winding-up of the co-operative;
- (d) an offer that would result in a contravention of section 289 (Maximum permissible level of share interest) were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer;
- (e) an offer that would lead to the offeror having a substantial share interest in the co-operative, or to a substantial change taking place in a substantial share interest that the offeror has in the co-operative, were the offeror to be registered (immediately after the offer is made) as the holder of the shares that are the subject of the offer.

(2) In subsection (1) (e), the expressions “substantial share interest” and “substantial change” have the same meanings as in section 287.

Requirements to be satisfied before offer can be made

300. (1) A person must not make an offer to which this Division applies unless the making of the offer has been approved by special resolution by means of a special postal ballot and has been approved by the Council.

(2) Despite subsection (1), an offer referred to in section 299 (1) (e) can be made even if it has not been approved as referred to in that subsection if it is made in circumstances specified in and in accordance with the requirements of the regulations.

Some offers totally prohibited if they discriminate

301. An offer referred to in section 299 (a)–(d) must not be made at all if it operates or would operate to discriminate between members who are active members and members who are not active members.

Offers to be submitted to board first

302. (1) Any proposal to make an offer to which this Division applies must in the first instance be submitted to the board.

(2) The board may decline to put a proposed offer to a special postal ballot unless arrangements satisfactory to the board have been made for payment to the co-operative of the expenses involved in holding the ballot. The board may require payment in advance.

(3) A requisition for a special postal ballot for the purposes of this Division cannot be served unless and until the board has had a reasonable opportunity to consider the proposed offer concerned. This applies whether the requisition is under section 303 or 195.

(4) A period of 28 days is to be considered to constitute a reasonable opportunity for considering a proposed offer but the Registrar may extend that period in a particular case by notice in writing to the co-operative.

Requisitioning of special postal ballot

303. (1) The board must conduct a special postal ballot for the purposes of this Division on the requisition of any one or more active members of the co-operative.

(2) The board may decline to conduct the ballot unless arrangements satisfactory to the board have been made for payment to the co-operative of the expenses involved in holding the ballot. The board may require payment in advance.

- (3) The following provisions apply to the requisition for the ballot:
- (a) it must specify the proposed special resolution to be voted on;
 - (b) it must be signed by the requisitioning member or members (and may consist of several documents in like form each signed by one or more of the requisitioning members);
 - (c) it must be served on the co-operative by being lodged at the registered office of the co-operative.
- (4) The ballot must be conducted as soon as practicable and in any case must be conducted within 2 months after the requisition is served.
- (5) This section does not affect section 195 (which provides another means by which a special postal ballot can be requisitioned by members).

Expenses involved in special postal ballots

304. (1) All reasonable expenses incurred by a co-operative in and in connection with preparing for and holding a special postal ballot are to be considered to constitute the “expenses involved in holding the ballot” for the purposes of this Division.

(2) Those expenses include (but are not limited to) the following expenses:

- the cost of obtaining expert advice (including legal and financial advice) and of commissioning expert reports;
- costs attributable to the use of staff of the co-operative in connection with preparing for and holding the ballot;
- the cost of producing, printing and posting the ballot papers and other material associated with the ballot.

Announcements of proposed takeovers concerning proposed company

305. (1) This section applies to an offer to purchase shares in a co-operative made as part of a proposal for, or that is conditional on, the registration of the co-operative as a company (“**the proposed company**”) under the Corporations Law.

(2) A person must not make a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make takeover offers, or to cause a takeover announcement to be made, in relation to the proposed company if:

- (a) the person knows that the announcement is false or is recklessly indifferent as to whether it is true or false; or
- (b) the person has no reasonable grounds for believing that the person, or the person and the other person or persons, will be able to

perform obligations arising under the scheme or announcement or under the Corporations Law in connection with the scheme or announcement if a substantial proportion of the offers or the offers made under the announcement are accepted.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(3) If a person makes a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make a takeover bid in relation to the proposed company, the person must proceed to make a takeover bid in relation to shares in the company in accordance with the public announcement within 2 months after the day on which the company is incorporated.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(4) A person is not liable to be convicted of more than one offence under subsection (3) in respect of any one public announcement.

(5) A person who contravenes this section (whether or not the person is convicted of an offence for the contravention) is liable to pay compensation to any other person who suffered loss as a result of entering into a transaction with respect to shares in reliance on the public announcement concerned.

(6) The amount of that compensation is the difference between the price of the shares at which the transaction was entered into and the price of the shares at which the transaction would have been likely to have been entered into if the person had not made the public announcement.

(7) A person is not guilty of an offence for a contravention of subsection (3) and is not liable to pay compensation in respect of the contravention if it is proved that the person could not reasonably have been expected to make the takeover bid concerned:

- (a) as a result of circumstances that existed at the time of the making of the public announcement but of which the person had no knowledge and could not reasonably have been expected to have knowledge; or
- (b) as a result of a change in circumstances after the making of the announcement, other than a change in circumstances caused directly or indirectly by the person.

(8) Expressions used in this section have the same meaning as in section 746 (Announcements of proposed takeover bids) of the Corporations Law.

Additional disclosure requirements for offers involving conversion to company

306. If an offer is part of a proposal for, or is conditional on, the registration of the co-operative as a company under the Corporations Law, the disclosure statement required to be sent to members for the purposes of the special postal ballot must contain the following additional information:

- (a) full particulars of any proposal whereby any of the directors will acquire a relevant interest in any share of the company to be formed;
- (b) any other information that is material to the making of a decision by a member whether or not to agree to the making of the offer, being information that is within the knowledge of the directors and has not previously been disclosed to the members;
- (c) such other information as is prescribed.

Consequences of prohibited offer

307. (1) If a person makes an offer to purchase shares in a co-operative in contravention of this Division:

- (a) the person is not entitled to be registered as the holder of the shares concerned; and
- (b) if the transfer of the shares is registered, the person is not entitled to vote at any meeting of the co-operative.

(2) Any vote cast by or on behalf of a member when the member is not entitled to vote because of the operation of this section is to be disregarded.

Council may grant exemptions

308. The Council may by order in writing exempt a co-operative from compliance with all or specified provisions of this Division and section 194 (Special postal ballots) in relation to any matter to which this Division applies and may grant such an exemption unconditionally or subject to conditions.

**PART 12—AMALGAMATION, TRANSFER OF
ENGAGEMENTS, WINDING UP ETC.****Division 1—Amalgamation****Amalgamation of local co-operatives**

309. (1) Any 2 or more co-operatives may by special resolution by means of a special postal ballot of each of them apply to be registered as an amalgamated co-operative, with or without any winding up or division of the funds of the co-operatives or any of them.

(2) The application is to be made in the form approved by the Registrar and be accompanied by such documents and information as the Registrar may require.

(3) The Registrar is to grant the application if satisfied that the co-operatives have complied with the provisions of this Act and the regulations and that the proposed rules of the amalgamated co-operative are not contrary to this Act or the regulations.

Amalgamation of local and foreign co-operatives

310. (1) This section provides a means by which one or more co-operatives can amalgamate with one or more foreign co-operatives, with or without any winding up or any division of their funds and whether the amalgamation is to result in a co-operative under this Act or in a foreign co-operative.

(2) A co-operative cannot be amalgamated with a foreign co-operative unless the foreign co-operative is registered, incorporated or otherwise established under a law of a place outside the State (“the relevant foreign law”) that is prescribed for the purposes of this section and that expressly or impliedly makes provision for:

- (a) the amalgamation of the foreign co-operative with a co-operative under this Act; and
- (b) the amalgamation to result either in a co-operative registered under this Act or in a foreign co-operative under the relevant foreign law; and
- (c) the assets and liabilities of the foreign co-operative to become assets and liabilities of the amalgamated co-operative.

(3) Before the application for amalgamation is made it is necessary for each of the co-operatives involved to resolve by special resolution passed by means of a special postal ballot to apply for amalgamation and for each of the foreign co-operatives involved to comply with any provisions of the relevant foreign law in relation to the application for amalgamation.

(4) The application for amalgamation is to be made in the form approved by the Registrar and be accompanied by such documents and information as the Registrar may require.

(5) The Registrar is required to grant the application if satisfied:

- (a) that the co-operatives involved have complied with the provisions of this Act and the regulations; and
- (b) that the foreign co-operatives involved have complied with the provisions of the relevant foreign law; and
- (c) if the amalgamation is to result in a co-operative under this Act, that the proposed rules of the amalgamated co-operative are not contrary to this Act or the regulations.

Procedure on grant of application

311. (1) When the Registrar grants an application that is to result in an amalgamated co-operative under this Act, the Registrar is to:

- (a) register the amalgamated co-operative and its rules; and
- (b) issue a certificate that the co-operative is incorporated as an amalgamated co-operative under this Division; and
- (c) notify the issue of that certificate in the Gazette; and
- (d) remove from the register the name of any co-operative that was a party to the amalgamation.

(2) When the Registrar grants an application that is to result in an amalgamated foreign co-operative under the law of a place outside the State, the Registrar is to remove from the register the name of any co-operative that was a party to the amalgamation with effect from the date on which the amalgamated foreign co-operative is registered, incorporated or otherwise established.

Exemptions

312. (1) The Council may by order in writing exempt a co-operative from compliance with all or specified provisions of this Division and section 194 (Special postal ballots) in relation to any matter to which this Division applies and may grant such an exemption unconditionally or subject to conditions.

(2) If an amalgamation under this Division involves a foreign co-operative, the Registrar may by order in writing exempt the amalgamated co-operative from any provision of this Act or the regulations and may grant such an exemption unconditionally or subject to conditions and for a limited or unlimited period.

(3) The Registrar may cancel an exemption under subsection (2) and may revoke or vary any condition of such an exemption.

Division 2—Transfer of engagements

Transfer of engagements

313. (1) A co-operative may by special resolution passed by means of a special postal ballot transfer its engagements to any other co-operative which may undertake to fulfil those engagements.

(2) The transfer of engagements must make provision in a manner approved by the Registrar for those members of the transferor co-operative who wish to do so to become members of the transferee co-operative.

(3) This section does not apply to a transfer of engagements to which section 314 applies.

(4) The Council may by order in writing exempt a co-operative from compliance with all or specified provisions of this section and section 194 (Special postal ballots) in relation to any matter to which this section applies and may grant such an exemption unconditionally or subject to conditions.

Transfer of engagements by direction of Registrar

314. (1) The Registrar may, with the approval of the Council, direct a co-operative:

- (a) to transfer its engagements to a co-operative approved by the Registrar; and
- (b) within a period specified by the Registrar when giving the direction or within such further period as the Registrar may allow, to enter into an agreement approved by the Registrar to give effect to the transfer of engagements directed.

(2) The Registrar is not to give such a direction to a co-operative unless the necessary grounds exist for the giving of the direction, as referred to in section 343.

(3) The transfer of engagements must make provision in a manner approved by the Registrar for those members of the transferor co-operative who wish to do so to become members of the transferee co-operative.

(4) If a co-operative fails to comply with a direction under this section, the Registrar may elect to treat the failure as the necessary grounds for

the winding up of the co-operative on a certificate of the Registrar or for the appointing of an administrator of the co-operative, and is to notify the co-operative accordingly.

(5) The Registrar may revoke a direction under this section at any time up until the co-operative has agreed pursuant to the direction to transfer its engagements.

(6) A transfer of engagements directed under this section takes effect on a day notified by the Registrar in the Gazette.

(7) An officer of a co-operative who:

- (a) fails to take all reasonable steps to secure compliance by the co-operative with a direction given under this section; or
- (b) by a wilful act or omission is the cause of a failure by the co-operative to comply with such a direction,

is guilty of an offence.

Maximum penalty: 10 penalty units.

Representations to Council on direction to transfer engagements

315. (1) A co-operative which is the subject of a direction by the Registrar under section 314 may, within 14 days after the direction is given, make representations to the Council with respect to the direction.

(2) After considering any such representation, the Council may direct the Registrar to revoke the direction and the Registrar is to comply with any such direction.

Division 3—Transfer of incorporation

Application for transfer

316. (1) A co-operative may, if approved by special resolution by means of a special postal ballot, apply to become registered or incorporated as one of the following bodies corporate:

- (a) a company under the Corporations Law;
- (b) an incorporated association under the Associations Incorporation Act 1984;
- (c) a society under the Permanent Building Societies Act 1967;
- (d) a credit union under the Credit Union Act 1969;
- (e) a friendly society under the Friendly Societies Act 1989;
- (f) any body corporate that is incorporated, registered or otherwise established under a law that is a law of a place outside the State and that is prescribed for the purposes of this section.

(2) Before such an application is made, the co-operative must by special resolution by means of a special postal ballot:

- (a) determine under what name the co-operative is to apply to be incorporated or registered;
- (b) adopt any memorandum or articles of association or rules that may be necessary or considered desirable.

(3) The name applied for need not be the same as that of the co-operative and must not include the word “co-operative” or any other word importing a similar meaning.

(4) The Council may by order in writing exempt a co-operative from compliance with all or specified provisions of this section and section 194 (Special postal ballots) in relation to any matter to which this section applies, and any such exemption may be granted unconditionally or subject to conditions.

Meaning of “new body” and “transfer”

317. The registration or incorporation of a co-operative as a body corporate as a result of an application under this Division is referred to in this Division as its “**transfer**” and the body corporate concerned is referred to in this Division as “**the new body**”.

New body ceases to be registered as co-operative

318. On the transfer of a co-operative under this Division, it ceases to be registered as a co-operative under this Act.

Transfer not to impose greater liability etc.

319. (1) Any memorandum or articles of association or rules adopted for the purposes of the transfer must not be such as to:

- (a) impose on the members of the new body who were members of the co-operative at the date of transfer any greater or different liability to contribute to the assets of the new body than the liability to which they were subject as members of the co-operative; or
- (b) deprive any member of the new body of any preferential rights with respect to dividend or capital to which the member was entitled as a member of the co-operative at the date of transfer.

(2) The transfer must result in all persons who were members of the co-operative at the date of transfer becoming members of the new body.

(3) In the case of a transfer of a co-operative that has a share capital to a new body that has a share capital, the transfer must result in every member of the co-operative at the date of transfer who held shares in the co-operative being the holder of shares in the capital of the new body equal in number and nominal value to the shares held by the member as a member of the co-operative.

Effect of new certificate of incorporation

320. A certificate of incorporation or registration as the new body issued by the appropriate officer under the law applicable to the new body is conclusive evidence that all the requirements of this Division and of that law in respect of that registration or incorporation have been complied with.

New body is a continuation of the co-operative

321. (1) When a co-operative transfers to a new body, the body corporate constituted by the new body is to be considered to be the same entity as the body corporate constituted by the co-operative.

(2) Without limiting the generality of subsection (1), Division 7 (Effect of amalgamation etc. on property, liabilities etc.) applies to a transfer under this Division.

Stamp duty

322. (1) This section applies when a co-operative that transfers under this Division was before its registration as a co-operative under this Act a company under the Corporations Law or any corresponding previous law of the State and stamp duty had been paid on its incorporation as such a company in respect of the amount of the nominal capital of the company (or if subsequently increased on the amount of its nominal capital & so increased).

(2) Any stamp duty so paid is to be taken into account and included in assessing the stamp duty payable on its incorporation or registration pursuant to the transfer.

Division 4—Winding up

Methods of winding up

323. (1) A co-operative may be wound up voluntarily or by the Court or on a certificate of the Registrar.

(2) In the case of a winding up voluntarily or by the Court, the co-operative may be wound up in the same manner and in the same circumstances as a company under the Corporations Law may be so wound up.

Winding up on Registrar's certificate

324. (1) A co-operative may be wound up on a certificate of the Registrar only if the necessary grounds for the taking of that action exist, as referred to in section 343.

(2) Such a winding up commences when the certificate is given.

(3) The Registrar may then appoint a person to be the liquidator of the co-operative (who need not be a registered liquidator under the Corporations Law) and the liquidator must within 10 days after appointment give notice of his or her appointment by advertisement in the Gazette.

(4) The liquidator is to give such security as may be prescribed and is entitled to receive such fees as are fixed by the Council.

(5) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the Registrar.

Application of Corporations Law

325. (1) The provisions of Parts 5.4–5.7 of the Corporations Law with respect to the winding up or dissolution of a company under that Law apply to the winding up or dissolution of a co-operative.

(2) For the purposes of the application of those provisions to a winding up on the certificate of the Registrar, such a winding up is to be considered to be a voluntary winding up (but section 490 of the Corporations Law does not apply).

(3) Provisions of the Corporations Law apply with such modifications as may be prescribed and with the following modifications:

- (a) a reference in any of those provisions to a special resolution or an extraordinary resolution is to be construed as a reference to a special resolution within the meaning of this Act;
- (b) a reference in any of those provisions to the Commission is to be construed as a reference to the Registrar;
- (c) section 516 is to be considered to be amended by inserting after the words “past member” the words “together with the amount of the contingent liability, if any, attached thereto, and together with any charges payable by him or her to the co-operative in accordance with the rules”;

- (d) a reference in section 461 to a proprietary company is to be construed as a reference to an association or federation;
- (e) a reference to a registered liquidator includes a reference to a person approved by the Registrar as a liquidator of a co-operative.

Restrictions on voluntary winding up

326. (1) A co-operative may be wound up voluntarily only by a creditors' voluntary winding up or if a special resolution is passed by means of a special postal ballot in favour of voluntary winding up.

(2) The Council may by order in writing exempt a co-operative from compliance with all or specified provisions of this section or section 194 (Special postal ballots) and may grant such an exemption either unconditionally or subject to conditions.

(3) When such a special postal ballot is held, the members may, by means of the same ballot, by simple majority:

- (a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the co-operative; and
- (b) fix the remuneration to be paid to the liquidator.

Commencement of members' voluntary winding up

327. A members' voluntary winding up of a co-operative commences when the result of the special postal ballot is noted in the minute book by the secretary of the co-operative.

Distribution of surplus where no share capital

328. (1) On a winding up of a co-operative that does not have a share capital, the surplus property of the co-operative is to be distributed as required by the rules of the co-operative.

(2) The rules of such a co-operative must make provision for the manner in which the surplus property of the co-operative is to be distributed in a winding up.

(3) In this section:

“surplus property” means that property of the co-operative that remains after satisfaction of the debts and liabilities of the co-operative and the costs, charges and expenses of the winding up.

Liquidator—vacancy may be filled by Registrar

329. If a co-operative is being wound up voluntarily and a vacancy occurs in the office of liquidator which in the opinion of the Registrar is unlikely to be filled in the manner provided by the Corporations Law, the Registrar may appoint a person to be liquidator.

Limit on remuneration of liquidator

330. The remuneration paid to the liquidator of a co-operative wound up voluntarily must not exceed the amount fixed by the Council.

Liability of member to contribute in a winding up where shares forfeited etc.

331. (1) If a person's membership of a co-operative is cancelled under Part 6 (Active membership requirements) within 2 years before the commencement of the winding up of the co-operative, the person is liable on the winding up to contribute to the property of the co-operative the nominal value of any shares forfeited in connection with that cancellation (being their nominal value immediately before cancellation).

(2) If under section 172 (Purchase and repayment of shares) a co-operative:

- (a) purchases any share of a member in the co-operative; or
- (b) repays to a member the whole or any part of the amount paid up on any share held by a member,

within 2 years before the commencement of the winding up of the co-operative, the member or former member is liable on the winding up to contribute to the property of the co-operative the amount which was paid by the co-operative to the member or former member in respect of the purchase or repayment together with any amount unpaid on those shares immediately before the purchase or repayment.

(3) If a person contributes to the property of a co-operative pursuant to a liability under this section, the amount contributed is, for the purposes of the winding up concerned, to be treated as having been paid up by the person on shares of the co-operative.

(4) The liability of a member or former member of a co-operative under this section is in addition to any other liability of the member or former member to contribute to the property of the co-operative on a winding up of the co-operative.

Division 5—Official management**Official management**

332. (1) The provisions of Part 5.3 (Official management) of the Corporations Law extend, with such modifications as may be prescribed, to a co-operative.

(2) For that purpose references in those provisions to the Commission are to be construed as references to the Registrar.

Division 6—Appointment of administrator**Appointment of administrator of co-operative**

333. The Registrar may, with the approval of the Council, appoint an administrator to conduct the affairs of a co-operative but only if the necessary grounds for the taking of that action exist as referred to in section 343.

Effect of appointment of administrator

334. (1) On the appointment of an administrator of a co-operative:

- (a) the directors of the co-operative cease to hold office; and
- (b) all contracts of employment with the co-operative are terminated; and
- (c) all contracts for the provision of secretarial or administrative services for the co-operative are terminated.

(2) An administrator of a co-operative has the functions of the board of the co-operative and, except as provided by this Division, no appointment of a director of the co-operative may be made while the administrator is in office.

Revocation of appointment

335. (1) The Registrar may revoke the appointment of an administrator.

(2) When a liquidator of a co-operative is appointed, the appointment of any administrator of the co-operative is automatically revoked.

(3) Before revoking the appointment of an administrator of a co-operative, the Registrar must, except in the case of a revocation at the direction of the Council under this Division:

- (a) ensure that directors of the co-operative have been elected in accordance with the rules of the co-operative at a meeting convened by the administrator in accordance with those rules; or
 - (b) appoint directors of the co-operative.
- (4) Directors so elected or appointed:
- (a) take office upon revocation of the appointment of the administrator; and
 - (b) in the case of appointed directors, hold office until the annual general meeting of the co-operative that next succeeds revocation of that appointment.

Expenses of administration

336. (1) The expenses of and incidental to the conduct of the affairs of a co-operative by an administrator are payable out of the funds of the co-operative.

(2) The remuneration of an administrator who is not a servant of the Crown is an expense referred to in subsection (1) and is to be fixed by the Registrar.

(3) If an administrator is a servant of the Crown, the reimbursement of the Crown in an amount certified by the Registrar in respect of the remuneration of its servant is an expense referred to in subsection (1) and is recoverable as a debt due to the Crown.

Liabilities arising from administration

337. (1) An administrator of a co-operative has the same duties, responsibilities, rights, protections and immunities as has a director of the co-operative.

(2) The Registrar is not liable for any loss sustained by a co-operative during the term of office of an administrator, whether or not the administrator is so liable.

Council may direct revocation of administrator's appointment

338. (1) If an administrator of a co-operative is appointed, a majority of the directors who ceased to hold office on the appointment of the administrator may, within 14 days after the appointment, make representations to the Council with respect to the appointment.

(2) After considering any such representations, the Council may direct the Registrar to revoke the appointment of the administrator and the Registrar is to comply with such a direction.

(3) A director who held office immediately before the appointment of the administrator resumes that office on revocation of the appointment.

Division 7—Effect of amalgamation etc. on property, liabilities etc.

How this Division applies to an amalgamation

339. (1) This Division applies to an amalgamation of co-operatives (including when a foreign co-operative is involved) and applies whether the amalgamation results in a co-operative under this Act or in a foreign co-operative under the law of a place outside the State.

(2) In the application of this Division to an amalgamation:

“**new body**” means the co-operative or foreign co-operative that results from the amalgamation;

“**original body**” means each co-operative or foreign co-operative that is a party to the amalgamation;

“**relevant day**” means the day on which the amalgamated co-operative is registered under this Act or the amalgamated foreign co-operative is registered, incorporated or established under the law of the place outside the State.

How this Division applies to a transfer of engagements

340. (1) This Division applies to a transfer of the engagements of a co-operative to another co-operative under Division 2.

(2) In the application of this Division to a transfer of engagements:

“**new body**” means the co-operative to which the engagements are transferred;

“**original body**” means the co-operative that transfers its engagements;

“**relevant day**” means the day on which the transfer of engagements takes effect, which:

- (a) in the case of a transfer under section 313 is the day specified in the relevant special resolution of the transferor co-operative as the day on which the transfer takes effect;
- (b) in the case of a transfer under section 314 is the day notified by the Registrar in the Gazette under that section.

How this Division applies to a transfer of incorporation

341. (1) This Division applies to a transfer of incorporation under Division 3.

(2) In the application of this Division to such a transfer:

“**new body**” means the body corporate that results from the transfer;

“**original body**” means the co-operative that transfers its incorporation;

“**relevant day**” means the day on which the transfer takes effect.

Effect of amalgamation on property, liabilities etc.

342. (1) In this clause:

“**assets**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;

“**instrument**” means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

“**liabilities**” means liabilities, debts and obligations (whether present or future and whether vested or contingent).

(2) On and from the relevant day for an event to which this Division applies:

- (a) the assets of the original body vest in the new body without the need for any conveyance, transfer, assignment or assurance; and
- (b) the rights and liabilities of the original body become the rights and liabilities of the new body; and
- (c) all proceedings by or against the original body that are pending immediately before the relevant day are taken to be proceedings pending by or against the new body; and
- (d) any act, matter or thing done or omitted to be done by, to or in respect of the original body before the relevant day is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the new body; and
- (e) a reference in an instrument or in any document of any kind to the original body is to be read as, or as including, a reference to the new body.

(3) The operation of this section is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(4) This section applies to a foreign co-operative to the extent that the law of the home jurisdiction of the foreign co-operative expressly or impliedly authorises.

(5) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section is not liable to stamp duty or to any fee chargeable under any Act for registration.

Division 8—Miscellaneous

Grounds for winding up, transfer of engagements, appointment of administrator

343. (1) This section applies to the following actions:

- (a) a direction by the Registrar to a co-operative to transfer its engagements under section 314;
- (b) the appointment of an administrator of a co-operative under Division 6;
- (c) the winding up of a co-operative on a certificate of the Registrar under section 324.

(2) The necessary grounds for the taking of action to which this section applies exist if the Registrar certifies:

- (a) that the number of members is reduced to less than the minimum number of persons allowed, as referred to in section 73 (Carrying on business with too few members); or
- (b) that the co-operative has not commenced business within 1 year of registration or has suspended business for a period of more than 6 months; or
- (c) that the registration of the co-operative has been obtained by mistake or fraud; or
- (d) that the co-operative exists for an illegal purpose; or
- (e) that the co-operative has wilfully and after notice from the Registrar violated the provisions of this Act or of the regulations or of the rules of the co-operative; or
- (f) that the board of the co-operative has, after notice from the Registrar, failed to ensure that the rules of the co-operative contain active membership provisions in accordance with Part 6; or

- (g) that there are, and have been for a period of one month immediately before the date of the Registrar's certificate, insufficient directors of the co-operative to constitute a quorum as provided by the rules of the co-operative; or
- (h) following an inquiry pursuant to the provisions of this Act into the affairs of a co-operative or the working and financial condition of a co-operative, that in the interests of members or creditors of the co-operative the action concerned should be taken.

(3) Alternatively, the necessary grounds for the winding up of a co-operative on a certificate of the Registrar exist if the Registrar certifies:

- (a) that the period, if any, fixed for the duration of the co-operative by its rules has expired; or
- (b) that an event (to be specified in the certificate) has occurred upon the occurrence of which the regulations or the rules provide that the co-operative is to be wound up.

(4) The Registrar is not to certify under this section as to any matter unless the matter has been proved to the Registrar's satisfaction.

PART 13—ARRANGEMENTS AND RECONSTRUCTIONS

Division 1—General requirements

Requirements for binding compromise or arrangement

344. (1) A compromise or arrangement is binding if and only if it is approved by order of the Court and it is agreed to:

- (a) if the compromise or arrangement is between the co-operative and any of its creditors—at a court ordered meeting by a majority in number of the creditors concerned who are present and voting (in person or by proxy), being a majority whose debts or claims against the co-operative amount to at least 75% of the total of the debts and claims of all those creditors who are present and voting (in person or by proxy); or
- (b) if the compromise or arrangement is between the co-operative and any of its members—by the members concerned, by special resolution passed by means of a special postal ballot.

(2) The court ordered meeting referred to in subsection (1) (a) is a meeting convened in accordance with an order of the Court under this Part.

(3) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(4) An order of the Court approving a compromise or arrangement does not have any effect until an office copy of the order is lodged with the Registrar. On the copy being lodged, the order takes effect from the date of lodgment or such earlier date as the Court specifies in the order.

Court ordered meeting of creditors

345. (1) If a compromise or arrangement is proposed between a co-operative and any of its creditors, the Court may on application by an appropriate person order a meeting or meetings of the creditors concerned.

(2) An appropriate person to make application for such an order is the co-operative, any member of the co-operative, any of the creditors concerned or, in the case of a co-operative being wound up, the liquidator.

(3) The meeting is to be convened in such manner and be held in such place or places (in the State or elsewhere) as the Court directs.

(4) In considering whether to make an order for a meeting to be held in another jurisdiction, the Court must have regard to where creditors concerned reside.

Registrar to be given notice and opportunity to make submissions

346. (1) The Court is not to make an order under this Division unless:

- (a) at least 14 days' notice of the hearing of the application for the order, or such shorter period of notice as the Court or the Registrar permits, has been given to the Registrar; and
- (b) the Court is satisfied that the Registrar has had a reasonable opportunity to examine the terms of and make submissions to the Court in relation to the proposed compromise or arrangement concerned and a draft explanatory statement relating to it.

(2) The “**draft explanatory statement**” referred to in subsection (1) is a statement:

- (a) explaining the effect of the proposed compromise or arrangement and, in particular, stating any material interests of the directors of the co-operative, whether as directors, as members or creditors of the co-operative or otherwise, and the effect on those interests of the proposed compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and
- (b) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member of the co-operative whether or not to agree to the proposed compromise or arrangement, being information that is

within the knowledge of the directors of the co-operative and has not previously been disclosed to the creditors or members of the co-operative.

Results of 2 or more meetings

347. If the Court orders 2 or more meetings of creditors to be held in relation to a proposed compromise or arrangement:

- (a) the meetings are to be considered to constitute a single meeting; and
- (b) the votes in favour of the proposed compromise or arrangement cast at each of the meetings are to be aggregated; and
- (c) the votes against the proposed compromise or arrangement cast at each of the meetings are to be aggregated.

Persons disqualified from administering compromise etc.

348. (1) Except with the leave of the Court, a person must not be appointed to administer, and must not administer, a compromise or arrangement approved under this Act between a co-operative and any of its creditors or members, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person:

- (a) is a mortgagee of any property of the co-operative; or
- (b) is an auditor or an officer of the co-operative; or
- (c) is an officer of a body corporate that is a mortgagee of property of the co-operative; or
- (d) is not a registered liquidator unless the person is a body corporate authorised by or under a law of the State to administer the compromise or arrangement concerned; or
- (e) is an officer of a body corporate related to the co-operative; or
- (f) unless the Registrar directs in writing that this paragraph does not apply in relation to the person in relation to the co-operative—has at any time within the last 12 months been an officer or promoter of the co-operative or of a related body corporate.

(2) This section does not disqualify a person from administering a compromise or arrangement under an appointment validly made before the commencement of this section.

Application of provisions of Corporations Law to person appointed

349. (1) Clauses 10, 12 (2) and (4), 13, 17 and 19 of Schedule 4 (Receivers and managers) apply to a person appointed to administer a compromise or arrangement as if the appointment were an appointment of the person as a receiver and manager of property of the co-operative and as if a reference to a receiver were a reference to that person.

(2) Section 536 of the Corporations Law applies to a person appointed to administer a compromise or arrangement as if the appointment were an appointment as a liquidator of the co-operative and as if a reference to a liquidator were a reference to that person.

Copy of order to be attached to rules

350. (1) A copy of an order of the Court approving a compromise or arrangement must be annexed to each copy of the rules of the co-operative issued after the order is made, and if this is not done the co-operative is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) The Court may, by order, exempt a co-operative from compliance with this section or determine the period during which the co-operative must comply.

Directors to arrange for reports

351. (1) When a compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of a co-operative or the amalgamation of any 2 or more co-operatives) has been proposed, the directors of the co-operative must:

- (a) if a meeting of the members of the co-operative by resolution so directs—instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and send their report or reports to the directors as soon as practicable; and
- (b) make any report or reports so obtained available at the registered office of the co-operative for inspection by the members and creditors of the co-operative at least 7 days before the day of the meeting ordered by the Court or the holding of the special postal ballot, as appropriate.

(2) If this section is not complied with, each director of the co-operative concerned is guilty of an offence.

Maximum penalty: 10 penalty units.

Power of Court to restrain further proceedings

352. (1) If a proposed compromise or arrangement is between a co-operative and any of its creditors and no order has been made or resolution passed for the winding up of the co-operative, the Court may restrain further proceedings in any action or other civil proceeding against the co-operative except by leave of the Court and subject to such terms as the Court imposes.

(2) The Court's power under this section is in addition to any of its other powers and is not to be exercised except on application by the co-operative or of any creditor or member of the co-operative.

Restrictions on Court's power to approve compromise or arrangement—takeovers

353. (1) The Court is not to approve a compromise or arrangement unless:

- (a) it is satisfied that the compromise or arrangement has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of Division 2 of Part 11 (Restrictions on certain share offers); and
- (b) there is produced to the Court a statement in writing by the Registrar stating that the Registrar has no objection to the compromise or arrangement.

(2) The Court need not approve a compromise or arrangement merely because a statement by the Registrar stating that the Registrar has no objection to the compromise or arrangement has been produced to the court.

Division 2—Explanatory statements**Explanatory statement required to accompany notice of meeting etc.**

354. (1) An explanatory statement must accompany every notice:

- (a) that is sent to a creditor of a co-operative convening the court ordered meeting to obtain agreement to the compromise or arrangement; or
- (b) that is sent to a member of a co-operative for the purpose of the conduct of the special postal ballot to obtain agreement to the compromise or arrangement.

(2) In every notice of such a meeting that is given by advertisement there must be included either a copy of the explanatory statement or

notification of the place at which and the manner in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.

(3) The explanatory statement must:

- (a) explain the effect of the compromise or arrangement and, in particular, state any material interests of the directors, whether as directors, as members or creditors of the co-operative or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and
- (b) set out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the directors and has not previously been disclosed to the creditors or members.

(4) Subsection (1) (a) does not apply in the case of a creditor whose debt does not exceed \$200 unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor must specify a place at which a copy of the explanatory statement can be obtained on request and, if the creditor makes such a request, the co-operative must comply with the request as soon as practicable.

Requirements for explanatory statement

355. (1) An explanatory statement must be approved by the Registrar.

(2) If the compromise or arrangement affects the rights of debenture holders, the explanatory statement must specify any material interests of the trustees for the debenture holders, whether as such trustees, as members or creditors of the co-operative or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons.

(3) If a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, every creditor or member entitled to attend the meeting or vote in the ballot is, on making application in that manner, to be furnished by the co-operative free of charge with a copy of the statement.

(4) Each person who is a director or trustee for debenture holders must give notice to the co-operative of such matters relating to the person as are required to be included in the explanatory statement.

Contravention of Division—offence by co-operative

356. (1) If a provision of this Division is contravened, the co-operative concerned and any other person involved in the contravention is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) It is a defence to a prosecution for such an offence if it is proved that the contravention was due to the failure of a person (other than the defendant), being a director of the co-operative or a trustee for debenture holders of the co-operative, to supply for the purposes of the explanatory statement particulars of the person's interests.

Provisions for facilitating reconstructions and amalgamations

357. (1) In this section:

“**co-operative**” includes foreign co-operative registered, formed or incorporated under a law of another State or Territory.

(2) This section applies when an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that:

- (a) the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of a co-operative or the amalgamation of a co-operative with another co-operative or with another body corporate; and
- (b) under the scheme the whole or any part of the undertaking or of the property of a co-operative concerned in the scheme (“**the transferor**”) is to be transferred to another body corporate (“**the transferee**”) except a company within the meaning of the Corporations Law.

(3) When this section applies, the Court may, either by the order approving the compromise or arrangement or by a later order provide for any one or more of the following:

- (a) the transfer to the transferee of the whole or a part of the undertaking and of the property or liabilities of the transferor;
- (b) the allotting or appropriation by the transferee of shares, debentures, policies or other interests in the transferee that, under the compromise or arrangement, are to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
- (d) the dissolution, without winding up, of the transferor;

- (e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;
- (f) the transfer or allotment of any interest in property to any person concerned in the compromise or arrangement;
- (g) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.

(4) If an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order, the property is transferred to and vests in, and the liabilities are transferred to and become the liabilities of, the transferee, free, in the case of any particular property if the order so directs, from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(5) If an order is made under this section, each body to which the order relates must, within 14 days after the making of the order, lodge with the Registrar an office copy of the order.

(6) In this section:

“**liabilities**” includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously;

“**property**” includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

Division 3—Acquisition of shares of dissenting shareholders

Definitions

358. In this Division:

“**dissenting shareholder**”, in relation to a scheme or contract, means a shareholder who has not assented to the scheme or contract or who has failed to transfer his, her or its shares in accordance with the scheme or contract;

“**excluded shares**”, in relation to a scheme or contract involving a transfer to a person of shares in a class of shares in a co-operative, means shares in that class that, when the offer relating to the scheme or contract is made, are held by:

- (a) in any case—the person or a nominee of the person; or
- (b) if the person is a body corporate—a subsidiary of the body.

Schemes and contracts to which Division applies

359. (1) This Division applies to a scheme or contract involving a transfer of shares in a co-operative (“the transferor”) to a person (“the transferee”) that has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of at least 90% in nominal value of all the shares concerned (other than excluded shares).

(2) This Division does not apply to a scheme or contract arising out of the making of an offer to which Division 2 (Restrictions on certain share offers) of Part 11 applies.

Acquisition of shares pursuant to notice to dissenting shareholder

360. (1) The transferee under the scheme or contract may, within 2 months after the offer is so approved, give notice as prescribed (a “compulsory acquisition notice”) to a dissenting shareholder that the transferee wishes to acquire the shares held by that shareholder.

(2) When such a notice is given, the dissenting shareholder may, by written notice given to the transferee within one month after the day on which the notice was given, ask for a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the transferee must give that statement.

(3) Having given the notice, the transferee is, unless the Court orders to the contrary, entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

(4) An order to the contrary by the Court may be given only on the application of the dissenting shareholder made within 1 month after the compulsory acquisition notice was given or within 14 days after any statement asked for under subsection (2) was given, whichever is the later.

(5) If alternative terms are offered to the approving shareholders:

- (a) the dissenting shareholder is entitled to elect which of those terms are preferred but must make that election within the time allowed for the making of an application to the Court under subsection (4); and
- (b) if the dissenting shareholder fails to make the election within that time, the transferee may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting shareholder.

Restrictions when excluded shares exceed 10%

361. If the nominal value of excluded shares exceeds 10% of the aggregate nominal value of all the shares (including excluded shares) to be transferred under the scheme or contract, section 360 (Acquisition of shares pursuant to notice to dissenting shareholder) does not apply unless:

- (a) the transferee offers the same terms to all holders of the shares (other than excluded shares) to be transferred under the scheme or contract; and
- (b) the holders who approve the scheme or contract together hold at least 90% in nominal value of the shares (other than excluded shares) to be transferred under the scheme or contract and are also at least 75% in number of the holders of those shares (with joint owners of shares being counted as one person).

Remaining shareholders may require acquisition

362. (1) If, under a scheme or contract to which this Division applies, the transferee becomes beneficially entitled to shares in the transferor which, together with any other shares in the transferor to which the transferee or a body corporate related to the transferee is beneficially entitled comprise or include 90% in nominal value of the shares concerned, then:

- (a) the transferee must, within 1 month after becoming beneficially entitled to those shares, give notice of the fact as prescribed to the holders of the remaining shares concerned who, when the notice was given, had not assented to the scheme or contract or been given a compulsory acquisition notice by the transferee under this Division; and
- (b) such a holder may, within 3 months after being given that notice, by notice to the transferee require the transferee to acquire the holder's share and, if alternative terms were offered to the approving shareholders, elect which of those terms the holder will accept.

(2) If a shareholder gives notice under this section with respect to the shareholder's shares, the transferee is entitled and bound to acquire those shares:

- (a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to the transferee and, if alternative terms were offered to those shareholders, on the terms for which the shareholder has elected, or, if no election is made, for whichever of the terms the transferee determines; or
- (b) on such other terms as are agreed or as the Court, on the application of the transferee or of the shareholder, thinks fit to order.

Transfer of shares pursuant to compulsory acquisition

363. (1) A transferee who has given a compulsory acquisition notice must:

- (a) send a copy of the notice to the transferor together with an instrument of transfer that relates to the shares that the transferee is entitled to acquire under this Division and that is executed, on the shareholder's behalf, by a person appointed by the transferee and, on the transferee's own behalf, by the transferee; and
- (b) pay, allot or transfer to the transferor the consideration for the shares.

(2) The transferee must do so within 14 days after whichever of the following happens last:

- (a) the period of 1 month after the day on which the compulsory acquisition notice was given expires;
- (b) the period of 14 days after a statement of the names and addresses of dissenting shareholders is supplied under this Division expires;
- (c) if an application has been made to the Court by a dissenting shareholder — the application is disposed of.

(3) When the transferee has complied with this section, the transferor must register the transferee as the holder of the shares.

(4) This section does not apply if the Court on the application of the dissenting shareholder orders to the contrary.

Disposal of consideration for shares compulsorily acquired

364. (1) All sums received by the transferor under this Division are to be paid into a separate bank account and those sums, and any other consideration so received, are to be held by the transferor in trust for the several persons entitled to the shares in respect of which they were respectively received.

(2) If a sum or other property received by the transferor under this Division has been held in trust by the transferor for a person for at least 2 years, the transferor must pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it or for part of it, to the Minister.

(3) The Minister is then to deal with it in accordance with Part 9.7 of the Corporations Law which for that purpose is to apply as part of this Act.

(4) The transferor must comply with subsection (2) before the end of 10 years after the day on which the sum was paid, or the consideration was allotted or transferred, to the transferor.

Division 4—Miscellaneous**Notification of appointment of scheme manager**

365. Within 14 days after being appointed to administer a compromise or arrangement approved under this Part, a person must lodge with the Registrar a notice in writing of the appointment.

Maximum penalty: 5 penalty units.

Power of Court to require reports

366. When an application is made to the Court under this Part in relation to a proposed compromise or arrangement, the Court may:

- (a) before making any order on the application, require the Registrar or any other person to give to the Court a report as to the terms of the compromise or arrangement or of the scheme for the purposes of or in connection with which the compromise or arrangement has been proposed, the conduct of the officers of the body or bodies concerned and any other matters that, in the opinion of the Registrar or that person, ought to be brought to the attention of the Court; and
- (b) in deciding the application, have regard to anything contained in the report; and
- (c) make such order or orders as to the payment of the costs of preparing and giving the report as the Court thinks fit.

Effect of out-of-jurisdiction compromise or arrangement

367. (1) A compromise or arrangement that is binding on any creditors of a foreign co-operative because of a provision of the law of another State or a Territory that corresponds to this Part is also binding on the creditors of the foreign co-operative whose debts are recoverable by action in a court of this State.

(2) If the Supreme Court of another State or a Territory makes an order under a provision of the law of that State or Territory that is prescribed as corresponding to a provision of this Part, the order is to be considered to have been made by the Supreme Court of New South Wales under that corresponding provision of this Act and has effect and may be enforced accordingly.

Jurisdiction to be exercised in harmony with Corporations Law jurisdiction

368. The jurisdiction of the Court under this Part is intended to complement the Court's jurisdiction under the Corporations Law and should be exercised in harmony with that jurisdiction.

Registrar may appear etc.

369. In any proceedings before the Court under this Part, the Registrar is entitled to appear and be heard, either in person or by the Registrar's duly appointed representative.

**PART 14—SUPERVISION AND PROTECTION OF
CO-OPERATIVES****Division 1—Supervision and inspection****Definitions**

370. In this Part:

“Co-operative venture” means:

- (a) any body corporate or unit trust formed by a co-operative or in the formation of which a co-operative participated; and
- (b) any partnership, joint venture or association of persons or bodies formed or entered into by a co-operative;

“premises” includes any structure, building, aircraft, vehicle, vessel and place (whether built upon or not) and any part of such a structure, building, aircraft, vehicle, vessel or place;

“relevant documents” means records or other documents that relate to the promotion, formation, membership, control, transactions, dealings, business or property of a co-operative.

“Co-operative” includes subsidiaries, foreign co-operatives and co-operative ventures

371. A reference in this Part to a co-operative includes a reference to each of the following:

- (a) a foreign co-operative;
- (b) a subsidiary of a co-operative or foreign co-operative;
- (c) a co-operative venture;
- (d) a co-operative or foreign co-operative, or a subsidiary of either, or a co-operative venture, that is in the course of being wound up or has been dissolved.

Appointment of inspectors

372. The Registrar may appoint persons to be inspectors for the purposes of this Act.

Registrar and investigators have functions of inspectors

373. The Registrar, and any investigator exercising functions under Division 2, have and may exercise all the functions of an inspector and for that purpose are to be considered to be inspectors.

Inspector's certificate of authority

374. Each inspector is to be provided by the Registrar with a certificate of authority and on applying for admission to any premises must, if requested to do so, produce the certificate.

Inspectors may require certain persons to appear, answer questions and produce documents

375. (1) An inspector may by notice in writing in the prescribed form:

- (a) require a co-operative to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the co-operative; and
- (b) require any person who is concerned in the activities of a co-operative to produce to the inspector at a time and place specified in the notice specified relevant documents relating to the co-operative; and
- (c) require any person who is concerned in the activities of a co-operative to attend before the inspector at a time and place specified in the notice and to answer any questions put to the person by the inspector relating to the promotion, formation, membership, control, transactions, dealings, business or property of the co-operative.

(2) A person is to be considered to be involved in the activities of a co-operative if the person:

- (a) is or has been an officer or employee of, or an agent, banker, solicitor, auditor or other person acting in any capacity for or on behalf of, the co-operative; or
- (b) is a person who has any relevant documents relating to the co-operative in his or her possession; or
- (c) is a person who was a party to the creation of any relevant documents relating to the co-operative.

(3) A person is not subject to any liability by reason of complying with a requirement made or purportedly made under this section.

Inspectors' powers of entry

376. (1) An inspector has power to enter any of the following premises:

- (a) any premises on which the affairs or activities of a co-operative are managed or conducted;
- (b) any premises on which the inspector suspects on reasonable grounds there is evidence of the commission of an offence under this Act or the regulations;
- (c) any premises on which the inspector suspects on reasonable grounds there are relevant documents.

(2) Despite subsection (1), the consent of the occupier or the authority of a search warrant is required to enter:

- (a) any part of premises not used for the management or conduct of the affairs or activities of a co-operative; and
- (b) any part of premises used for residential purposes (whether or not the part is also used for the management or conduct of the affairs or activities of a co-operative).

Powers of inspectors on premises entered

377. An inspector has the following powers on premises that the inspector is authorised to enter:

- (a) power to search for evidence of any contravention of this Act or the regulations;
- (b) power to search for relevant documents and to require any person on the premises to produce to the inspector any relevant documents in the person's custody or under the person's control;
- (c) power to require any person on the premises who is apparently involved in the management or conduct of the affairs or activities of a co-operative to answer questions or provide information;
- (d) power to exercise the functions of an inspector under section 378 in relation to any relevant documents found on the premises or produced to the inspector.

Functions of inspectors in relation to relevant documents

378. (1) An inspector has the following powers in relation to relevant documents found by an inspector on premises entered by the inspector or produced to the inspector pursuant to a requirement made under this Division:

- (a) power to take possession of the documents or secure them against interference;

- (b) power to make copies, or take extracts from, the documents;
- (c) power to require any person who was party to the creation of the documents to make a statement providing any explanation that the person is able to provide as to any matter relating to the creation of the documents or as to any matter to which the documents relate;
- (d) power to retain possession of the documents for such period as is necessary to enable the documents to be inspected, and copies of, or extracts from, the documents to be made or taken.

(2) While an inspector retains possession of a document, the inspector must permit a person who would be entitled to inspect the document were it not in the possession of the inspector to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

(3) If an inspector takes possession of or secures against interference any relevant document and a person has a lien on the document, the inspector's actions do not prejudice the lien.

Offence—failing to comply with requirements of inspector

379. (1) A person who fails to comply with any requirement made of the person by an inspector under the authority of this Part is guilty of an offence unless the person establishes that he or she had a reasonable excuse for failing to comply.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) A person who in purported compliance with a requirement under this Division furnishes information or makes a statement that is false or misleading in a material particular is guilty of an offence unless the person establishes that he or she believed on reasonable grounds that it was true and not misleading.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(3) A person must not without reasonable excuse obstruct or hinder an inspector exercising functions under this Act.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(4) The occupier or person in charge of any premises must provide a person who enters the premises under the authority of this Part or pursuant to a search warrant referred to in section 381 with all reasonable facilities and assistance for the effective exercise of the person's powers under this Part or under the warrant.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Protection from incrimination

380. (1) A person is not excused from making a statement pursuant to a requirement under this Division on the ground that the statement might tend to incriminate him or her.

(2) However, if the person claims before making a statement that the statement might tend to incriminate him or her, the statement is not admissible in evidence against him or her in criminal proceedings other than proceedings under this Division.

(3) Except as provided by subsection (2), a statement made by a person in compliance with a requirement under this Division may be used in evidence in any criminal or civil proceedings against the person.

Search warrants

381. (1) An inspector may apply to an authorised justice for the issue of a search warrant in respect of premises if the inspector believes on reasonable grounds:

- (a) that the affairs or activities of a co-operative are being managed or conducted on the premises; or
- (b) that there is evidence on the premises of the commission of an offence under this Act or the regulations; or
- (c) that there are relevant documents on the premises.

(2) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant to enter the premises and exercise all or specified functions of an inspector on the premises.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a police officer may accompany an inspector executing a search warrant issued under this section and may take all reasonable steps to assist in the exercise of the functions of the inspector under this Act.

(5) In this section:

“**authorised justice**” has the same meaning as in the Search Warrants Act 1985.

Copies of extracts of records to be admitted in evidence

382. (1) Subject to this section, in any legal proceedings (whether proceedings under this Act or otherwise), a copy of or extract from a

record relating to affairs of a co-operative is admissible in evidence as if it were the original record or the relevant part of the original record.

(2) A copy of or extract from a record is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the record or of the relevant part of the record.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a record is a true copy of the record or of a part of the record may be given by a person who has compared the copy or extract with the record or the relevant part of the record and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

Privilege

383. (1) A legal practitioner is entitled to refuse to comply with a requirement under section 375 or 378 relating to a relevant document if:

- (a) the document contains a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner; or
- (b) the legal practitioner is not able to comply with the requirement without disclosing a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner.

(2) The legal practitioner is not entitled to refuse to comply with the requirement to the extent that he or she is able to comply with it without disclosing the privileged communication.

(3) The legal practitioner is also not entitled to refuse to comply with the requirement if the person by or on behalf of whom the communication was made or (if the person is under official management or in the course of being wound up) the official manager or the liquidator agrees to the legal practitioner complying with the requirement.

(4) If the legal practitioner refuses to comply with such a requirement, he or she must forthwith furnish in writing to the Registrar:

- (a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the legal practitioner); and
- (b) sufficient particulars to identify the document containing the communication (if the communication was made in writing).

Penalty: 20 penalty units or imprisonment for 3 months, or both.

Police aid for inspectors

384. (1) An inspector may call to his or her aid a police officer if he or she is obstructed, or believes on reasonable grounds that he or she will be obstructed, in the exercise of his or her functions as an inspector.

(2) A police officer has, while acting in aid of an inspector, all the functions of an inspector.

Division 2—Inquiries**Definitions**

385. In this Division:

“affairs”, in relation to a co-operative, includes:

- (a) the promotion, formation, membership, control, transactions, dealings, business and property of the co-operative; and
- (b) loans made to the co-operative; and
- (c) matters that are concerned with identifying people who are, or have been, financially interested in the success or failure, or apparent success or failure, of the co-operative or who are, or have been, able to control or influence materially the policies of the co-operative; and
- (d) the circumstances in which a person placed, withdrew or disposed of funds with, or loans to, the co-operative;

“costs”, in relation to an inquiry under this Division, includes:

- (a) the expenses of, and incidental to, the inquiry; and
- (b) the expenses payable by the Registrar in any proceedings instituted by the Registrar under this Division in the name of the co-operative the subject of the inquiry; and
- (c) so much of the remuneration of a servant of the Crown as is determined by the Treasurer to be attributable to matters connected with the inquiry;

“involved person”, in relation to an inquiry into the affairs of a co-operative, means:

- (a) an officer of the co-operative; or
- (b) a person who acts, or has at any time acted, as banker, solicitor, auditor or actuary, or in any other capacity, for the co-operative; or
- (c) a person who has, or at any time had, in his or her possession any property of the co-operative; or
- (d) a person who is indebted to the co-operative; or

- (e) a person who is capable of giving information relating to the affairs of the co-operative; or
- (f) a person whom an investigator believes on reasonable grounds to be a person referred to in paragraphs (a)–(e).

Appointment of investigators

386. (1) The Registrar may with the consent of the Minister appoint a person or persons to hold an inquiry into the affairs of a co-operative if the Registrar considers that it is desirable to do so for the protection of the public or of the members or creditors of the co-operative. Such a person is referred to as an “investigator”.

(2) The Registrar may vary the terms and conditions of appointment of an investigator if the Minister and the investigator agree to the variation.

(3) In the course of an inquiry into the affairs of a co-operative, an investigator may inquire into the affairs of a subsidiary of the co-operative that, if the subsidiary were the co-operative, would be affairs of the co-operative.

(4) An inquiry into the affairs of a subsidiary of a co-operative may be conducted as if the subsidiary were the co-operative.

Powers of investigators

387. (1) An investigator inquiring into the affairs of a co-operative may, by giving an involved person a notice in the prescribed form, require the person:

- (a) to produce any document of which the person has custody or control and which relates to those affairs; or
- (b) to give the investigator all reasonable assistance in connection with the inquiry; or
- (c) to appear before the investigator for examination on oath.

(2) An investigator may administer an oath to an involved person given a notice under subsection (1).

(3) An investigator may take possession of a document produced by an involved person under subsection (1) and may retain it for the period that the investigator decides is necessary for the inquiry.

(4) While an investigator retains possession of a document, the investigator must permit a person who would be entitled to inspect the document were it not in the possession of the investigator to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

Examination of involved person

388. (1) A legal practitioner acting for an involved person:

- (a) may attend an examination of the involved person by an investigator; and
- (b) may, to the extent that the investigator permits, address the investigator and examine the involved person.

(2) An involved person is not excused from answering a question asked by the investigator even if seeking to be excused on the ground of possible self-incrimination.

(3) If an involved person answers a question of an investigator after having claimed possible self-incrimination by doing so, neither the question nor the answer is admissible in evidence in any criminal proceedings other than:

- (a) proceedings under section 390 for giving a false or misleading answer to the question; or
- (b) proceedings on a charge of perjury in respect of the answer.

(4) An involved person who attends for examination by an investigator is entitled to be paid the prescribed allowance and the prescribed expenses.

Privilege

389. (1) An involved person who is a legal practitioner is entitled to refuse to produce a document to an investigator if the document contains a privileged communication made by or on behalf of or to the legal practitioner in his or her capacity as a legal practitioner.

(2) The legal practitioner is not entitled to refuse to produce the document if the person by or on behalf of whom the communication was made or (if the person is under official management or in the course of being wound up) the official manager or the liquidator agrees to the legal practitioner producing the document.

(3) If the legal practitioner refuses to comply with such a requirement, he or she must forthwith furnish in writing to the investigator:

- (a) the name and address of the person to whom or by or on behalf of whom the communication was made (if known to the legal practitioner); and
- (b) sufficient particulars to identify the document.

Penalty: 20 penalty units or imprisonment for 3 months, or both.

Offences by involved person

390. (1) An involved person who:

- (a) refuses or fails to comply with a lawful requirement of an investigator without showing reasonable cause for the refusal or failure; or
- (b) gives an investigator information knowing the information to be false or misleading in a material particular; or
- (c) when appearing before an investigator, refuses to take an oath or makes a statement knowing the statement to be false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) If an investigator considers that a refusal or failure by a person to comply with a requirement of the investigator is an offence under subsection (1) (a), the investigator may certify the refusal or failure to the Court and the Court may then:

- (a) order the involved person to comply with the requirement of the investigator within a stated period; or
- (b) instead of, or in addition to, making such an order, punish the involved person as for a contempt of the Court if satisfied that there was no lawful excuse for the refusal or failure to comply with the requirement of the investigator.

Offences relating to documents

391. If an inquiry into the affairs of a co-operative is being held under this Division, a person who:

- (a) conceals, destroys, mutilates or alters a document relating to the co-operative; or
- (b) sends, or causes to be sent, out of the State any document or other property that belongs to, or is under the control of, the co-operative,

is guilty of an offence unless it is established that the person charged did not intend to defeat, delay or obstruct the inquiry.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Record of examination

392. (1) Except as provided by section 388 (which relates to self-incrimination), a record of an examination may be used in

proceedings against the person examined, but this does not preclude the admission of other written or oral evidence.

(2) A person examined is, on written application made to the investigator, entitled to a free copy of the record of examination.

(3) The Registrar may provide a legal practitioner with a copy of a record of examination made by an investigator if the Registrar is satisfied that the legal practitioner is conducting, or is in good faith contemplating, legal proceedings in respect of affairs of the co-operative to which the record relates.

(4) A legal practitioner who:

- (a) uses a copy of a record of examination otherwise than in connection with the preparation for, institution of, or conduct of, legal proceedings; or
- (b) publishes or communicates the record or any part of it for any other purpose,

is guilty of an offence.

Maximum penalty (subsection (4)): 10 penalty units.

Report of investigator

393. (1) An investigator may, and if directed by the Registrar to do so must, make interim reports to the Registrar on any inquiry being held by the investigator.

(2) As soon as practicable after the end of an inquiry, the investigator must report to the Registrar:

- (a) the opinion of the investigator in relation to the affairs of the co-operative the subject of the inquiry; and
- (b) the findings on which the opinion is based.

(3) An investigator's report may include a recommendation as to whether:

- (a) an order should be made under section 396 (3) (under which the Registrar may order a co-operative to pay the costs of the inquiry); or
- (b) an application should be made under section 396 (4) or (5) (under which a court may order a person to pay the costs of the inquiry); or
- (c) such an order and such an application should both be made.

(4) A report by an investigator may be accompanied by any document of which the investigator has taken possession after being produced under this Division, in which case the Registrar:

- (a) may retain the document for such period as the Registrar considers necessary in order to decide whether legal proceedings should be instituted as a result of the inquiry; and
- (b) may retain the document for any further period that the Registrar considers to be necessary to enable legal proceedings to be instituted and prosecuted; and
- (c) may permit the use of the document for any legal proceedings instituted as a result of the inquiry; and
- (d) must permit inspection of the document by a person who would be entitled to inspect it if it were returned to its former custody; and
- (e) may permit inspection of the document by another person while it is in the possession of the Registrar but only if the Registrar considers that the person has an interest in the inquiry and, because of that interest, refusal of the inspection would be unjust.

Proceedings following inquiry

394. (1) If legal proceedings are to be, or have been, instituted by the Registrar as a result of an inquiry under this Division, the Registrar may, by order in writing, require a person who, in relation to the inquiry, was an involved person to give all such assistance in connection with the proceedings as the person is reasonably able to give.

(2) The Court may, on the application of the Registrar, order a person to comply with an order under subsection (1) if the person has refused or failed to do so.

(3) If the Registrar considers that, as a result of an inquiry under this Division, legal proceedings should, in the public interest, be instituted by a co-operative for the recovery of:

- (a) damages in respect of fraud or other misconduct in connection with the affairs of the co-operative; or
- (b) property of the co-operative,

the proceedings may be instituted and prosecuted in the name of the co-operative.

Admission of investigator's report as evidence

395. (1) A document certified by the Registrar as being a copy of a report of an inquiry under this Division is admissible as evidence of any findings made by the investigator.

(2) Subsection (1) does not authorise the admission of evidence that is inadmissible under section 388.

Costs of inquiry

396. (1) The costs of an inquiry under this Division are to be paid out of money appropriated by Parliament.

(2) At the direction of the Treasurer, the Registrar must act under one or more of subsections (3), (4) and (5).

(3) The Registrar may, by order served on a co-operative, direct the co-operative to pay to the Crown all or part of the costs of an inquiry under this Division into the affairs of the co-operative.

(4) If proceedings are instituted by the Registrar under section 394 in the name of a co-operative, the court may, in the course of the proceedings and on the application of the Registrar, order that all or part of the costs of the inquiry that led to the proceedings be paid to the Crown by a specified party to the proceedings.

(5) If a person is convicted of an offence in proceedings certified by the Registrar to be the result of an inquiry into the affairs of a co-operative, the convicting court may, on the application of the Registrar made at the time of the conviction or not more than 14 days later, order the convicted person to pay to the Crown all or part of the costs of the inquiry.

(6) An order under this section must state:

- (a) the amount to be paid; and
- (b) the time or times for payment; and
- (c) the manner of payment.

(7) An amount that has not been paid by a person in accordance with an order under this section is recoverable from the person by the Registrar as a debt due to the Crown.

Division 3—Prevention of fraud etc.**Falsification of records**

397. A person who makes, orders or allows to be made any entry or erasure in, or any omission from:

- (a) any accounts or accounting records of a co-operative or of a subsidiary of a co-operative; or
- (b) any return, document or other record required to be sent, produced or delivered for the purposes of this Act,

with intent to falsify them or it, or to evade any of the provisions of this Act, is guilty of an offence.

Maximum penalty: 20 penalty units.

Fraud or misappropriation

398. (1) A person who:

- (a) by false representation or imposition, obtains possession of any property of a co-operative; or
- (b) having any property of a co-operative in his or her possession, withholds or misapplies it or wilfully applies any part of it to purposes other than those authorised by the rules of the co-operative or by this Act,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) A person who is guilty of such an offence must, if ordered to do so by the court that convicts the person, deliver up all such property and repay all money improperly applied.

Maximum penalty: imprisonment for 3 months.

(3) This section does not prevent any person from being proceeded against by way of indictment if the person has not been previously convicted of the same offence under this Act.

Offering or paying commission

399. A person who offers or pays any commission, fee or reward, whether pecuniary or otherwise, to an officer of a co-operative for or in connection with a transaction or proposed transaction between the person and the co-operative is guilty of an offence.

Maximum penalty: 20 penalty units.

Accepting commission

400. (1) An officer of a co-operative who accepts any commission, fee or reward, whether pecuniary or otherwise, from any person for or in connection with a transaction or proposed transaction between the person and the co-operative is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) An officer of a co-operative who is guilty of any offence under subsection (1) is also liable to make good to the co-operative double the value or amount of the commission, fee or reward.

False statements in loan application etc.

401. (1) A person who in or in relation to any application, request or demand for money made to or of any co-operative:

- (a) gives any information or makes any statement to the co-operative or an officer, employee or agent of the co-operative knowing it to be false or misleading in a material particular; or
 - (b) proffers to the co-operative or an officer, employee or agent of the co-operative any information or statement provided by any other person knowing it to be false or misleading in a material particular,
- is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) If a person is convicted of an offence under subsection (1), a co-operative from which money has been obtained by the person in relation to the commission of the offence may exercise all such rights under a mortgage or other security given to it by the person to secure the repayment of money as it could exercise if there were a breach of a covenant or of a term of any contract by which the security was given.

(3) The co-operative may exercise those rights whether the mortgage or other security was executed by the person alone or by the person and another person or other persons.

(4) If an order has been made under section 556A (1) of the Crimes Act 1900 in relation to a person in respect of an offence under subsection (1), the person is for the purposes of this section to be considered to have been convicted of the offence.

Division 4—Miscellaneous powers of the Registrar

Application for special meeting or inquiry

402. (1) The Registrar must, on the application of a majority of the members of the board or of not less than one-third in number of the members of a co-operative:

- (a) call a special meeting of the co-operative; or
- (b) hold, or appoint an inspector to hold, an inquiry into the affairs of the co-operative or of a subsidiary of the co-operative.

(2) An application must be supported by such evidence as the Registrar directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.

(3) Notice of the application must be given to the co-operative as the Registrar directs.

(4) The applicants must give such security for the expenses of the meeting or inquiry as the Registrar directs.

Holding of special meeting

403. (1) The Registrar may direct the time and place at which the special meeting is to be held and the matters that are to be discussed and determined at the meeting.

(2) The Registrar is to give such notice to members of the holding of the special meeting as the Registrar considers appropriate (despite any provision in the co-operative's rules as to the giving of notice).

(3) The special meeting has all the powers of a meeting called in accordance with the rules of the co-operative and has power to appoint its own chairperson (despite any rule of the co-operative to the contrary).

(4) The Registrar or any person nominated by the Registrar for the purpose may attend and address the meeting.

Expenses of special meeting or inquiry

404. The expenses of and incidental to a meeting called or an inquiry held under this Division (including under section 405) are to be defrayed in such proportions as the Registrar directs:

- (a) by the applicants (if any);
- (b) out of the funds of the co-operative to which the meeting or inquiry related or whose subsidiary was the subject of the inquiry; or
- (c) by any officer, member, former officer or former member of the co-operative.

Power to hold special inquiry into co-operative

405. The Registrar may without any application hold, or appoint an inspector to hold, an inquiry into the working and financial condition of a co-operative or a subsidiary of a co-operative.

Special meeting following inquiry

406. On completion of any inquiry under this Division, the Registrar may call a special meeting of the co-operative. Sections 403 and 404 apply to such a meeting.

Information and evidence

407. (1) On any application for registration of a co-operative or of any rule or document under this Act, the Registrar may require from the applicant such information and evidence as may be reasonable in order to show that the application should be granted.

(2) The Registrar may require from any co-operative such information and evidence as may be reasonable in order to show that the co-operative is bona fide carrying on business in accordance with the provisions of this Act.

(3) The Registrar may require from a co-operative such evidence as the Registrar thinks proper of all matters required to be done and of the entries in any document required to be furnished to the Registrar under this Act.

Enlargement or abridgment of time

408. (1) The Registrar may grant an enlargement of, or may abridge, any time for doing anything required to be done by a co-operative by this Act, the regulations or the rules of a co-operative on such terms (if any) as the Registrar determines.

(2) The Registrar may grant such an enlargement of time even if the time for doing the thing has expired.

(3) This section does not limit the operation of section 81 of the Supreme Court Act 1970, or the operation of any rules of the Court relating to the enlargement or abridgment of time.

PART 15—ADMINISTRATION OF THIS ACT

Division 1—The Registrar

Registrar's functions

409. The Registrar has such functions as are conferred or imposed on the Registrar by or under this Act.

Keeping of registers etc.

410. (1) The Registrar is to keep such registers as the Registrar considers necessary or desirable for the purposes of this Act.

(2) Any document lodged with, furnished to or registered by the Registrar under this Act is to be kept in the office of the Registrar.

Delegation by Registrar

411. (1) The Registrar may delegate to any person any of the Registrar's functions except this power of delegation.

(2) A delegate may subdelegate to another person any function delegated under this section if the delegate is authorised by the terms of the delegation to do so.

Approvals by Registrar

412. (1) This section applies to any provision of this Act which imposes a requirement for the Registrar's approval of any action or thing.

(2) The Registrar may indicate in writing to an applicant for such an approval that the approval is to be considered to have been granted at the end of a specified period unless the Registrar informs the applicant in writing within that period that the approval has not been granted or is still being considered.

Disposal of records by Registrar

413. The Registrar may, if in the opinion of the Registrar it is no longer necessary or desirable to retain them, destroy or dispose of any of the following:

- any annual return or balance-sheet lodged more than 7 years ago;
- any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, if a memorandum of satisfaction of the charge was registered more than 7 years ago;
- any other document (except the rules or any document affecting the rules of a co-operative) that was lodged, furnished or registered more than 15 years ago;
- any document lodged, furnished or registered in relation to a co-operative that was dissolved or ceased to be registered more than 15 years ago;
- any document a transparency of which has been incorporated in a register kept by the Registrar.

Division 2—The Council**Constitution of Council**

414. (1) There is constituted by this Act a Co-operatives Council.

(2) The Council is to consist of 9 members appointed by the Minister.

(3) Of the 9 members, 4 are to be persons chosen by the Minister from among persons nominated as provided in section 415.

(4) In making appointments to the Council, the Minister is to have regard to the desirability of achieving in the composition of the Council an appropriate diversity of backgrounds, qualifications, experience and interests in the co-operative sector and an appropriate diversity of representation of various types and sizes of co-operatives.

(5) Schedule 5 has effect with respect to the members and procedure of the Council.

Nominations

415. (1) For the purpose of receiving nominations for appointment to the Council, the Minister is to invite nominations from every co-operative.

(2) Each co-operative is entitled to nominate a maximum of 3 persons.

(3) Nominations are to be in writing and must be accompanied by such information as the Minister may request in relation to the persons nominated.

(4) If insufficient nominations are made within a reasonable time after the Minister's invitation is made, the Minister may appoint persons of the Minister's own choice.

Minister and Registrar may attend meetings

416. (1) The Registrar is entitled to attend and preside at meetings of the Council and is entitled to appoint any person to attend and preside at those meetings as the Registrar's nominee.

(2) The Minister is entitled to attend meetings of the Council and is entitled to appoint a person to attend those meetings as the Minister's nominee.

(3) Neither the Registrar nor the Minister, nor a person attending as the nominee of either of them, has a deliberative vote at a meeting of the Council but the Registrar (or his or her nominee) when presiding at a meeting of the Council has a casting vote in the event of an equality of votes.

Functions of the Council

417. The Council has the following functions:

- (a) to encourage the development and integration of the co-operative sector;
- (b) to advise and make recommendations to the Minister on the following matters:
 - any action to be taken for promoting co-operative principles and for encouraging and assisting in the formation of co-operatives
 - policies for the administration of this Act and the regulations
 - the regulations to be made under this Act

- such other matters as may be referred to the Council by the Minister or as may be prescribed;
- (c) such other functions as may be conferred or imposed on the Council by or under this Act.

Delegation by Council to Registrar

418. (1) The Council may delegate to the Registrar any of the Council's functions except this power of delegation.

(2) The Registrar may subdelegate to an officer of the Public Service any function delegated under this section if the Registrar is authorised by the terms of the delegation to do so.

Appeal to Court from decision of Council

419. A person aggrieved by a decision of the Council under this Act may appeal against the decision to the Supreme Court in accordance with rules of court.

Division 3—Evidence**Certificate of incorporation**

420. (1) A certificate of incorporation of a co-operative issued under this Act is conclusive evidence that the co-operative is incorporated under this Act and that all the requirements of this Act in respect of registration have been complied with.

(2) This section does not affect any provisions of this Act for the winding up or dissolution of the co-operative or the cancellation of its registration.

Certificate of Registrar as to when something done

421. (1) If a function under this Act is conferred or imposed on the Registrar as a consequence of something being done or omitted to be done within a specified period, the Registrar may certify:

- (a) that the thing had or had not been done within that period; or
- (b) that the thing had or had not been done by a specified date.

(2) Such a certificate given by the Registrar is evidence of the matters stated in the certificate.

Orders etc. published in the Gazette

422. A copy of an order, notice, exemption or other instrument published in the Gazette purporting to have been given or issued under this Act or the regulations is evidence of the giving or issuing of the order, notice, exemption or other instrument of which it purports to be a copy.

Records kept by co-operatives

423. (1) A record kept by a co-operative under a requirement of this Act is admissible in evidence in any proceedings and is evidence of any matter stated or recorded in the record.

(2) A document purporting to be a record kept by a co-operative is, unless the contrary is proved, to be considered to be a record kept by the co-operative under a requirement of this Act.

(3) A copy of any entry in a record regularly kept by a co-operative in the course of its business is, if verified by statutory declaration of the secretary to be a true copy of the entry, to be received in evidence in any case where and to the same extent as the original entry itself is admissible.

Minutes

424. (1) Every entry in the minutes purporting to be a minute of the business transacted at a meeting of a co-operative or of the board, and purporting to have been signed by the chairperson at a subsequent meeting, is evidence that the business as therein recorded was transacted at the meeting and that the meeting was duly convened and held.

(2) An entry in the minutes of a meeting of a co-operative to the effect that a resolution was carried or carried unanimously, or was lost, is evidence of the fact without proof of the number or proportion of votes recorded for or against the resolution.

Official certificates etc.

425. (1) A certificate of incorporation given by the Registrar is to be received in evidence as if it were the original certificate.

(2) A certificate of registration or other official document relating to a co-operative signed by or bearing the seal of the Registrar is to be received in evidence without further proof.

(3) Rules certified by the Registrar to be a true copy of the rules of a co-operative is evidence of the registered rules of the co-operative.

The Registrar

426. (1) Judicial notice is to be taken of the signature and seal of any person who holds or has held the office of Registrar, if the signature or seal purports to be attached to any certificate or other official document.

(2) This section extends to any copy of the rules of a co-operative certified by the Registrar to be a true copy of its registered rules.

(3) In any proceedings, no proof is required (until evidence is given to the contrary) of the appointment of the Registrar or any former Registrar.

Rules

427. A printed copy of the rules of a co-operative verified by statutory declaration of the secretary of the co-operative to be a true copy of its registered rules is in any proceedings evidence of the rules, in the absence of evidence to the contrary.

Registers

428. The register of directors, members and shares of a co-operative is evidence of the particulars directed or authorised by or under this Act to be inserted in the register.

PART 16—OFFENCES AND PROCEEDINGS**Offences by officers of co-operatives**

429. (1) If a co-operative contravenes a provision of this Act or the regulations:

- (a) any person who is a director of the co-operative or concerned in its management is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention; and
- (b) any other officer of the co-operative who by a wilful act or omission is the cause of the contravention is taken to have contravened the same provision.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the co-operative has been proceeded against or convicted under that provision.

(3) This section does not affect any liability imposed on a co-operative for an offence committed by the co-operative against this Act.

Notice to be given of conviction for offence

430. If a co-operative or an officer of a co-operative is convicted of an offence against a provision of this Act or the regulations, the

co-operative must, not later than 15 months after the conviction is recorded, give to each member of the co-operative notice in writing of:

- (a) the conviction; and
- (b) any penalty imposed in respect of the offence to which the conviction relates; and
- (c) the nature of the offence to which the conviction relates.

Secrecy

431. (1) A person:

- (a) who is, or at any time was, engaged in the administration of this Act or the former Act; and
- (b) who, except as provided by this section, records, makes use of or divulges any information obtained in the course of that administration,

is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) Subsection (1) does not apply to:

- (a) the recording, making use of or divulging of information in the course of the administration of this Act; or
- (b) the recording or making use of information for the purpose of divulging it as permitted by subsection (3) or (4); or
- (c) the divulging of information as permitted by subsection (3) or (4).

(3) Information may be divulged:

- (a) for the purposes of criminal proceedings; or
- (b) for the purposes of any proceedings under this Act or of an inquiry authorised by an Act; or
- (c) with the consent of the person to whom the information relates; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) in accordance with a reciprocal arrangement under section 441.

(4) Information may be divulged to:

- (a) the Minister, or
- (b) the Treasurer; or
- (c) the Chief Commissioner of Stamp Duties; or
- (d) the Chief Commissioner of Pay-roll Tax; or

- (e) the Chief Commissioner of Land Tax; or
 - (f) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a law of the Commonwealth; or
 - (g) the person who, under a law of another State, or of a Territory, administers a law of the State or Territory that relates to taxation or the imposition of a duty; or
 - (h) a person seeking information under a reciprocal arrangement under section 441; or
 - (i) a member of the Police Force exercising functions as such; or
 - (j) a person nominated by a person referred to in paragraphs (a)–(g).
- (5)** For the purposes of this section, a person is, or was, engaged in the administration of this Act or the former Act if the person exercises, or at any time exercised, a function as:
- (a) the Registrar holding office under this Act or the former Act; or
 - (b) a member of the Council constituted under this Act or of the Advisory Council constituted under the former Act; or
 - (c) an inspector appointed under this Act or the former Act; or
 - (d) an investigator appointed under this Act; or
 - (e) a person appointed or employed for the purposes of this Act or the former Act.
- (6)** In this section:
- “**divulge**”, in relation to information, means:
- (a) communicate the information verbally; or
 - (b) make available a document containing the information; or
 - (c) make available anything from which, by electronic process or otherwise, the information may be obtained; or
 - (d) communicate the information in any other manner;
- “**former Act**” means the Co-operation Act 1923.

False or misleading statements

432. (1) A person who, in a document required for the purposes of this Act or lodged with the Registrar makes, or authorises the making of, a statement knowing it to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) A person who, from a document required for the purposes of this Act or lodged with the Registrar omits, or authorises the omission of, anything knowing that the omission makes the document misleading in a material particular is guilty of an offence.

Maximum penalty: 100 penalty units.

(3) A person who, in a document required for the purposes of this Act or lodged with the Registrar makes, or authorises the making of, a statement that is false or misleading in a material particular is guilty of an offence unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of false or misleading statements in such a document.

Maximum penalty: 50 penalty units.

(4) If an omission makes a document required for the purposes of this Act or lodged with the Registrar misleading in a material respect, a person who made or authorised the omission is guilty of an offence unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make such a document false or misleading.

Maximum penalty: 50 penalty units.

Further offence for continuing failure to do required act

433. (1) If a provision of this Act requires an act to be done and it has not been done, the obligation to do the act continues until the act is done:

- (a) even if a person has been convicted of an offence in relation to the failure to do the act; and
- (b) even if the provision required the act to be done within a particular period or before a particular time and that period has ended or that time has passed.

(2) If a person is convicted of an offence (“a primary conviction”) for a failure to do the act (whether it is the first or a second or subsequent offence in relation to the failure) and the failure to do the act continues after the time of the conviction, the person is guilty of a further offence for that continuing failure.

(3) That further offence is constituted by the failure to do the act during the period that begins with the primary conviction and ends when proceedings for the further offence are commenced or the act concerned is done (whichever happens first). This period is “the further offence period”.

(4) Proceedings for the further offence are to be considered to have been commenced on the day on which the information for the further offence is laid or on such earlier day as the information may specify for that purpose.

(5) The maximum penalty for the further offence is the penalty calculated by multiplying \$50 by the number of days in the further offence period.

Civil remedies

434. (1) If a co-operative in making, guaranteeing or raising any loan or receiving any deposit contravenes any provision of this Act or the regulations or any rule of the co-operative, the civil rights and liabilities of the co-operative or any other person in respect of the recovery of the loan or deposit are not affected or prejudiced by the contravention but the money becomes immediately payable.

(2) The same remedies may be had for the recovery of the loan or deposit and for the enforcement of any security for it as if there had not been a contravention of this Act or the regulations or of the rules of the co-operative.

Proceedings for offences etc.

435. (1) Proceedings for an offence under this Act may be instituted at any time before the expiration of 3 years after the alleged commission of the offence.

(2) Proceedings for an offence under this Act are to be disposed of summarily before:

- (a) a Local Court constituted by a Magistrate; or
- (b) the Supreme Court in its summary jurisdiction.

(3) The maximum penalty that may be imposed by a Local Court for an offence under this Act is 50 penalty units or imprisonment for 12 months, or both.

(4) Proceedings for the recovery of any fine or penalty imposed by the rules of a co-operative are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(5) Proceedings for an offence may be instituted only by the Registrar or any aggrieved person.

(6) Proceedings for the recovery of any fine or penalty imposed by the rules of a co-operative may be instituted only by the co-operative.

PART 17—GENERAL**Interpretation of applied provisions of Corporations Law**

436. (1) Provisions of the Corporations Law applied by this Act so apply with such modifications as may be necessary or appropriate for the effectual application of the provisions to co-operatives.

(2) Examples of necessary or appropriate modifications are as follows:

- (a) a reference to articles or memorandum of association is to read as a reference to rules;
- (b) a cross-reference to another provision of the Corporations Law is, if that cross-reference is not appropriate (because for example the provision cross-referred to is not among the provisions applied), to be read as a cross-reference to the equivalent provision of this Act;
- (c) a reference to the Gazette is to be read as a reference to the Government Gazette of New South Wales;
- (d) a reference to the Commonwealth is to be read as a reference to the State;
- (e) provisions which are not relevant to co-operatives or which are incapable of application to co-operatives are to be ignored;
- (f) modifications directed by the Registrar under subsection (3).

(3) The Registrar may by order published in the Gazette give directions as to the modifications that are necessary or desirable for the effectual operation of the applied provisions of the Corporations Law.

(4) This section has effect subject to any specific requirements of provisions of this Act that apply provisions of the Corporations Law.

Exemption from stamp duty

437. (1) No stamp duty is payable in respect of any of the following instruments:

- (a) the certificate of incorporation of a co-operative;
- (b) a share certificate or any other instrument issued or executed in connection with the capital of a co-operative.

(2) An instrument issued or executed in connection with a CCU of a co-operative is not exempt under subsection (1).

Inspection of documents

438 (1) Any person is entitled, on payment of the prescribed fee:

- (a) to inspect any document (other than a document of a class or description prescribed as exempt from this paragraph) registered by, or filed or lodged with, the Registrar under this Act; and
- (b) to obtain from the Registrar a certified copy of any such document; and
- (c) obtain from the Registrar a certificate of the registration of a co-operative and a certified copy of the rules of a co-operative or of any part of those rules.

(2) Subsection (1) does not apply to:

- (a) a list of the members of a co-operative submitted by a co-operative pursuant to section 253 (List of members to be furnished at request of Registrar);
- (b) a special return submitted by a co-operative pursuant to section 254 (Special return to be furnished at request of Registrar).

Co-operative ceasing to exist

439. (1) As soon as practicable after a co-operative is dissolved or has otherwise ceased to exist, the Registrar is to register the dissolution and cancel the registration of the co-operative.

(2) The Registrar may remove from any register kept by the Registrar the name of any co-operative that has been dissolved or otherwise ceased to exist.

(3) A co-operative that has transferred its engagements to another co-operative is to be considered to have ceased to exist.

Service of documents

440. (1) A document may be served on a co-operative by post or by leaving it at the registered office of the co-operative with a person who appears to be aged 16 or more.

(2) A document may be served on a foreign co-operative by post or by leaving it with a person who appears to be aged 16 or more and is at a place where the foreign co-operative carries on business in New South Wales.

(3) For the purpose of serving a document under this section by post, it is properly addressed if:

- (a) in the case of a co-operative, it is addressed to the registered office of the co-operative; or
- (b) in the case of a foreign co-operative, it is addressed to a place in New South Wales where the foreign co-operative carries on business.

(4) This section does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on a co-operative or a foreign co-operative in any other way.

Reciprocal arrangements

441. (1) If a reciprocal arrangement with another State or a Territory is in force, the Registrar:

- (a) may, at the request of the appropriate official of the State or Territory, provide the official with information or documents relating to a co-operative; and
- (b) may request the appropriate official of the State or Territory to provide the Registrar with documents or information relating to an organisation that, under the arrangement, is an organisation corresponding to a co-operative.

(2) A reciprocal arrangement with another State or a Territory is an arrangement made between the Minister and a representative of the government of the other State or the Territory under which it is agreed:

- (a) that the Registrar will comply with a request referred to in subsection (1) (a); and
- (b) that a request made by the Registrar to an official designated in the arrangement as the appropriate official for the purposes of subsection (1) (b) will be complied with.

Translations of documents

442. A requirement imposed by or under this Act to furnish or lodge a document or make a document available for inspection is, in the case of a document that is not in the English language, to be considered to include a requirement that a translation of the document be furnished, lodged or made available for inspection at the same time.

Injunctions

443. (1) If the Court is satisfied on the application of the Registrar that a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:

- (a) a contravention of this Act or the regulations; or

- (b) attempting to contravene this Act or the regulations; or
 - (c) aiding, abetting, counselling or procuring a person to contravene this Act or the regulations; or
 - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act or the regulations; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act or the regulations; or
 - (f) conspiring with others to contravene this Act or the regulations,
- the Court may grant an injunction on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
- (2)** If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (3)** The Court may discharge or vary an injunction granted under this section.
- (4)** The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (5)** The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (6)** If the Registrar applies to the Court for the grant of an injunction under this section, the Court is not to require the Registrar or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(7) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

Savings and transitional provisions

444. Schedule 6 has effect.

Amendment of other Acts

445. Each Act specified in Schedule 7 is amended as set out in that Schedule.

Regulations

446. (1) The Governor may make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may be made for or with respect to the following:

- (a) the making of applications for the exercise of a function by the Registrar, including the use of a form approved by the Registrar;
- (b) fees to be paid in connection with the administration of this Act.

(3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

**SCHEDULE 1—MATTERS FOR WHICH RULES MUST
MAKE PROVISION**

(Sec. 107)

Requirements for all co-operatives

1. The rules of all co-operatives must set out or make provision for each of the following:

- the name of the co-operative;
- where the office of the co-operative is to be situated;
- the primary activities of the co-operative;
- active membership provisions (within the meaning of Part 6);
- whether the co-operative intends to avail itself of any powers authorised by this Act as incidental to its primary activities, and in the case of the borrowing powers, within what limits it proposes to exercise those powers;
- the manner in which the capital of the co-operative is to be raised;
- the manner in which the funds of the co-operative are to be managed, and in particular the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the co-operative;
- the purposes to which the funds of the co-operative are to be applied, and the manner in which they are to be invested;
- in the case of any co-operative which is authorised to make an advance, the manner in which an application for an advance is to be made; the conditions with which an applicant is to comply; the manner in which an advance is to be made and repaid; the deduction, if any, for premium; the conditions on which a borrower may redeem the amount due from him or her before the expiration of the period for which the advance is made; and the terms upon which a mortgage may be redeemed;
- the manner in which any gain or surplus which may result from the transactions of the co-operative is to be distributed among members;
- the manner in which any loss which may result from the transactions of the co-operative is to be provided for,
- the mode and conditions of admission to membership, and the payment to be made or the share or interest to be acquired before rights of membership are exercised;
- the rights and liabilities of members, and of the estates of deceased members and of members whose estates have been sequestrated or assigned;
- the manner in which the share or interest of members may be transferred;
- the circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled and suspended members;

Co-operatives Act 1992 No. 18

 SCHEDULE 1—MATTERS FOR WHICH RULES MUST MAKE PROVISION—
continued

- the number of directors, the qualification of directors, and the manner of electing, remunerating and removing directors and filling a vacancy, whether directors are to be elected annually or half-yearly, the period for which directors are to hold office, and whether directors are to retire by rotation or otherwise;
- the powers and duties of the board, the requisite notice of meetings, the quorum for meetings, and the procedure at meetings, of the board;
- the intervals between general meetings of the co-operative, the manner of calling general and special meetings, the requisite notices of meetings, and the quorum for meetings, of the co-operative;
- the procedure at meetings of the co-operative, including the rights of members in voting at meetings, the manner of voting, and the majority necessary for carrying resolutions;
- the manner of appointing, remunerating and removing officers of the co-operative, the powers and duties of officers, and the security to be given by any officer having the receipt or charge of any money belonging to the co-operative;
- whether the accounts of the co-operative are to be audited annually or more frequently;
- the manner of appointing, remunerating and removing auditors, the powers and duties of auditors, and in particular their powers and duties with respect to the inspection of securities belonging to the co-operative;
- provision for the custody of securities belonging to the co-operative;
- the charges, including any charges on admission or for working expenses or otherwise, which are to be payable by a member to the co-operative;
- the circumstances in which fines and forfeitures may be imposed on members of the co-operative, and the mount of the fines, not exceeding the prescribed maximum amount;
- whether disputes between the co-operative and any of its members, or any person claiming by or through any member, under the rules, are to be settled by reference to arbitration or how otherwise;
- the manner of altering and rescinding the rules, and of making additional rules;
- provision for the device, custody and use of the seal of the co-operative;
- the manner in which the co-operative may be wound-up;
- such matters as may be prescribed, whether in addition to or in substitution for any matter specified in this clause;
- such other matters as to the co-operative appear necessary or desirable.

Additional matters—co-operatives with share capital

2. In addition to the matters specified in clause 1, the rules of a co-operative with a share capital must set out or make provision for each of the following:

Co-operatives Act 1992 No. 18

SCHEDULE 1—MATTERS FOR WHICH RULES MUST MAKE PROVISION—
continued

- the nominal value of each share in the co-operative;
- the amount of the contingent liability, if any, attaching to shares;
- the terms upon which shares, not including bonus shares, but including shares, if any, with a contingent liability attached to them are to be issued;
- the periodic subscriptions by which or the manner in which shares are to be paid for;
- the maximum amount which may be paid to a member in the form of dividend in respect of the shares held by the member, not exceeding the amount allowed by this Act;
- provision for the forfeiture of shares on expulsion or on failure to pay any subscription or call, the extent to which members whose shares have been forfeited are to remain liable for any amount still unpaid in respect of them, and the sale or cancellation of forfeited shares;
- the manner in which shares may be transferred,
- such matters as may be prescribed, whether in addition to or in substitution for any matter specified in this clause.

SCHEDULE 2—RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES

(Sec. 5)

Part I—Relevant interests**Terminology used in this Schedule**

1. (1) This clause applies for the purposes of this Part.
- (2) Power to vote in respect of a right to vote is power to exercise, or to control the exercise of, the right to vote.
- (3) A reference to power to dispose of a share includes a reference to power to exercise control over the disposal of the share.
- (4) A reference to power or control includes a reference to power or control that is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, agreements and practices, or any of them, whether or not they are enforceable.
- (5) Power to vote in respect of a right to vote, or power to dispose of a share, that is exercisable by 2 or more persons jointly is to be considered to be exercisable by either or any of those persons.
- (6) A reference to a controlling interest includes a reference to an interest that gives control.

Co-operatives Act 1992 No. 18

 SCHEDULE 2—RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES—
continued
Basic rules—relevant interests

2. (1) A person who has power to vote in respect of a right to vote has a relevant interest in the right to vote.

(2) A person who has power to dispose of a share has a relevant interest in the share.

Control of body corporate having power in relation to a share

3. If a body corporate has, or is by this Part to be considered to have:

- (a) power to vote in respect of a right to vote; or
- (b) power to dispose of a share,

a person is to be considered for the purposes of this Part to have in relation to the right to vote or share the same power as the body has, or is to be considered to have, if:

- (c) the body is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of the power referred to in paragraph (a) or (b); or
- (d) the person has a controlling interest in the body.

Control of 20% of voting power in body corporate having power in relation to a share

4. If a body corporate or an associate of a body corporate has, or is by this Part (other than this clause) to be considered to have:

- (a) power to vote in respect of a right to vote; or
- (b) power to dispose of a share,

a person is to be considered for the purposes of this Part to have in relation to the right to vote or share the same power as the body or associate has, or is to be considered to have, if:

- (c) the person has; or
- (d) an associate of the person has; or
- (e) associates of the person together have; or
- (f) the person and an associate of associates of the person together have,

power to vote in respect of the right to vote attached to not less than 20% of the voting shares in the body.

Deemed relevant interest in advance of performance of agreement that will give rise to a relevant interest

5. If a person:

- (a) has entered into an agreement with another person with respect to an issued share or right to vote in which the other person has a relevant interest; or

Co-operatives Act 1992 No. 18

 SCHEDULE 2—RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES—
continued

- (b) has a right enforceable against another person in relation to an issued share or right to vote in which the other person has a relevant interest, whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition; or
- (c) has an option granted by another person, or has granted to another person an option, with respect to an issued share or right to vote in which the other person has a relevant interest,

and, on performance of the agreement, enforcement of the right, or exercise of the option, the first-mentioned person would have a relevant interest in the share or right to vote, the first-mentioned person is to be considered for the purposes of this Part to have that relevant interest in the share or right to vote.

Control of body corporate having a relevant interest by virtue of clause 5

6. If a body corporate is by clause 5 to be considered to have a relevant interest in a share in or right to vote at meetings of a co-operative, a person is to be considered for the purposes of this Part to have a relevant interest in the share or right to vote if:

- (a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of power to vote in respect of that right to vote or power to dispose of those shares;
- (b) the person has a controlling interest in the body corporate; or
- (c) the person has power to vote in respect of the right to vote attached to not less than 20% of the voting shares in the body corporate.

Matters not affecting application of Schedule

7. (1) It is immaterial for the purposes of this Part whether or not power to vote in respect of a right to vote, or power to dispose of a share:

- (a) is express or implied or formal or informal; or
- (b) is exercisable by a person alone or jointly with any other person or persons; or
- (c) cannot be related to a particular share; or
- (d) is, or can be made, subject to restraint or restriction.

(2) A relevant interest in a share or right to vote is not to be disregarded merely because of either or both of the following:

- (a) its remoteness;
- (b) how it arose.

Body corporate may have a relevant interest in its own shares

8. A body corporate may, by virtue of this Part, be considered to have a relevant interest in a share in or right to vote arising from membership of the body itself.

Co-operatives Act 1992 No. 18

SCHEDULE 2—RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES—
*continued***Exclusions: money-lenders**

9. A relevant interest of a person in a share or right to vote is to be disregarded if the person's ordinary business includes lending money and the person has authority to exercise powers as the holder of the relevant interest only because of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, other than a transaction entered into with an associate of the person.

Exclusions: certain trustees

10. A relevant interest of a person in a share or right to vote is to be disregarded if the share or right is subject to a trust, the person has the relevant interest as a trustee of the trust and:

- (a) a beneficiary under the trust is by clause 5 to be considered to have a relevant interest in the share or right because the beneficiary has a presently enforceable and unconditional right referred to in clause 5 (b); or
- (b) the person is a bare trustee.

Exclusions: instructions to securities dealer to dispose of share

11. A relevant interest of a person in a share or right to vote is to be disregarded if the person's ordinary business includes dealing in securities and the person has authority to exercise powers as the holder of the relevant interest only because of instructions given to the person, by or on behalf of another person, to dispose of the share on the other person's behalf in the ordinary course of that business.

Exclusions: honorary proxies

12. A relevant interest of a person in a share or right to vote is to be disregarded if the person has it only because of having been appointed, otherwise than for valuable consideration given by the person or an associate of the person, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.

Exclusions: holders of prescribed offices

13. A relevant interest of a person in a share or right to vote is to be disregarded if the person has it because of holding a prescribed office.

Prescribed exclusions

14. The regulations may provide that specified relevant interests in specified shares are, in specified circumstances and subject to the specified conditions (if any), to be disregarded for the purposes of specified provisions of this Act.

Co-operatives Act 1992 No. 18

 SCHEDULE 2—RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES—
continued
Effect of Schedule

15. (1) Nothing in this Schedule limits the generality of anything else in it.
- (2) A person does not have a relevant interest in a share of a co-operative or right to vote in respect of a co-operative except as provided in this Schedule.

Relevant interest—body corporate other than co-operative

16. A reference in this Act (including in this Schedule) to a relevant interest in a share of a body corporate other than a co-operative or a right to vote in respect of a body corporate other than a co-operative is to be construed in accordance with the Corporations Law.

Part 2—Associates**Effect of Part**

17. (1) A person is not an associate of another person except as provided by this Part.
- (2) Nothing in this Part limits the generality of anything else in it.

Associates of a body corporate

18. The associates of a body corporate include the following:
- (a) a director or secretary of the body;
 - (b) a related body corporate;
 - (c) a director or secretary of a related body corporate.

Matters relating to voting rights

19. (1) If a reference to an associate of a person relates to:
- (a) the extent of power to exercise, or to control the exercise of, the voting power attached to voting shares in or arising from membership of a body corporate; or
 - (b) the person's entitlement to shares in a body corporate; or
 - (c) an offer to purchase shares to which Division 2 (Restrictions on certain share offers) of Part 11 applies,
- the reference includes a reference to another person with whom the person has, or proposes to enter into, an agreement:
- (d) because of which one of those persons has or will have power (even if it is in any way qualified):
 - (i) to exercise; or
 - (ii) to control, directly or indirectly, the exercise of; or
 - (iii) to influence substantially the exercise of,
 any voting power attached to shares in the body; or

*Co-operatives Act 1992 No. 18*SCHEDULE 2—RELEVANT INTERESTS, ASSOCIATES RELATED BODIES—
continued

- (e) for the purpose of controlling or influencing:
 - (i) the composition of the body's board; or
 - (ii) the conduct of affairs of the body; or
- (f) under which one of those persons:
 - (i) will or may acquire; or
 - (ii) may be required by the other to acquire, shares in the body in which the other has a relevant interest; or
- (g) under which one of those persons may be required to dispose of shares in the body in accordance with the other's directions, whatever other effect the agreement may have.

(2) In relation to a matter relating to shares in a body corporate, a person may be an associate of the body and the body may be an associate of a person.

General

20. (1) A reference to an associate of a person includes a reference to:
- (a) any other person in concert with whom the person is acting or proposes to act;
 - (b) any other person who, under the regulations, is, for the purposes of the provision in which the reference occurs, an associate of the person;
 - (c) any other person with whom the person is or proposes to become associated, whether formally or informally, in any other way,
- in respect of the matter to which the reference relates.

(2) If a person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this Part, a reference to an associate of the person includes a reference to that other person.

Exclusions

21. A person is not an associate of another person by virtue of clause 19 or 20 (1), or by virtue of clause 20 (2) as it applies in relation to clause 19 or 20 (1), merely because of one or more of the following:

- (a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;
- (b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in securities, to acquire shares on the client's behalf in the ordinary course of that business;
- (c) one has made, or proposes to make, to the other an offer to which Division 2 (Restrictions on certain share offers) of Part 11 applies, in relation to shares held by the other,

*Co-operatives Act 1992 No. 18*SCHEDULE 2—RELEVANT INTERESTS, ASSOCIATES, RELATED BODIES—
continued

- (d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.

Part 3—Related bodies**Related bodies corporate**

22. For the purposes of this Act, a body corporate is to be taken to be related to:
- (a) another body corporate that is its subsidiary; and
 - (b) another body corporate of which it is a subsidiary; and
 - (c) another body corporate if both it and that other body corporate are subsidiaries of the same body corporate.

SCHEDULE 3—REGISTRATION ETC. OF CHARGES

(Sec. 278)

Part 1—Preliminary**Interpretation and application**

1. (1) In this Part, unless the contrary intention appears:

“**co-operative**” includes a foreign co-operative registered, formed or incorporated under a law of another State or a Territory;

“**document of title**” means a document:

- (a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land; or
- (b) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land,

and includes:

- (c) a bill of lading; and
- (d) a warehousekeeper’s certificate; and
- (e) a wharfinger’s certificate; and
- (f) a warrant or order for the delivery of goods; and
- (g) a document that is, or evidences title to, a marketable security;

“**marketable security**” has the Same meaning as in the Corporations Law;

“**present liability**”, in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met;

 SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

“property”, in relation to a co-operative, means property within the State held by the co-operative, whether or not as trustee;

“prospective liability”, in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability;

“Register” means the Register of Co-operative Charges referred to in clause 5;

“registrable charge” means a charge in relation to which, by virtue of clause 2, the provisions of this Schedule mentioned in clause 2 (1) apply.

(2) A charge referred to in clause 4 is, until the charge is registered, to be treated for the purposes of this Schedule as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.

(3) The registration of a charge referred to in clause 4 does not prejudice any priority that would have been accorded to the charge under any other law (whether or not a law of a place in Australia) if the charge had not been registered.

(4) For the purposes of this Schedule, a notice or other document is taken to be lodged when it is received at the office of the Registrar by an officer authorised to receive it.

Part 2—Registration

Charges required to be registered

2. (1) Subject to this clause, the provisions of this Schedule relating to the giving of notice in relation to, the registration of, and the priorities of, charges apply in relation to the following charges (whether legal or equitable) on property of a co-operative and do not apply in relation to any other charges:

- (a) a floating charge on the whole or a part of the property, business or undertaking of the co-operative;
- (b) a charge on uncalled share capital or uncalled share premiums;
- (c) a charge on a call, whether in respect of share capital or share premiums, made but not paid;
- (d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under a law of a place in Australia relating to title to ships;
- (e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;
- (f) a charge on a book debt;

 SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

- (g) a charge on a marketable security, not being:
- (i) a charge created in whole or in part by the deposit of a document of title to the marketable security; or
 - (ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by the chargee;
- (h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage;
- (i) a charge on a negotiable instrument other than a marketable security.
- (2) The provisions of this Schedule mentioned in subclause (1) do not apply in relation to:
- (a) a charge, or a lien over property, arising by operation of law; or
 - (b) a pledge of a personal chattel or of a marketable security; or
 - (c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt; or
 - (d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business; or
 - (e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.
- (3) The reference in subclause (1) (d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on:
- (a) a document evidencing title to land; or
 - (b) a chattel interest in land; or
 - (c) a marketable security; or
 - (d) a document evidencing a thing in action; or
 - (e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.
- (4) The reference in subclause (1) (f) to a charge on a book debt is a reference to a charge on a debt due or to become due to the co-operative at some future time on account of or in connection with a profession, trade or business carried on by the co-operative, whether entered in a book or not, and includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge, but does not include a reference to a charge on a marketable security, on a negotiable instrument or on a debt owing in respect of a mortgage, charge or lease of land.

*Co-operatives Act 1992 No. 18*SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

(5) The reference in subclause (1) (h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security (however described) that is registrable under a prescribed law of a State or Territory.

(6) For the purposes of this clause, a co-operative is to be considered to have deposited a document of title to property with another person (in this subclause referred to as the “chargee”) in a case where the document of title is not in the possession of the co-operative if:

- (a) the person who holds the document of title acknowledges in writing that the person holds the document of title on behalf of the chargee; or
- (b) a government, an authority or a body corporate that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

(7) For the purposes of this clause, a charge is to be considered to be a charge on property of a kind to which a particular paragraph of subclause (1) applies even though the instrument of charge also charges other property of the co-operative including other property that is of a kind to which none of the paragraphs of that subclause applies.

(8) The provisions of this Schedule mentioned in subclause (1) do not apply in relation to a charge on land.

(9) The provisions of this Schedule mentioned in subclause (1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are affixed.

(10) A charge on property of a co-operative is not invalid merely because of the failure to lodge with the Registrar, or give to the co-operative or another person, a notice or other document that is required by this Part to be so lodged or given.

Lodgment of notice of charge and copy of instrument

3. (1) Where a co-operative creates a charge, the co-operative must ensure that there is lodged, within 45 days after the creation of the charge:

- (a) a notice in the prescribed form setting out the following particulars:
 - (i) the name of the co-operative and the date of the creation of the charge;
 - (ii) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;
 - (iii) if the charge is a floating charge—whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;
 - (iv) a short description of the liability (whether present or prospective) secured by the charge;

 SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

- (v) a short description of the property charged;
 - (vi) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;
 - (vii) if the charge is constituted by the issue of a debenture or debentures—the name of the trustee (if any) for debenture holders;
 - (viii) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders—the name of the chargee;
 - (ix) such other information as is prescribed; and
- (b) if, pursuant to a resolution or resolutions passed by the co-operative, the co-operative issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolution or resolutions and the debentures—a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture; and
- (c) if, in a case to which paragraph (b) does not apply, the charge was created or evidenced by an instrument or instruments:
- (i) the instrument or each of the instruments; or
 - (ii) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.
- (2) In a case to which subclause (1) (b) applies:
- (a) the charge is, for the purposes of subclause (1), to be considered to be created when the first debenture in the series of debentures is issued; and
 - (b) if, after the issue of the first debenture in the series, the co-operative passes a further resolution authorising the issue of debentures in the series, the co-operative must ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged within 45 days after the passing of that resolution.
- (3) A notice in relation to a charge, being a charge in relation to which subclause (1) (b) or (c) applies, is not to be taken to have been lodged under subclause (1) unless the notice is accompanied by the documents specified in that paragraph.
- (4) Where a notice with respect to an instrument creating a charge has been lodged under subclause (1), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, clauses 18 to 21 (inclusive) have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

(5) Where a payment or discount has been made or allowed, either directly or indirectly, by a co-operative to a person in consideration of the person's subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be lodged under subclause (1) must include particulars as to the amount or rate per cent of the payment or discount.

(6) Where a co-operative issues debentures as security for a debt of the co-operative, the co-operative is not thereby to be regarded, for the purposes of subclause (5), as having allowed a discount in respect of the debentures.

Acquisition of property subject to charge

4. (1) Where a co-operative acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a co-operative, the co-operative must, within 45 days after the acquisition of the property:

- (a) ensure that there is lodged:
 - (i) a notice in the prescribed form in relation to the charge, setting out the name of the co-operative and the date on which the property was so acquired and otherwise complying with the requirements of clause 3 (1) (a); and
 - (ii) if the charge was created or evidenced as mentioned in clause 3 (1) (a)—a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph verified by a statement in writing to be a true copy; and
 - (iii) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in clause 3 (1) (b)):
 - (A) the instrument or each of the instruments; or
 - (B) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy; and
- (b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

(2) A notice in relation to a charge, being a charge in relation to which subclause (1) (a) (ii) or (iii) applies, is not to be taken to have been lodged under subclause (1) unless it is accompanied by the documents specified in that subparagraph.

Registration of documents relating to charges

5. (1) The Registrar is to keep a register to be known as the Register of Co-operative Charges.

(2) Where a notice in respect of a charge on property of a co-operative that is required by clause 3 or 4 to be lodged is lodged (whether during or after the period

 SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

within which the notice was required to be lodged) and the notice contains all the particulars required by the relevant clause to be included in the notice, the Registrar must as soon as practicable cause to be entered in the Register the time and date when the notice was lodged and the following particulars in relation to the charge:

- (a) if the charge is a charge created by the co-operative, the date of its creation or, if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired;
- (b) a short description of the liability (whether present or prospective) secured by the charge;
- (c) a short description of the property charged;
- (d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.

(3) Subject to subclause (9), where particulars in respect of a charge are entered in the Register in accordance with subclause (2), the charge is to be considered to be registered, and to have been registered from and including the time and date entered in the Register under that subclause.

(4) Where:

- (a) a notice in respect of a charge on property of a co-operative is lodged under clause 3 or 4 (whether during or after the period within which the notice was required to be lodged); and
- (b) the notice is not accompanied by a certificate to the effect that all documents accompanying the notice have been duly stamped as required by any applicable law relating to stamp duty,

the Registrar must cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in subclause (2) (a), (b), (c) and (d), but must cause the word “provisional” to be entered in the Register next to the entry specifying that time and date.

(5) Where:

- (a) in accordance with subclause (4), the word “provisional” is entered in the Register next to an entry specifying the time and date on which a notice in respect of a charge was lodged; and
- (b) within a period of 30 days or such longer period as is prescribed after the notice was lodged, or within such further period as the Registrar, if the Registrar considers it to be appropriate in a particular case, allows, a certificate to the effect set out in subclause (4) (b) has been produced to the Registrar,

the Registrar is to delete the word “provisional” from the entry in the Register relating to that charge, but if such a certificate is not produced within the period, or the further period, referred to in paragraph (b), the Registrar must delete from the Register all the particulars that were entered in relation to the charge.

(6) Where a document that purports to be a notice in respect of a charge on property of a co-operative for the purposes of clause 3 or 4 is lodged (whether during or after the period within which the notice was required to be lodged) and the document contains

 SCHEDULE 3—REGISTRATION ETC. OF CHARGES —*continued*

the name of the co-operative concerned and the particulars referred to in clause 3 (1) (a) (vii) or (viii), as the case requires, but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective:

- (a) the Registrar must cause to be entered in the Register the time and date when the document was lodged and such of the particulars referred to in subclause (2) (a), (b), (c) and (d) as are ascertainable from the document, but shall cause the word “provisional” to be entered in the Register next to the entry specifying that time and date; and
- (b) the Registrar is, by notice in writing to the person who lodged the document, to direct the person to ensure that there is lodged, on or before the day specified in the notice, a notice in relation to the charge that complies with the requirements of clause 3 or 4, as the case may be, but the giving by the Registrar of a direction to the person under this paragraph does not affect any liability that the co-operative may have incurred or may incur by reason of a contravention of clause 3 or 4.

(7) Where the Registrar gives a direction to a person under subclause (6) (b) in relation to a charge:

- (a) if the direction is complied with on or before the day specified in the notice containing the direction, the Registrar must:
 - (i) delete from the Register the word “provisional” that was inserted pursuant to subclause (6) (a); and
 - (ii) cause to be entered in the Register in relation to the charge any particulars referred to in subclause (2) that have not previously been entered; and
- (b) if the direction is not complied with on or before that day—the Registrar must delete from the Register all the particulars that were entered in relation to the charge; and
- (c) if the direction is complied with after that day—the Registrar must cause to be entered in the Register in relation to the charge the time at which and day on which the direction was complied with and the particulars referred to in subclause (2) (a), (b), (c) and (d)

(8) The Registrar may enter in the Register in relation to a charge, in addition to the particulars expressly required by this clause to be entered, such other particulars as the Registrar thinks fit.

(9) If the word “provisional” is entered in the Register next to an entry specifying a time and day in relation to a charge, the charge is to be considered not to have been registered but:

- (a) where the word “provisional” is deleted from the Register pursuant to subclause (5) or (7) (a)—the charge is to be considered to be registered and to have been registered from and including the time and day specified in the Register pursuant to subclause (4) or (6) (a), as the case may be; or

SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

(b) where the particulars in relation to the charge are deleted from the Register pursuant to subclause (7) (b) and those particulars and a time and day are subsequently entered in the Register in relation to the charge pursuant to subclause (7) (c)—the charge is to be considered to be registered from and including that last-mentioned time and day.

(10) Where, pursuant to clause 4, a co-operative lodges notices relating to 2 or more charges on the same property acquired by the co-operative (being charges that are not already registered under this Part), the time and day that is to be entered in the Register in relation to each of those charges are the time and day when the first notice was lodged.

(11) Where, in accordance with subclause (10), the time and day that are entered in the Register are the same in relation to 2 or more charges on property acquired by a co-operative, those charges are to have, as between themselves, the respective priorities that they would have had if they had not been registered under this Part.

(12) Where a notice is lodged under clause 9 (whether during or after the period within which it was required to be lodged), the Registrar must as soon as practicable cause to be entered in the Register the time and day when the notice was so lodged and the particulars set out in the notice.

Standard time for the purposes of clause 5

6. (1) The Registrar may, by notice published in the Gazette, declare a specified standard time to be the standard time for the purposes of clause 5.

(2) Where a notice is in force under subclause (1), a reference in clause 5 (2), (4), (6) (a), (7) (c), (10) or (12) to entering the time when a particular event happened is a reference to entering that time as expressed in terms of the standard time specified in the notice.

Certain charges void against liquidator or official manager

7. (1) Where:

- (a) an order is made, or a resolution is passed, for the winding up of a co-operative; or
 - (b) an official manager is appointed in respect of a co-operative,
- a registrable charge on property of the co-operative is void as a security on that property as against the liquidator or official manager, as the case may be, unless:
- (c) a notice in respect of the charge was lodged under clause 3 or 4, as the case requires:
 - (i) within the relevant period, or
 - (ii) at least 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be; or
 - (d) the period within which a notice in respect of the charge (other than a notice under clause 9) is required to be lodged, being the period specified in the

SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

relevant clause or that period as extended by the Court under subclause (4), has not ended at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the end of that period; or

- (e) in relation to a charge to which clause 4 applies—the period of 45 days after the chargee becomes aware that the property charged has been acquired by a co-operative has not ended at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the end of that period.

(2) The reference in subclause (1) (c) to the relevant period shall be construed as a reference to:

- (a) in relation to a charge to which clause 3 (1) applies period of 45 days specified in that clause, or that period as extended by the Court under subclause (4) of this clause; or
- (b) in relation to a charge to which clause 4 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a co-operative.

(3) Where, after there has been a variation in the terms of a registrable charge on property of a co-operative having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge:

- (a) an order is made, or a resolution is passed, for the winding up of the co-operative; or
- (b) an official manager is appointed in respect of the co-operative,

the registrable charge is void as a security on that property to the extent that it secures the amount of the increase in that debt or liability unless:

- (c) a notice in respect of the variation was lodged under clause 9:
 - (i) within the period of 45 days specified in clause 9 (2) or that period as extended by the Court under subclause (4) of this clause; or
 - (ii) not later than 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be; or
- (d) the period of 45 days specified in clause 9 (2), or that period as extended by the Court under subclause (4) of this clause, has not ended at the commencement of the winding up or at the time of the appointment of the official manager and the notice is lodged before the end of that period.

(4) The Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Part:

- (a) was accidental or due to inadvertence or some other sufficient cause; or
 - (b) is not of a nature to prejudice the position of creditors or shareholders,
- or that on other grounds it is just and equitable to grant relief, may, on the application of the co-operative or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

 SCHEDULE 3—REGISTRATION ETC. OF CHARGES —*continued*

(5) Where:

- (a) a registrable charge (in this subclause referred to as the “later charge”) is created before the end of 45 days after the creation of an unregistered registrable charge (in this subclause referred to as the “earlier charge”); and
- (b) the later charge relates to all or any of the property to which the earlier charge related; and
- (c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability,

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or official manager of the co-operative, notwithstanding that a notice in respect of the later charge was lodged under clause 3 within the period mentioned in subclause (1) (c) of this clause, unless it is proved to the satisfaction of the Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Part.

(6) Nothing in subclause (1) or (3) operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of:

- (a) the filing of an application for an order for the winding up of the co-operative; or
- (b) the passing of the necessary resolution for the voluntary winding up of the co-operative; or
- (c) the passing of the necessary resolution that the co-operative be placed under official management.

(7) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in subclause (6) (a), (b) and (c) is on the person asserting that the property was so purchased.

Charges in favour of certain persons void in certain cases

8. (1) Where:

- (a) a co-operative creates a charge on property of the co-operative in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge; and
- (b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Court having, under subclause (3), given leave for the charge to be enforced,

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are to be considered always to have been, void.

SCHEDULE 3—REGISTRATION ETC. OF CHARGES —*continued*

(2) Without limiting the generality of subclause (1), a person who:

- (a) appoints a receiver of property of a co-operative under powers conferred by an instrument creating or evidencing a charge created by the co-operative; or
- (b) whether directly or by an agent, enters into possession or assumes control of property of a co-operative for the purposes of enforcing a charge created by the co-operative,

is to be taken, for the purposes of subclause (1), to take a step in the enforcement of the charge.

(3) On application by the chargee under a charge, the Court may, if it is satisfied that:

- (a) immediately after the creation of the charge, the co-operative that created the charge was solvent; and
- (b) in all the circumstances of the case, it is just and equitable for the Court to do so,

give leave for the charge to be enforced.

(4) Nothing in subclause (1) affects a debt, liability or obligation of a co-operative that would, if that subclause had not been enacted, have been secured by a charge created by the co-operative.

(5) Nothing in subclause (1) operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.

(6) The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in subclause (5) is on the person asserting that the property was so purchased.

(7) In this clause:

“**chargee**”, in relation to a charge, means:

- (a) in any case—the holder, or all or any of the holders, of the charge; or
- (b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether upon demand or otherwise—that person, or all or any of those persons;

“**officer**”, in relation to a co-operative, includes, in the case of a foreign co-operative, a local agent of the foreign co-operative;

“**receiver**” includes a receiver and manager;

SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

“**relevant person**”, in relation to a charge created by a co-operative, means:

- (a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the co-operative; or
- (b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).

Assignment and variation of charges

9. (1) Where, after a registrable charge on property of a co-operative has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge must, within 45 days after he, she or it becomes the holder of the charge:

- (a) lodge a notice stating that he, she or it has become the holder of the charge; and
- (b) give the co-operative a copy of the notice.

(2) Where, after a registrable charge on property of a co-operative has been created, there is a variation in the terms of the charge having the effect of:

- (a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or
- (b) prohibiting or restricting the creation of subsequent charges on the property,

the co-operative must, within 45 days after the variation occurs, ensure that there is lodged a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

(3) Where a charge created by a co-operative secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the co-operative in accordance with the terms of the charge is not to be taken, for the purposes of subclause (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

(4) A reference in this clause to the chargee in relation to a charge is, if the charge is constituted by a debenture or debentures and there is a trustee for debenture holders, to be construed as a reference to the trustee for debenture holders.

(5) Nothing in clause 3 requires the lodgment of a notice under that clause in relation to a charge merely because of the fact that the terms of the charge are varied only in a manner mentioned in this clause.

Satisfaction of, and release of property from, charges

10. (1) Where, with respect to a charge registered under this Part:

- (a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part; or

SCHEDULE 3—REGISTRATION ETC. OF CHARGES —*continued*

(b) the property charged or part of that property is released from the charge, the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released must, within 14 days after receipt of a request in writing made by the co-operative on whose property the charge exists, give to the co-operative a memorandum in the prescribed form acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be.

(2) The co-operative may lodge the memorandum and, upon the memorandum being lodged, the Registrar is to enter in the Register particulars of the matters stated in the memorandum.

(3) The reference in subclause (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released is, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, to be construed as a reference to the person who was, at that time, the trustee of debenture holders.

Lodgment of notices, offences etc.

11. (1) Where a notice in respect of a charge on property of a co-operative is required to be lodged under clause 3, 4 or 9 (2), the notice may be lodged by the co-operative or by any interested person.

(2) Where clause 3, 4 or 9 (2) is contravened in relation to a registrable charge on property of a co-operative, the co-operative and any officer of the co-operative who is knowingly concerned in or a party to the contravention is guilty of an offence.

Maximum penalty: 10 penalty units.

(3) Where a person who becomes the holder of a registrable charge fails to comply with clause 9 (1), the person and, if the person is a body corporate, any officer of the body corporate who is in default, each contravene this subclause.

(4) Where a document required by this Part other than clause 9 (1) to be lodged is lodged by a person other than the co-operative concerned, that person:

- (a) must, within 7 days after the lodgment of the document, give to the co-operative a copy of the document; and
- (b) is entitled to recover from the co-operative the amount of any fees properly paid by the person on lodgment of the document.

Co-operative to keep documents relating to charges and register of charges

12. (1) A co-operative must, at the place where the register referred to in subclause (2) is kept, keep a copy of every document relating to a charge on property of the co-operative that is lodged under this Part and a copy of every document given to the co-operative under this Part.

 SCHEDULE 3—REGISTRATION ETC. OF CHARGES —*continued*

(2) A co-operative must keep a register and must, upon the creation of a charge (whether registrable or not) on property of the co-operative, or upon the acquisition of property subject to a charge (whether registrable or not), as soon as practicable enter in the register particulars of the charge, giving in each case:

- (a) if the charge is a charge created by the co-operative, the date of its creation or, if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired, and
- (b) a short description of the liability (whether present or prospective) secured by the charge; and
- (c) a short description of the property charged; and
- (d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee; and
- (e) the name of the person whom the co-operative believes to be the holder of the charge.

(3) A register kept by a co-operative pursuant to subclause (2) must be open for inspection:

- (a) by any creditor or member of the co-operative—without charge; and
- (b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the co-operative requires or, where the co-operative does not require the payment of an amount, without charge.

(4) A person may request a co-operative to furnish the person with a copy of the register or any part of the register and, where such a request is made, the co-operative must send the copy to that person:

- (a) if the co-operative requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the co-operative or within such longer period as the Registrar approves; or
- (b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Registrar approves.

(5) If default is made in complying with any provision of this clause, the Co-operative is guilty of an offence.

Maximum penalty: 10 penalty units.

Certificates

13. (1) Where particulars of a charge are entered in the Register in accordance with this Part, the Registrar must, on request by any person, issue to that person a certificate setting out those particulars and stating the time and day when a notice in respect of the charge containing those particulars was lodged with the Registrar and, if the word “provisional” appears in the Register next to the reference to that time and day, stating that fact.

SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

(2) A certificate issued under subclause (1) is prima facie evidence of the matters stated in the certificate.

(3) Where particulars of a charge are entered in the Register in accordance with this Part, and the word “provisional” does not appear in the Register next to the reference to the time and day when a notice in respect of the charge was lodged, the Registrar must, on request by any person, issue to that person a certificate stating that particulars of the charge are entered in the Register in accordance with this Part.

(4) A certificate issued under subclause (3) is conclusive evidence that the requirements of this Part as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged) have been complied with.

Registration under other legislation relating to charges

14. (1) Where, whether before or after the prescribed time, a notice in relation to a charge is required to be lodged under this Part:

- (a) the charge need not be registered under the Bills of Sale Act 1898 or the Liens on Crops and Wool and Stock Mortgages Act 1898; and
- (b) no provision of those Acts relating to priorities applies to or in relation to the charge; and
- (c) a failure to register a charge under those Acts does not affect the validity, or limit the effect, of the charge.

(2) Where:

- (a) a transfer, assignment, or giving of security, by a co-operative is registrable under the Bills of Sale Act 1898; and
- (b) notice in relation to the transfer, assignment or giving of security is required to be lodged under this Part; and
- (c) the transfer, assignment or giving of security is registered under this Part, then the transfer, assignment or giving of security is, subject to subclause (1) (b), as valid and effectual as if it had been duly registered under that Act.

(3) Where:

- (a) a crop lien, wool lien or stock mortgage, given by a co-operative is registrable under the Liens on Crops and Wool and Stock Mortgages Act of 1898; and
- (b) notice in relation to the crop lien, wool lien or stock mortgage, is required to be lodged under this Part; and
- (c) the crop lien, wool lien or stock mortgage, is registered under this Part, then the crop lien, wool lien or stock mortgage is, subject to subclause (1) (b), as valid and effectual as it would be if it had been duly registered under that Act.

(4) Nothing in this clause applies in relation to a charge given by a co-operative jointly with another person who is not, or other persons at least one of whom is not, a co-operative.

SCHEDULE 3—REGISTRATION ETC. OF CHARGES —*continued***Power of Court to rectify Register**

15. Where the Court is satisfied:

- (a) that a particular with respect to a registrable charge on property of a co-operative has been omitted from, or mis-stated in, the Register or a memorandum referred to in clause 10; and
- (b) that the omission or mis-statement:
 - (i) was accidental or due to inadvertence or to some other sufficient cause; or
 - (ii) is not of a nature to prejudice the position of creditors or shareholders, or that on other grounds it is just and equitable to grant relief,

the Court may, on the application of the co-operative or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement be rectified.

Power to exempt from compliance with certain requirements of Part

16. (1) The Registrar may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with such of the requirements of clause 3, 4 or 9 relating to:

- (a) the particulars to be contained in a notice under the relevant clause; or
- (b) the documents (other than the notice) to be lodged under the relevant clause; or
- (c) the verification of any document required to be lodged under the relevant clause,

as are specified in the instrument.

(2) A person who is exempted by the Registrar, subject to a condition, from compliance with a requirement of clause 3, 4 or 9 must not contravene the condition.

(3) Where a person has contravened a condition to which an exemption under this clause is subject, the Court may, on the application of the Registrar, order the person to comply with the condition.

Part 3—Order of priority**Interpretation**

17. (1) In this Part:

“**priority time**”, in relation to a registered charge, means:

- (a) except as provided by paragraph (b) or (c)—the time and date appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to clause 5; and

 SCHEDULE 3—REGISTRATION ETC. OF CHARGES —*continued*

- (b) where a notice has been lodged under clause 4 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Part 2—the earlier or earliest time and day appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to clause 4; and
- (c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged under clause 9 (2)—the time and day entered in the Register in relation to the charge pursuant to clause 5 (12);

“prior registered charge”, in relation to another registered charge, means a charge the priority time of which is earlier than the priority time of the other charge;

“subsequent registered charge”, in relation to another registered charge, means a charge the priority time of which is later than the priority time of the other registered charge;

“registered charge” means a charge that is registered under Part 2;

“unregistered charge” means a charge that is not registered under Part 2 but does not include a charge that is not a registrable charge.

(2) A reference in this Part to a person having notice of a charge includes a reference to a person having constructive notice of the charge.

(3) Where, by virtue of the definition of “priority time” in subclause (1), a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities is, for the purposes of this Part, to be considered to be secured by a separate registered charge the priority time of which is the priority time of the first-mentioned registered charge that relates to the liability concerned.

Priorities of charges

18. (1) Subject to this clause, clauses 19 to 21, inclusive, have effect with respect to the priorities, in relation to each other, of registrable charges on the property of a co-operative.

(2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in clauses 19 to 21, inclusive, is subject to:

- (a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge; and
- (b) any agreement between those chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

(3) The holder of a registered charge, being a floating charge, on property of a co-operative is to be considered, for the purposes of subclause (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, in any of that property unless:

SCHEDULE 3—REGISTRATION ETC. OF CHARGES —*continued*

- (a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge; and
 - (b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Registrar under clause 3, 4 or 9 before the creation of the subsequent registered charge.
- (4) Where a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of clause 2 (1) applies or apply and also relates to other property, clauses 19 to 21, inclusive, apply so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and do not affect the priority of the charge in so far as it relates to the other property.

General priority rules in relation to registered charges

19. (1) A registered charge on property of a co-operative has priority over:
- (a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and
 - (b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created; and
 - (c) an unregistered charge on the property created after the creation of the registered charge.
- (2) A registered charge on property of a co-operative is postponed to:
- (a) a subsequent registered charge on the property, where the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and
 - (b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.

General priority rule in relation to unregistered charges

20. An unregistered charge on property of a co-operative has priority over:
- (a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under clause 19 (1); and
 - (b) another unregistered charge on the property created after the first-mentioned unregistered charge.

 SCHEDULE 3—REGISTRATION ETC. OF CHARGES —*continued*
Special priority rules

21. (1) Except as provided by this clause, any priority accorded by this Part to a charge over another charge does not extend to any liability that, at the priority time in relation to the first-mentioned charge, is not a present liability.

(2) Where a registered charge on property of a co-operative secures:

- (a) a present liability and a prospective liability of an unspecified amount; or
- (b) a prospective liability of an unspecified amount,

any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge.

(3) Where a registered charge on property of a co-operative secures:

- (a) a present liability and a prospective liability up to a specified maximum amount; or
- (b) a prospective liability up to a specified maximum amount,

and the notice lodged under clause 3 or 4 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this Part to the charge over another charge extends to any prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.

(4) Where:

(a) a registered charge on property of a co-operative secures:

- (i) a present liability and a prospective liability up to a specified maximum amount; or
- (ii) a prospective liability up to a specified maximum amount,

but the notice lodged under clause 3 or 4 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified; or

(b) a registered charge on property of a co-operative secures a prospective liability of an unspecified amount,

the following paragraphs have effect:

- (c) any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge;

SCHEDULE 3—REGISTRATION ETC. OF CHARGES—*continued*

- (d) any priority accorded by this Part to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if, at that time, the terms of the first-mentioned charge required the chargee in relation to that charge to make the advance after that time, and so extends to that prospective liability whether the advance was made before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made.

Offence

22. If a person contravenes a provision of this Schedule, the person is guilty of an offence by virtue of this clause unless that or another provision of this Schedule provides that the person is not guilty of an offence or provides for a penalty higher than 5 penalty units for the contravention.

Maximum penalty: 5 penalty units.

SCHEDULE 4—RECEIVERS AND MANAGERS

(Sec. 279)

Interpretation

1. In this Schedule:

“**co-operative**” includes a foreign co-operative;

“**officer**”, in relation to a co-operative that is a foreign co-operative, includes a local agent of the foreign co-operative;

“**property**”, in relation to a co-operative, means property:

(a) in the case of a co-operative that is not a foreign co-operative—within or outside Australia; or

(b) in the case of a co-operative that is a foreign co-operative—within Australia or an external Territory;

“**receiver**”, in relation to property of a co-operative, includes a receiver and manager.

Application of Schedule

2. Except in so far as the contrary intention appears, this Schedule applies in relation to a receiver of property of a co-operative who is appointed after the commencement of this Schedule, even if the appointment arose out of a transaction entered into, or an act or thing done, before that commencement.

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued***Persons not to act as receivers**

3. (1) A person is not qualified to be appointed, and must not act, as receiver of property of a co-operative if the person:

- (a) is a mortgagee of property of the co-operative; or
- (b) is an auditor or an officer of the co-operative; or
- (c) is an officer of a body corporate that is a mortgagee of property of the co-operative; or
- (d) is not a registered liquidator under the Corporations Law; or
- (e) is an officer of a body corporate related to the co-operative; or
- (f) unless the Registrar directs in writing that this paragraph does not apply in relation to the person in relation to the co-operative—has at any time within the last 12 months been an officer or promoter of the co-operative or of a related body corporate.

(2) In subclause (1):

“**officer**”, in relation to a body corporate, does not include a receiver, appointed under an instrument whether before or after the commencement of this clause, of property of the body.

(3) Subclause (1) (d) does not apply in relation to a body corporate authorised by or under a law of the Commonwealth, of a State or of a Territory to act as receiver of property of the co-operative concerned.

(4) Nothing in this clause prevents a person from acting as receiver of property of a co-operative under an appointment validly made before the commencement of this clause.

Liability of receiver

4. (1) A receiver, or any other authorised person, who, whether as agent for the co-operative concerned or not, enters into possession or assumes control of any property of a co-operative for the purpose of enforcing any charge is, notwithstanding any agreement to the contrary, but without prejudice to the person’s rights against the co-operative or any other person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subclause (1) does not constitute the person entitled to the charge a mortgagee in possession.

(3) Where:

- (a) a person (in this subclause called the “controller”) enters into possession or assumes control of property of a co-operative; and

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

- (b) the controller purports to have been properly appointed as a receiver in respect of that property under a power contained in an instrument, but has not been properly so appointed; and
- (c) civil proceedings in a federal court or a court of a State or Territory arise out of an act alleged to have been done by the controller,

the court may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly so appointed, order that:

- (d) the controller be relieved in whole or in part of a liability that the controller has incurred but would not have incurred if the controller had been properly so appointed; and
- (e) a person who purported to appoint the controller as receiver be liable in respect of an act, matter or thing in so far as the controller has been relieved under paragraph (d) of liability in respect of that act, matter or thing.

Powers of receiver

5. (1) Subject to this clause, a receiver of property of a co-operative has power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.

(2) Without limiting the generality of subclause (1), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver's powers in any way, a receiver of property of a co-operative has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed:

- (a) to enter into possession and take control of property of the co-operative in accordance with the terms of that order or instrument; and
- (b) to lease, let on hire or dispose of property of the co-operative; and
- (c) to grant options over property of the co-operative on such conditions as the receiver thinks fit; and
- (d) to borrow money on the security of property of the co-operative; and
- (e) to insure property of the co-operative; and
- (f) to repair, renew or enlarge property of the co-operative; and
- (g) to convert property of the co-operative into money; and
- (h) to carry on any business of the co-operative; and
- (i) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the co-operative; and
- (j) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the co-operative; and

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

- (k) to draw, accept, make and endorse a bill of exchange or promissory note; and
 - (l) to use a seal of the co-operative; and
 - (m) to engage or discharge employees on behalf of the co-operative; and
 - (n) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver; and
 - (o) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person; and
 - (p) where a debt or liability is owed to the co-operative—to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement; and
 - (q) where the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the co-operative:
 - (i) in the name of the co-operative, to make a call in respect of money unpaid on shares in the co-operative (whether on account of the nominal value of the shares or by way of premium); or
 - (ii) upon the giving of a proper indemnity to a liquidator of the co-operative—in the name of the liquidator, to make a call in respect of money unpaid on account of the nominal value of shares in the co-operative; and
 - (r) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise; and
 - (s) to make or defend an application for the winding up of the co-operative; and
 - (t) to refer to arbitration any question affecting the co-operative.
- (3) The conferring by this clause on a receiver of powers in relation to property of a co-operative does not affect any rights in relation to that property of any other person other than the co-operative.
- (4) In this clause, a reference, in relation to a receiver, to property of a co-operative is, unless the contrary intention appears, a reference to the property of the co-operative in relation to which the receiver was appointed.

Duties of receiver with respect to bank accounts and accounting records

6. (1) A receiver of property of a co-operative is to:
- (a) open and maintain a bank account bearing the receiver's own name, the title "receiver" and the name of the co-operative; and
 - (b) within 3 business days after money of the co-operative comes under the receiver's control, pay that money into the account referred to in paragraph (a); and
 - (c) ensure that the account referred to in paragraph (a) does not contain any money other than the money of the co-operative that comes under the receiver's control; and

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

(d) keep such accounting records as correctly record and explain all transactions entered into by the receiver as receiver.

(2) Any director, creditor or member of a co-operative may, unless the Court otherwise orders, personally or by an agent, inspect records kept by a receiver of property of the co-operative for the purposes of subclause (1) (d).

Reports by receiver

7. (1) If it appears to the receiver of property of a co-operative that:

- (a) a past or present officer, or a member, of the co-operative may have been guilty of an offence under any law of the Commonwealth or of a State or Territory in relation to the co-operative; or
- (b) a person who has taken part in the formation, promotion, administration, management or winding up of the co-operative:
 - (i) may have misapplied or retained, or may have become liable or accountable for, any money or property (whether the property is within or outside Australia) of the co-operative; or
 - (ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the co-operative,

the receiver must:

- (c) lodge as soon as practicable a report about the matter, and
 - (d) give to the Registrar such information, and such access to and facilities for inspecting and taking copies of any documents, as the Registrar requires.
- (2) The receiver may also lodge further reports specifying any other matter that, in the receiver's opinion, it is desirable to bring to the notice of the Registrar.
- (3) If it appears to the Court:
- (a) that a past or present officer, or a member, of a co-operative in respect of property of which a receiver has been appointed has been guilty of an offence under a law referred to in subclause (1) (a) in relation to the co-operative; or
 - (b) that a person who has taken part in the formation, promotion, administration, management or winding up of a co-operative in respect of property of which a receiver has been appointed has engaged in conduct referred to in subclause (1) (b) in relation to the co-operative,

and that the receiver has not lodged a report about the matter, the Court may, on the application of a person interested in the appointment of the receiver or of its own motion, direct the receiver to lodge such a report.

Supervision of receiver

8. (1) If:

- (a) it appears to the Court or to the Registrar that a receiver of property of a co-operative has not faithfully performed or is not faithfully performing the receiver's duties or has not observed or is not observing:

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

- (i) a requirement of the order by which, or the instrument under which, the receiver was appointed; or
 - (ii) a requirement of the Court; or
 - (iii) a requirement of this Act, of the regulations or of the rules of the Court; or
- (b) a complaint is made to the Court or to the Registrar by any person with respect to the conduct of a receiver of property of a co-operative in connection with the performance of the receiver's duties,

the Court or the Registrar, as the case may be, may inquire into the matter and, where the Court or Registrar so inquires, the Court may take such action as it thinks fit.

(2) The Registrar may report to the Court any matter that in the Registrar's opinion is a misfeasance, neglect or omission on the part of the receiver and the Court may order the receiver to make good any loss that the estate of the co-operative has sustained thereby and may make such other order or orders as it thinks fit.

(3) The Court may at any time require a receiver of property of a co-operative to answer any inquiry in relation to the performance of the receiver's duties as receiver and may examine the receiver or any other person on oath concerning the performance of the receiver's duties and may direct an investigation to be made of the receiver's books.

Receiver may apply to Court

9. A receiver of property of a co-operative appointed under a power contained in an instrument may apply to the Court for directions in relation to any matter arising in connection with the performance of the receiver's functions.

Power of Court to fix remuneration of receiver

10. (1) The Court may, on application by the liquidator or the official manager of a co-operative, or by the Registrar, by order fix the amount to be paid by way of remuneration to any person who, under a power contained in an instrument, has been appointed as receiver of property of the co-operative.

- (2) The power of the Court to make an order under this clause:
- (a) extends to fixing the remuneration for any period before the making of the order or the application for the order; and
 - (b) is exercisable even if the receiver has died, or ceased to act, before the making of the order or the application for the order; and
 - (c) if the receiver has been paid or has retained for the receiver's remuneration for any period before the making of the order any amount in excess of that fixed for that period—extends to requiring the receiver or the receiver's personal representatives to account for the excess or such part of the excess as is specified in the order.

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

(3) The power conferred by subclause (2) (c) is not to be exercised in respect of any period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances making it proper for the power to be so exercised

(4) The Court may from time to time, on an application made by the liquidator, the official manager, the receiver or the Registrar, vary or amend an order made under this clause.

Receiver to enjoy qualified privilege in certain circumstances

11. A receiver of property of a co-operative has qualified privilege in respect of
- (a) a matter contained in a report that the receiver lodges under clause 7; or
 - (b) a comment that the receiver makes under clause 14 (2) (c).

Notification of appointment of receiver

12. (1) A person who obtains an order for the appointment of a receiver of property of a co-operative, or who appoints such a receiver under a power contained in an instrument, must:

- (a) within 7 days after obtaining the order or making the appointment, lodge notice that the order has been obtained, or that the appointment has been made, as the case may be; and
- (b) within 21 days after obtaining the order or making the appointment, cause notice that the order has been obtained, or that the appointment has been made, as the case may be, to be published in the Gazette.

(2) Within 14 days after being appointed as a receiver of property of a co-operative, a person must lodge a notice in the prescribed form of the address of the person's office.

(3) A receiver of property of a co-operative must, within 14 days after a change in the situation of the receiver's office, lodge notice in the prescribed form of the change.

(4) Where a person appointed as receiver of property of a co-operative ceases to act as such, the person must:

- (a) within 7 days after so ceasing to act, lodge notice that the person has so ceased to act; and
- (b) within 21 days after so ceasing to act, cause notice that the person has so ceased to act to be published in the Gazette.

Statement that receiver appointed

13. Where a receiver of property (whether within or outside the State or within or outside Australia) of a co-operative has been appointed, the co-operative must set out, in every business document of the co-operative, after the name of the co-operative where it first appears, a statement that a receiver, or a receiver and manager, as the case requires, has been appointed.

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

Provisions as to information where receiver appointed

14. (1) In this clause:

“reporting officer”, in relation to a co-operative in respect of property of which a receiver has been appointed, means a person who is:

- (a) in the case of a co-operative other than a foreign co-operative—director or secretary of the co-operative; or
- (b) in the case of a foreign co-operative—a local agent of the foreign co-operative,

on the day of the appointment.

(2) Where a receiver of property of a co-operative is appointed:

- (a) the receiver must serve on the co-operative as soon as practicable notice of the appointment; and
- (b) within 14 days after the co-operative receives the notice, the reporting officers must make out and submit to the receiver a report in the prescribed form about the affairs of the co-operative as at the day of the appointment; and
- (c) the receiver must, within 1 month after receipt of the report:
 - (i) lodge a copy of the report and a notice setting out any comments the receiver sees fit to make relating to the report or, if the receiver does not see fit to make any comment, a notice stating that the receiver does not see fit to make any comment; and
 - (ii) send to the co-operative a copy of the notice lodged in accordance with subparagraph (i); and
 - (iii) if the appointment was by or on behalf of the holders of debentures of the co-operative, send to the trustees (if any) for those holders a copy of the report and a copy of the notice lodged in accordance with subparagraph (i).

(3) Where notice has been served on a co-operative under subclause (2) (a), the reporting officers may apply to the receiver or to the Court to extend the period within which the report is to be submitted and:

- (a) if application is made to the receiver—the receiver believes that there are special reasons for so doing, the receiver may, by notice in writing given to the reporting officers, extend that period until a specified day; and
- (b) if application is made to the Court—the Court believes that there are special reasons for so doing, the Court may, by order, extend that period until a specified day.

(4) As soon as practicable after granting an extension under subclause (3) (a), the receiver must lodge a copy of the notice.

(5) As soon as practicable after the Court grants an extension under subclause (3) (b), the reporting officers must lodge a copy of the order.

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

(6) Subclauses (2), (3) and (4) do not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver who has died or ceased to act, except that, where subclause (2) applies to a receiver who dies or ceases to act before that subclause has been fully complied with, the references in subclause (2) (b) and (c), (3) and (4) to the receiver, subject to subclause (7), include references to the receiver's successor and to any continuing receiver.

(7) Where a co-operative is being wound up, this clause and clause 15 apply even if the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

Receiver may require reports

15. (1) A receiver of property of a co-operative may, by notice given to the person or persons, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in the prescribed form, and submit to the receiver, a report, containing such information as is specified in the notice as to the affairs of the co-operative or as to such of those affairs as are specified in the notice, as at a date specified in the notice:

- (a) persons who are or have been officers of the co-operative;
- (b) where the co-operative was incorporated within one year before the date of the receiver's appointment—persons who have taken part in the formation of the co-operative;
- (c) persons who are employed by the co-operative or have been so employed within one year before the date of the receiver's appointment and are, in the opinion of the receiver, capable of giving the information required;
- (d) persons who are, or have been within one year before the date of the receiver's appointment, officers of, or employed by, a body corporate that is, or within that year was, an officer of the co-operative.

(2) The receiver may, in a notice under subclause (1), specify the information that the receiver requires as to the affairs of a co-operative by reference to information required by this Act to be included in any other report, statement or notice under this Act.

(3) A person making a report and verifying it as required by subclause (1) must, subject to the regulations, be allowed, and must be paid by the receiver (or the receiver's successor) out of the receiver's receipts, such costs and expenses incurred in and about the preparation and making of the report and the verification of the report as the receiver (or the receiver's successor) considers reasonable.

(4) A person must comply with a requirement made under subclause (1).

Maximum penalty: 10 penalty units.

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

(5) A reference in this clause to the receiver's successor includes a reference to a continuing receiver.

Receiver may inspect records

16. A receiver of property of a co-operative is entitled to inspect at any reasonable time any records of the co-operative that relate to that property and a person must not fail to allow the receiver to inspect such records at such a time.

Lodging of accounts of receiver

17. (1) A receiver of property of a co-operative must, within one month after the end of the period of 6 months (or such lesser period as the receiver determines) from the date of the receiver's appointment and of every subsequent period of 6 months during which the receiver acts as receiver, and within one month after the receiver ceases to act as receiver, lodge an account in the prescribed form showing:

- (a) the receiver's receipts and payments during each such period or, where the receiver ceases to act as receiver, during the period from the end of the period to which the last account related or from the date of the receiver's appointment, as the case requires, up to the date of the receiver so ceasing to act;
- (b) except in the case of the first account lodged under this subclause—the aggregate amount of receipts and payments during all preceding periods since the receiver's appointment; and
- (c) where the receiver has been appointed under a power contained in an instrument—the amount (if any) owing under that instrument:
 - (i) in the case of the first account—the time of the receiver's appointment and at the end of the period to which the account relates; and
 - (ii) in the case of any other account—the end of the period to which the account relates,

and the receiver's estimate of the total value, at the end of the period to which the account relates, of the property of the co-operative that is subject to the instrument.

(2) The Registrar may, of the Registrar's own motion or on the application of the co-operative or a creditor of the co-operative, cause the accounts lodged in accordance with subclause (1) to be audited by a registered company auditor (within the meaning of the Corporations Law) appointed by the Registrar and, for the purpose of the audit, the receiver must furnish the auditor with such books and information as the auditor requires.

(3) Where the Registrar causes the accounts to be audited on the request of the co-operative or a creditor, the Registrar may require the co-operative or creditor, as the case may be, to give security for the payment of the cost of the audit.

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

(4) The costs of an audit under subclause (2) are to be fixed by the Registrar and the Registrar may if the Registrar thinks fit make an order declaring that, for the purposes of clause 4 (1), those costs are to be considered to be a debt incurred by the receiver in the course of the receivership for services rendered and, where such an order is made, the receiver is liable for those costs in accordance with clause 4 as if they were such a debt.

(5) A person must comply with a requirement made under this clause.

Payment of certain debts, out of property subject to floating charge, in priority to claims under charge

18. (1) This clause applies where:

- (a) a receiver is appointed on behalf of the holders of any debentures of a co-operative that are secured by a floating charge, or possession is taken or control is assumed, by or on behalf of the holders of any debentures of a co-operative, of any property comprised in or subject to a floating charge; and
- (b) at the date of the appointment or of the taking of possession or assumption of control (in this clause called the “relevant date”):
 - (i) the co-operative has not commenced to be wound up voluntarily; and
 - (ii) the co-operative has not been ordered to be wound up by the Court.

(2) The receiver or other person taking possession or assuming control of property of the co-operative must pay, out of the property coming into his, her or its hands, the following debts or amounts in priority to any claim for principal or interest in respect of the debentures:

- (a) first, any amount that in a winding up is payable in priority to unsecured debts pursuant to section 562 of the Corporations Law (as applying under this Act);
- (b) next, if an auditor of the co-operative had applied to the Registrar for consent to his, her or its resignation as auditor and the Registrar had refused that consent before the relevant date—the reasonable fees and expenses of the auditor incurred during the period beginning on the day of the refusal and ending on the relevant date;
- (c) subject to subclauses (4) and (5), next, any debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to section 556 (1) (e), (g) or (h) or 560 of the Corporations Law (as applying under this Act).

(3) The receiver or other person taking possession or assuming control of property must pay debts and amounts payable pursuant to subclause (2) (c) in the same order of priority as is prescribed by Division 6 of Part 5.6 of the Corporations Law (as applying under this Act) in respect of those debts and amounts.

(4) If an auditor of the co-operative had applied to the Registrar for consent to his, her or its resignation as auditor and the Registrar had, before the relevant date, refused that consent, a receiver must, when property comes to the receiver’s hands, before paying any debt or amount referred to in subclause (2) (c), make provision out of that

SCHEDULE 4—RECEIVERS AND MANAGERS —*continued*

property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision has not already been made under this subclause.

(5) If an auditor of the co-operative applies to the Registrar for consent to his, her or its resignation as auditor and, after the relevant date, the Registrar refuses that consent, the receiver must, in relation to property that comes into the receiver's hands after the refusal, before paying any debt or amount referred to in subclause (2) (c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the refusal and before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision has not already been made under this subclause.

(6) A receiver must make provision in respect of reasonable fees and expenses of an auditor in respect of a particular period as required by subclause (4) or (5) whether or not the auditor has made a claim for fees and expenses for that period, but where the auditor has not made a claim, the receiver may estimate the reasonable fees and expenses of the auditor for that period and make provision in accordance with the estimate.

(7) For the purposes of this clause the references in Division 6 of Part 5.6 of the Corporations Law (as applying under this Act) to the relevant date are to be read as references to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

Enforcement of duty of receiver to make returns

19. (1) If a receiver of property of a co-operative:

- (a) who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on the receiver, by any member or creditor of the co-operative or trustee for debenture holders, of a notice requiring the receiver to do so; or
- (b) who has been appointed under a power contained in an instrument has, after being required at any time by the liquidator of the co-operative so to do, failed to render proper accounts of, and to vouch, the receiver's receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator,

the Court may make an order directing the receiver to make good the default within such time as is specified in the order.

(2) An application under subclause (1) may be made:

- (a) if subclause (1) (a) applies—by a member or creditor of the co-operative or by a trustee for debenture holders; and
- (b) if subclause (1) (b) applies—by the liquidator of the co-operative.

SCHEDULE 4—RECEIVERS AND MANAGERS —continued**Offence**

20. If a person contravenes a provision of this Schedule, the person is guilty of an offence by virtue of this clause unless that or another provision of this Schedule provides that the person is not guilty of an offence or provides for a penalty higher than 5 penalty units for the contravention.

Maximum penalty: 5 penalty units.

SCHEDULE 5—MEMBERS AND PROCEDURE OF THE COUNCIL

(Sec. 414)

PART 1—MEMBERS**Term of office**

1. Subject to this Act, a member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment but is eligible for re-appointment if otherwise qualified.

Deputies

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the member's deputy:

- (a) may, if available, act in the place of the member, and
- (b) while so acting, has all the functions of the member and is to be regarded as a member.

(3) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Vacancy in office of member

3. (1) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4

SCHEDULE 5—MEMBERS AND PROCEDURE OF THE COUNCIL—*continued*

weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a mentally incapacitated person; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

4. If the office of a member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

Disclosure of pecuniary interests

5. (1) The Council may make rules for or with respect to:

- (a) requiring disclosure by a member of any direct or indirect pecuniary interest of the member on a matter being considered or about to be considered at a meeting of the Council; and
- (b) prohibiting a member being present during any deliberation of the Council with respect to a matter in which the member has such an interest or taking part in any decision of the Council with respect to a matter in which the member has such an interest.

(2) The Council may amend any such rules (by substituting, varying, revoking or adding to them).

(3) The rules and any amendment to them are of no effect unless approved by the Minister and take effect when published in the Gazette.

Allowances

6. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

Effect of certain other Acts

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

SCHEDULE 5—MEMBERS AND PROCEDURE OF THE COUNCIL—*continued*

- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

Proof of certain matters not required

8. In any legal proceedings, proof is not required (until evidence is given to the contrary) of

- (a) the constitution of the Council; or
- (b) any resolution of the Council; or
- (c) the appointment of, or holding of office by, any member of the Council; or
- (d) the presence or nature of a quorum at any meeting of the Council.

PART 2—PROCEDURE**General procedure**

9. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Council.

Quorum

10. The quorum for a meeting of the Council is 5 members.

Presiding member

11. (1) The Registrar is to preside at a meeting of the Council.

(2) In the absence of the Registrar, a member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(3) When presiding at a meeting of the Council, the Registrar does not have a deliberative vote but in the event of an equality of votes has a casting vote.

(4) If the person presiding at a meeting of the Council is not the Registrar, that person has a deliberative vote and in the event of an equality of votes has a second or casting vote.

(5) In this clause, a reference to the Registrar includes a reference to the Registrar's nominee.

SCHEDULE 5—MEMBERS AND PROCEDURE OF THE COUNCIL—*continued***Voting**

12. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

Transaction of business outside meetings or by telephone etc.

13. (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is to be regarded as a decision of the Council.

(2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purpose of

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the person presiding and each member have the same voting rights as they have at an ordinary meeting of the Council.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

(6) Section 416 (Minister and Registrar may attend meetings) applies to the transaction of business or a meeting under this clause in the same way as that section applies to an ordinary meeting of the Council.

Committees of Council

14. (1) The Council may appoint committees to enable it to exercise its functions.

(2) A committee need not include a member of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

Minutes

15. The Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

SCHEDULE 5—MEMBERS AND PROCEDURE OF THE COUNCIL—*continued***First meeting**

16. The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 444)

Definitions

1. In this Schedule:

“**1923 Act**” means the Co-operation Act 1923, as in force immediately before the commencement of this clause;

“**transferred co-operative**” is explained in clause 4.

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

General savings

3. (1) Except as otherwise provided by this Schedule or by regulations made under clause 2, anything done under a provision of the 1923 Act in respect of a transferred co-operative that had an effect immediately before the commencement of a corresponding provision of this Act is to be considered to have been done under that corresponding provision.

(2) Subclause (1) applies even if when done under the corresponding provision of this Act the thing can be done only by a different person or body and in such a case is to be considered to have been done by that person or body.

SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS —*continued***Certain co-operative societies become co-operatives under this Act**

4. (1) A society registered under the 1923 Act (unless exempted under subclause (4)) is to be considered to be a co-operative registered under this Act and is referred to in this Schedule as a “transferred co-operative”.

(2) Each transferred co-operative is the same legal entity as the corresponding society under the 1923 Act and accordingly has the same name, rules and membership as it had under the 1923 Act.

(3) After the commencement of this clause, the Registrar is not to register a new society under the 1923 Act unless the society is exempted under subclause (4).

(4) The following societies under the 1923 Act are exempt from this clause:

- (a) a co-operative housing society;
- (b) a Starr-Bowkett Society;
- (c) a non-terminating building society;
- (d) a society mentioned in the Second Schedule to that Act.

Property etc. of transferred co-operatives

5. (1) In this clause:

“**assets**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;

“**former society**”, in relation to a transferred co-operative, means the society under the 1923 Act which became the transferred co-operative as a result of clause 4;

“**instrument**” means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

“**liabilities**” means liabilities, debts and obligations (whether present or future and whether vested or contingent).

(2) On the commencement of this clause, the following provisions have effect:

- (a) the assets of the former society of a transferred co-operative vest in the transferred co-operative without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of the former society of a transferred co-operative become the rights and liabilities of the transferred co-operative;
- (c) all proceedings by or against the former society of a transferred co-operative that are pending immediately before the commencement of this clause are taken to be proceedings pending by or against the transferred co-operative;

SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS —*continued*

- (d) any act, matter or thing done or omitted to be done by, to or in respect of the former society of a transferred co-operative before the commencement of this clause is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferred co-operative;
 - (e) a reference in an instrument or in any document of any kind to the former society of a transferred co-operative is to be read as, or as including, a reference to the transferred co-operative.
- (3) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

1923 Act ceases to apply to transferred co-operatives

6. (1) The 1923 Act and any regulations under that Act cease to apply to transferred co-operatives.

(2) For the purposes of the application of the provisions of the Interpretation Act 1987 in respect of co-operatives under this Act, the 1923 Act is to be considered to have been repealed and replaced by this Act.

Primary objects/primary activities

7. Any reference (in the context of active membership provisions) in the rules of a transferred co-operative to a chief primary object or primary object is to be read as a reference to a primary activity of the co-operative.

Registration of charges

8. (1) Any charge registered under the provisions of the Companies (New South Wales) Code applied by section 65 (3) of the 1923 Act is, to the extent that it affects property of a transferred co-operative, to be considered to be registered under the corresponding provisions of this Act and to have been so registered at the time that it became registered under the 1923 Act.

(2) The register kept under the 1923 Act for that purpose is, to the extent that it relates to charges affecting property of a transferred co-operative, to be considered to be part of the register kept under the corresponding provisions of this Act.

References to societies registered under 1923 Act

9. (1) A reference in any instrument to a society registered under the 1923 Act is to be read as including a reference to a co-operative registered under this Act.

SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS —*continued*

(2) In this clause:

“instrument” means any Act (other than this Act or the 1923 Act), any instrument made under an Act (other than this Act or the 1923 Act) and any instrument of any other kind.

Loans to directors

10. Section 232 (Restrictions on loans to directors) does not apply to the making of a loan, the giving of a guarantee or the providing of security before the commencement of that section.

Active membership provisions

11. (1) If a co-operative society had the benefit of an extension under section 80F of the 1923 Act of the time within which the rules of the society had to contain active membership provisions, that extension continues to operate for the purposes of this Act.

(2) The effect of this is that the rules of the co-operative need not contain active membership provisions until the extension expires.

(3) Sections 181 (Inactive members not entitled to vote) and 64 (Qualification for membership—likelihood of being active member) do not apply to the co-operative until the extension expires.

Dissolution of Advisory Council

12. The Advisory Council established under the 1923 Act is dissolved.

SCHEDULE 7—AMENDMENT OF OTHER ACTS

(Sec. 445)

Associations Incorporation Act 1984 No. 143

(1) Section 48 (**Application to bring company or co-operative under Act**):

(a) From section 48 (1), omit “society registered under the Co-operation Act, 1923”, insert instead “co-operative registered under the Co-operatives Act 1992”.

(b) Omit “society” wherever (except firstly) occurring, insert instead “co-operative”.

(c) From section 48 (4), omit “Registrar of Co-operative Societies”, insert instead “Registrar of Co-operatives”.

(2) Section 49 (**Effect of transfer of incorporation**):

(a) Omit “society” wherever occurring, insert instead “co-operative”.

(b) From section 49 (1), omit “Registrar of Co-operative Societies”, insert instead “Registrar of co-operatives”.

SCHEDULE 7—AMENDMENT OF OTHER ACTS —*continued*

(c) From section 49 (1), omit “Co-operation Act, 1923,” insert instead “Co-operatives Act 1992”.

(3) Sections 56 (**Transfer of incorporation**) and 57 (**Effect of transfer of incorporation**):

Omit “society within the meaning of the Co-operation Act, 1923” wherever occurring, insert instead “co-operative within the meaning of the Co-operatives Act 1992”.

Land Tax Management Act 1956 No. 26Section 10 (**Land exempted from tax**):

From section 10 (1) (t), omit “rural society registered under the Co-operation Act 1923”, insert instead “co-operative under the Co-operatives Act 1992 that has as its objects any of the objects listed in section 7 of the Co-operation Act 1923”.

Search Warrants Act 1985 No. 37Section 10 (**Definitions**):

Insert in the definition of “search warrant” in alphabetical order of Acts:

section 381 of the Co-operatives Act 1992;

*[Minister’s second reading speech made in—
Legislative Assembly on 9 April 1992
Legislative Council on 5 May 1992]*