



New South Wales

# Co-operatives Legislation Amendment Act 1999 No 2

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New South Wales

# Co-operatives Legislation Amendment Act 1999 No 2

Act No 2, 1999

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An Act to amend the *Co-operation Act 1923*, the *Co-operatives Act 1992*, the *Co-operatives Amendment Act 1997*, and the *Co-operative Housing and Starr-Bowkett Societies Act 1998* in connection with the administration of the co-operatives legislation; and for other purposes. [Assented to 31 May 1999]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Co-operatives Legislation Amendment Act 1999*.

**2 Commencement**

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

**3 Amendment of Co-operation Act 1923 (1924 No 1)**

The *Co-operation Act 1923* is amended as set out in Schedule 1.

**4 Amendment of Co-operatives Act 1992 No 18**

The *Co-operatives Act 1992* is amended as set out in Schedule 2.

**5 Amendment of Co-operatives Amendment Act 1997 No 39**

The *Co-operatives Amendment Act 1997* is amended as set out in Schedule 3.

**6 Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11**

The *Co-operative Housing and Starr-Bowkett Societies Act 1998* is amended as set out in Schedule 4.

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## Schedule 1 Amendment of Co-operation Act 1923

(Section 3)

**[1] Section 5 Definitions**

Omit the definition of *Registrar*. Insert instead:

*Registrar*—see section 5D.

**[2] Section 5C Certain functions of the Registrar to be exercised by FINCOM**

Omit the section.

**[3] Section 5D**

Insert as section 5D:

**5D Exercise of registrar's functions**

- (1) The powers, authorities, duties and functions expressed to be conferred or imposed on the “registrar” by or under this Act are to be exercised and performed by the Director-General of the Department of Fair Trading.
- (2) For that purpose, a reference in this Act to the registrar is to be read as a reference to the Director-General of the Department of Fair Trading.

**[4] Fifth Schedule Savings and transitional provisions**

Insert at the end of the Schedule:

*Co-operatives Legislation Amendment Act 1999*

**10 Functions of registrar exercised by FINCOM**

- (1) Anything done or omitted to be done in connection with a matter by, to or in relation to the New South Wales Financial Institutions Commission under section 5C before its repeal by the *Co-operatives Legislation Amendment Act 1999* is taken to have been done or omitted by, to or in relation to the registrar.

- (2) Any liability attaching to that Commission under section 22 of the *Financial Institutions Commission 1992* in connection with any such matter becomes a liability of the Crown.
- (3) A member of the staff of the Department of Fair Trading or a delegate of the Director-General of that Department incurs no liability for an honest act or omission in the exercise or performance of powers, authorities, duties or functions under this Act (whether before or after the commencement of this clause) in connection with any such matter.
- (4) A liability that would, but for this clause, attach to a member of the staff of the Department of Fair Trading or a delegate of the Director-General of that Department attaches to the Crown.
- (5) Subclause (3) does not apply to:
  - (a) wilful misconduct, or
  - (b) wilful neglect, or
  - (c) wilful failure to comply with this Act.

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## Schedule 2 Amendment of Co-operatives Act 1992

(Section 4)

### [1] Notes

Omit all notes that refer to core consistent provisions.

### [2] Section 3A

Insert after section 3:

#### **3A Application to co-operative housing societies and other bodies**

Except where expressly provided by this Act and except as provided by the regulations, this Act does not apply to or in respect of:

- (a) a co-operative housing body under the *Co-operative Housing and Starr-Bowkett Societies Act 1998*, or
- (b) a body that is of the same nature as such a co-operative housing body but that is not registered under that Act.

### [3] Section 5 Definitions

Omit the definition of *Registrar* from section 5 (1). Insert instead:

*Registrar*—see section 5B.

### [4] Section 5B

Insert after section 5A:

#### **5B Exercise of Registrar's functions**

- (1) The functions expressed to be conferred or imposed on the “Registrar” by or under this Act are to be exercised by the Director-General of the Department of Fair Trading.
- (2) For that purpose, a reference in this Act to the Registrar is to be read as a reference to the Director-General of the Department of Fair Trading.

**[5] Section 255 Name to include certain matter**

Insert at the end of section 255 (5) (g):

, or

- (h) a corporation that is allowed under another Act to use the word “co-operative” or the abbreviation “co-op” in its name.

**[6] Section 260**

Insert after section 259:

**260 Restriction on use of word “co-operative” or similar words**

- (1) A person, other than a co-operative, must not trade, or carry on business, under a name or title containing the word “co-operative”, the abbreviation “co-op” or words importing a similar meaning.
- (2) Subsection (1) does not apply to:
  - (a) an entity mentioned in section 255 (5), or
  - (b) a person or body exempted by the Registrar under this section.
- (3) A person or body may apply to the Registrar for exemption from subsection (1).
- (4) The Registrar may, by written notice given to the person or body, grant an exemption for such time and on such terms and conditions as the Registrar determines. An exemption can provide that specified provisions of this Act apply to the person or body as if the person or body were a co-operative, and the specified provisions then apply accordingly (as if a reference in those provisions to a co-operative included a reference to the person or body).
- (5) The Registrar may, at any time:
  - (a) revoke an exemption, or
  - (b) vary or revoke the terms or conditions of an exemption.

- (6) A person who contravenes this section or a condition of an exemption under this section, and every director or other person having the control and management of a body contravening this section or the condition, is guilty of an offence.

Maximum penalty: 20 penalty units.

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Schedule 3 Amendment of Co-operatives Amendment Act 1997

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### **Schedule 3 Amendment of Co-operatives Amendment Act 1997**

(Section 5)

**Schedule 1 Amendments (item [9]—section 5 (1), definition of  
“Registrar”)**

Omit Schedule 1 [9].

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## **Schedule 4 Amendment of Co-operative Housing and Starr-Bowkett Societies Act 1998**

(Section 6)

**[1] The whole Act (except where inconsistent with other items of this  
Schedule)**

Omit “FINCOM” wherever occurring.

Insert instead “the Registrar” or “The Registrar” as appropriate.

**[2] Headings in the Act (and so much of the Act as consists of  
references to headings in the Act)**

Omit “FINCOM” wherever occurring. Insert instead “Registrar”.

**[3] Section 3 Definitions**

Omit the definitions of *employee* and *FINCOM* from section 3 (1).

**[4] Section 3 (1)**

Insert in alphabetical order:

*Registrar*—see section 47A.

**[5] Sections 19 (f), 20 (2), 24 (2), 28 (1) (a), (b) and (c), 40 (6) (c), (7) and  
(10), 41 (3), 43 (14) (b) and (15), 140 (7), 149 (4) and (7), 152, 153 (6),  
155 (2) and (3), 158 (3) (b), and 214 (4)**

Omit “it” wherever occurring. Insert instead “the Registrar”.

**[6] Sections 20 (1), 25, 28 (1) and (2), 40 (1) and (2), 105 (3), 140 (10) (b),  
149 (11), 176 (2)**

Omit “its” wherever occurring. Insert instead “the Registrar’s”.

**[7] Section 22 FINCOM to keep Minister informed**

Omit the section.

**[8] Section 23**

Omit the section. Insert instead:

**23 Inspection of documents**

- (1) A person may:
  - (a) inspect documents prescribed by the regulations or documents of a class prescribed by the regulations kept by the Registrar relating to co-operative housing bodies on payment of the fee (if any) prescribed by the regulations, and
  - (b) obtain, on payment of the fee prescribed by the regulations, a certified copy of a document that a person may inspect under paragraph (a).
- (2) If a reproduction or transparency of a document, or an extract of information contained in a document, is produced for inspection, a person is not entitled under subsection (1) to require the production of the original of that document.

**[9] Section 28 (2)**

Omit “it” where secondly occurring. Insert instead “the Registrar”.

**[10] Section 29 Obtaining evidence**

Omit “employee of FINCOM” wherever occurring in section 29 (1).  
Insert instead “officer of the Department of Fair Trading”.

**[11] Section 29 (2), (4) and (6)**

Omit “employee” and “employee's” wherever occurring.  
Insert instead “officer” or “officer's” as appropriate.

**[12] Sections 29 (6), and 41 (4) and (5)**

Omit “FINCOM's” wherever occurring.  
Insert instead “the Registrar's”.

**[13] Section 43 Appointment of administrator**

Omit “employee of FINCOM” wherever occurring in section 43 (14).  
Insert instead “officer of the Department of Fair Trading”.

**[14] Section 43 (15)**

Omit “debt due to FINCOM”. Insert instead “debt due to the Crown”.

**[15] Part 2, Division 3 (section 47A)**

Insert after section 47:

**Division 3      Exercise of functions and powers of  
Registrar**

**47A Exercise of functions and powers of Registrar**

- (1) The functions and powers expressed to be conferred on the “Registrar” by or under this Act are to be exercised and performed by the Director-General of the Department of Fair Trading.
- (2) For that purpose, a reference in this Act to the Registrar is to be read as a reference to the Director-General of the Department of Fair Trading.

**47B Delegation by Registrar**

- (1) The Registrar may delegate to any person any of the Registrar’s functions and powers except this power of delegation.
- (2) A delegate may sub-delegate to another person any function or power delegated under this section if authorised by the terms of the delegation to do so.

**[16] Section 84 Use of words “co-operative housing society” or “Starr-Bowkett”**

Omit “, co-operative” from section 84 (2) (a).

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Schedule 4      Amendment of Co-operative Housing and Starr-Bowkett Societies Act  
1998

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**[17] Section 84 (7)**

Omit the subsection.

**[18] Sections 149 (6) and 199 (2)**

Omit “it” where firstly occurring. Insert instead “the Registrar”.

**[19] Part 5, Division 3 (sections 164–172)**

Omit the Division.

**[20] Section 191 The Standards Committee**

Omit section 191 (1) (c). Insert instead:

- (c) the Director-General of the Department of Fair Trading or his or her nominee (being a member of the staff of the Department of Fair Trading),

**[21] Schedule 5 Savings and transitional provisions**

Omit “Newcastle Co-operative Building Societies Association Limited” from clause 5.

**[22] Schedule 5**

Omit “St. George Association of Co-op. Housing & Building Societies Ltd” from clause 5.

Insert instead “State Wide Association of CHS & Originators Limited”.

**[23] Schedule 6 Amendment of Acts**

Omit Schedule 6.5.

[Minister's second reading speech made in—  
Legislative Assembly on 25 May 1999  
Legislative Council on 26 May 1999]

BY AUTHORITY