



New South Wales

# Co-operatives Amendment (Accounts and Audit) Regulation 2000

under the

Co-operatives Act 1992

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Co-operatives Act 1992*.

JOHN WATKINS, M.P.,  
Minister for Fair Trading

## Explanatory note

Section 243 of the *Co-operatives Act 1992* provides for the making of regulations to adopt (with or without modification) provisions of the *Corporations Law* that apply to accounts and audits, so that those provisions may apply to co-operatives. This has occurred through clause 15 and Schedule 3 of the *Co-operatives Regulation 1997*.

The object of this Regulation is to amend the *Co-operatives Regulation 1997* (mainly by updating and replacing certain references) as a result of recent amendments made to the accounting and audit provisions of the *Corporations Law*.

This Regulation is made under the *Co-operatives Act 1992*, including sections 243 and 446 (the general regulation-making power).

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Clause 1                      Co-operatives Amendment (Accounts and Audit) Regulation 2000

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# **Co-operatives Amendment (Accounts and Audit) Regulation 2000**

### **1 Name of Regulation**

This Regulation is the *Co-operatives Amendment (Accounts and Audit) Regulation 2000*.

### **2 Amendment of Co-operatives Regulation 1997**

The *Co-operatives Regulation 1997* is amended as set out in Schedule 1.

### **3 Notes**

The explanatory note does not form part of this Regulation.

## Schedule 1 Amendments

(Clause 2)

**[1] Clause 15 Requirements for accounts and accounting records**

Omit “Part 1” from clause 15 (1). Insert instead “Parts 1 and 2”.

**[2] Clause 15 (2)**

Omit the subclause. Insert instead:

- (2) The adopted provisions of the *Corporations Law* are section 198F, Part 2F.3, sections 249K, 249V and 250T, and Parts 2M.2, 2M.3, 2M.4 and 2M.7.

**[3] Clause 15 (4)**

Insert after clause 15 (3):

- (4) The directors of a co-operative, or the co-operative by a resolution passed at a general meeting, may authorise a member to inspect books of the co-operative.

**[4] Clause 30 Application of Corporations Law to winding up**

Omit “Part 2”. Insert instead “Parts 1 and 3”.

**[5] Schedule 3 Modifications of Corporations Law**

Re-number Part 1 and Part 2 of the Schedule as Part 2 and Part 3, respectively.

**[6] Schedule 3, Part 1**

Insert after the heading to Schedule 3:

### Part 1 Interpretation of modified provisions

- (1) The following definitions replace the corresponding definitions under the *Corporations Law* for the purpose of interpreting the adopted provisions of the *Corporations Law* as modified by the Act and this Schedule:

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*Act* means the *Co-operatives Act 1992*.

*Commission* means the Registrar.

*consolidated entity* means a co-operative together with all the entities that the accounting standards require the co-operative to include in consolidated financial statements.

*Court* means the Supreme Court.

*debenture*, in relation to a co-operative, has the same meaning as in the Act.

*director*, in relation to a co-operative, has the same meaning as in the Act.

*disclosing entity*—see section 266 of the Act (which adopts Part 1.2A of the *Corporations Law*).

*financial year* means a financial year of a co-operative as determined in accordance with section 248 of the Act.

*member* means member of a co-operative.

*officer*, in relation to a co-operative, has the same meaning as in the Act.

*related body corporate* has the meaning given by clause 22 of Schedule 2 to the Act.

- (2) Expressions used in the adopted provisions as modified by the Act and this Schedule that are not defined in the *Corporations Law* have the same meaning as in the Act.
- (3) The adopted provisions apply as if all notes are omitted.

**[7] Schedule 3, Part 2 Section 243 of Act—Requirements for accounts and accounting records**

Omit items [1]–[33] from Division 1. Insert instead:

**Part 2D.1 Duties and powers****[1] Section 198F (1) and (2)**

Omit the subsections. Insert instead:

- (1) A director of a co-operative may inspect the books of the co-operative (other than its financial records) for the purposes of a legal proceeding:
  - (a) to which the person is a party, or
  - (b) that the person proposes in good faith to bring, or
  - (c) that the person has reason to believe will be brought against them,at all reasonable times after giving at least 7 days previous notice (or such lesser period of notice as may be approved by the Registrar) to the secretary of the co-operative.
- (2) A person who has ceased to be a director of a co-operative may inspect the books of the co-operative (including its financial records) for the purposes of a legal proceeding:
  - (a) to which the person is a party, or
  - (b) that the person proposes in good faith to bring, or
  - (c) that the person has reason to believe will be brought against them,at all reasonable times after giving at least 7 days previous notice (or such lesser period of notice as may be approved by the Registrar) to the secretary of the co-operative.

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- [2] **Section 198F (4) and (5)**  
Omit “company” wherever occurring.  
Insert instead “co-operative”.

### Part 2F.3 Inspection of books

- [3] **Section 247A (1)**  
Omit “company or registered managed investment scheme”.  
Insert instead “co-operative”.
- [4] **Section 247A (1) (a) and (b)**  
Omit “company or scheme” wherever occurring.  
Insert instead “co-operative”.
- [5] **Section 247C**  
Omit “ASIC”. Insert instead “the Registrar or an officer”.
- [6] **Section 247D**  
Omit the section.

### Part 2G.2 Meetings of members of companies

- [7] **Sections 249K and 249V (1)**  
Omit “company” wherever occurring.  
Insert instead “co-operative”.
- [8] **Sections 249V (1) and 250T**  
Omit “company’s” wherever occurring.  
Insert instead “co-operative’s”.

### Part 2M.2 Financial records

- [9] **Sections 286 (1) and 290 (1)**  
Omit “company, registered scheme or disclosing entity” wherever occurring.  
Insert instead “co-operative”.

**[10] Section 287 (3)**

Insert after section 287 (2):

- (3) An inspector may, by notice in writing, specify a period within which the translation must be made available to the inspector.

**[11] Section 288 (2)**

Insert at the end of section 288:

- (2) An inspector may, by notice in writing, specify a period within which the hard copy must be made available to the inspector.

**[12] Section 289**

Omit the section. Insert instead:

**289 Place where records are kept**

The financial records must be kept within New South Wales but the co-operative may decide where within New South Wales to keep them.

**[13] Section 290 (1)**

Insert “after giving at least 7 days previous notice (or such lesser period of notice as may be approved by the Registrar) to the secretary of the co-operative” after “reasonable times”.

**[14] Section 291**

Omit the section.

**Part 2M.3 Financial reporting**

**[15] Section 292**

Omit the section. Insert instead:

**292 Who has to prepare annual financial reports and directors' reports**

A financial report and a directors' report must be prepared for each financial year by all co-operatives.

**[16] Sections 293 and 294**

Omit the sections.

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- [17] **Sections 295 (4) (c), 297 (a), 298 (1), 299 (2) (a) and (3) (a), 300 (1) (c) and (3) (a), 301 (1), 307 (c), 310 (a), 312, 314 (1), 316 (1), 322 (2), 323, 323A (2), 323B, 323C and 323D (3) and (5)**

Omit “company, registered scheme or disclosing entity” wherever occurring.

Insert instead “co-operative”.

- [18] **Section 296 (1)**

Omit the second sentence.

- [19] **Section 298 (3)**

Omit the subsection.

- [20] **Sections 299 (3) (b) and 300 (3) (b)**

Omit “company, registered scheme or disclosing entity” wherever occurring.

Insert instead “co-operative, company or registered scheme”.

- [21] **Sections 300 (1) (d) (ii), (2), (9) (d) and (e), (11) and 300A (1) (a)–(c)**

Omit “company” and “company’s” wherever occurring.

Insert instead “co-operative” and “co-operative’s”, respectively.

- [22] **Section 300 (1)**

Omit the last sentence.

- [23] **Section 300 (5) (a), (6) (a) and (e), and 7 (a) and (c)**

Omit “company, registered scheme or disclosing entity” wherever occurring.

Insert instead “entity”.

- [24] **Section 300 (8)**

Omit the subsection. Insert instead:

(8) The report for a company must include details of:

- (a) any indemnity that is given to a current or former officer or auditor against a liability, or any relevant agreement under which an officer or auditor may be given an indemnity, and



- (b) any premium that is paid, or agreed to be paid, for insurance against a current or former officer's or auditor's liability.

For the purposes of this subsection, *officer* has the same meaning as in Division 2 of Part 9 of the Act.

**[25] Section 300 (10)**

Omit "public company that is not a wholly-owned subsidiary of another company or of a recognised company".

Insert instead "co-operative that is not a wholly-owned subsidiary of another co-operative".

**[26] Section 300 (12) and (13)**

Omit the subsections.

**[27] Section 300A (1)**

Omit "company" where first occurring.

Insert instead "co-operative that is included in an official list of the Exchange".

**[28] Section 300A (2)**

Omit the subsection.

**[29] Section 300A (3)**

Omit "company's constitution".

Insert instead "co-operative's rules".

**[30] Section 301 (2)**

Omit the subsection.

**[31] Sections 302 and 320**

Omit "A disclosing entity" wherever occurring.

Insert instead "A co-operative that is a disclosing entity".

**[32] Sections 302 (c), 311 and 320**

Omit "ASIC" wherever occurring.

Insert instead "the Registrar".

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**[33] Section 307 (d)**

Omit the paragraph. Insert instead:

- (d) whether the co-operative has kept registers as required by section 249 of the Act and other records as required by the Act (including provisions of this Law adopted by or under the Act).

**[34] Section 311 (a)**

Omit “this Law”.

Insert instead “the Act (including provisions of this Law adopted by or under the Act)”.

**[35] Sections 312 (a) and 323B (a)**

Omit “company, scheme or entity”.

Insert instead “co-operative”.

**[36] Section 314 (1)**

Omit “either”.

**[37] Section 314 (1) (c)**

Insert at the end of section 314 (1) (b):

, or

- (c) in the case of a non-trading co-operative:
  - (i) giving members notice:
    - (A) that the reports referred to in paragraph (a) may be inspected at the registered office of the co-operative, or
    - (B) that a concise report of the kind referred to in paragraph (b) may be inspected at the registered office of the co-operative, and
  - (ii) making the report or reports (as the case requires) available for inspection.

**[38] Section 315**

Omit the section. Insert instead:

**315 Deadline for reporting to members**

A co-operative must report to members under section 314 by the earlier of:

- (a) 21 days before the next AGM after the end of the financial year, or
- (b) 21 days less than 5 months after the end of the financial year.

**[39] Section 316 (1A)**

Insert after section 316 (1):

- (1A) Subsection (1) (b) does not apply to a member of a non-trading co-operative.

**[40] Section 317**

Omit “public company”. Insert instead “co-operative”.

**[41] Section 318 (1) and (2)**

Omit “company or disclosing entity” wherever occurring.  
Insert instead “co-operative”.

**[42] Section 318 (1) and (4)**

Insert “prescribed” before “debenture holders” wherever occurring.

**[43] Section 318 (2)**

Insert “prescribed” before “debenture holder”.

**[44] Section 318 (2) (a)**

Insert “or made available” after “sent”.

**[45] Section 318 (3)**

Omit the subsection. Insert instead:

- (3) The co-operative must, as soon as practicable after the request:
  - (a) if the terms of the debenture issue so provide—make the copies available for inspection free of charge at the registered office of the co-operative, or

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- (b) in any other case—give the prescribed debenture holder the copies free of charge.

**[46] Section 318 (5)**

Insert after section 318 (4):

- (5) In this section, *prescribed debenture holder* means a person who holds debentures or CCUs of a co-operative but is not a member of the co-operative.

**[47] Part 2M.3, Division 5, heading**

Omit “ASIC”. Insert instead “Registrar”.

**[48] Section 319**

Omit the section. Insert instead:

**319 Lodgment of annual reports with Registrar**

A co-operative that has to prepare or obtain a report for a financial year under the Act (including provisions of this Law adopted by or under the Act) must include in its annual report to the Registrar for that year a copy of each such report.

**[49] Section 321 (1)**

Omit the subsection. Insert instead:

- (1) The Registrar may give a co-operative a direction to lodge with the Registrar a copy of reports prepared or obtained by it under Division 1 or 2.

**[50] Section 322 (1)**

Omit the subsection. Insert instead:

- (1) If a financial report or directors’ report is amended after it is lodged with the Registrar, the co-operative must:
- (a) lodge the amended report with the Registrar within 14 days after the amendment, and

- (b) in the case of a non-trading co-operative—make a copy of the amended report available for inspection at the registered office of the co-operative and inform any member who asks, of its availability, and
- (c) in any other case—give a copy of the amended report free of charge to any member who asks for it.

**[51] Section 322 (2) (b)**

Insert “inspect or” before “obtain”.

**[52] Section 323D (1) and (2)**

Omit the subsections.

**[53] Part 2M.3, Division 8 (section 323DA)**

Omit the Division.

**Part 2M.4 Appointment and removal of auditor****[54] Sections 324 (1) (a)–(c), (e), (2) (a)–(c), (f), (4)–(11), (14)–(16), 327 (1)–(3), (5), (7), (9)–(16), 328, 329 (1)–(6), (10), (11) and 331**

Omit “a company” and “the company” wherever occurring.

Insert instead “a co-operative” and “the co-operative”, respectively.

**[55] Section 324 (1) (f), and (2) (g) and (h)**

Omit “except where the company is a proprietary company,” wherever occurring.

**[56] Section 324 (1) (f), and (2) (g) and (h)**

Omit “the company” wherever occurring.

Insert instead “the co-operative”.

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**[57] Section 324 (2) (e)**

Omit the paragraph. Insert instead:

- (e) the business name under which the firm is carrying on business is registered under the *Business Names Act 1962* or a return (in a form approved by the Registrar for the purpose) has been lodged showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report,

**[58] Section 324 (5)**

Omit "that company" wherever occurring.

Insert instead "that co-operative".

**[59] Section 324 (12)**

Omit the subsection. Insert instead:

- (12) A person who is, in the opinion of the Registrar, suitably qualified or experienced and is approved by the Registrar for the purposes of this Law in relation to the audit of the co-operative's financial reports may be appointed as auditor of the co-operative, subject to such terms and conditions as are specified in the approval.

**[60] Section 324 (13)**

Omit "company's". Insert instead "co-operative's".

**[61] Section 325**

Omit the section.

**[62] Section 327 (1A)**

Omit the subsection.

**[63] Section 327 (3) and (7)**

Omit "A company" wherever occurring.

Insert instead "A co-operative".

**[64] Section 329 (8)**

Omit "Subject to subsection (9), the". Insert instead "The"

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**[65] Section 329 (9)**

Omit the subsection.

**[66] Section 329 (11) (c)**

Omit “prescribed form”.

Insert instead “form approved by the Registrar”.

**[67] Section 330**

Omit the section. Insert instead:

**330 Effect of winding up on office of auditor**

An auditor of a co-operative ceases to hold office if:

- (a) a special resolution is passed in accordance with section 189 of the Act for the voluntary winding up of the co-operative, or
- (b) a certificate is issued by the Registrar for the winding up of the co-operative, or
- (c) an order is made by the Court for the winding up of the co-operative.

**[68] Part 2M.4, Division 2 (sections 331AA–331AE)**

Omit the Division.

**Part 2M.7 Sanctions for contraventions of Chapter**

**[69] Section 344 (1)**

Omit “company, registered scheme or disclosing entity”.

Insert instead “co-operative”.

**[8] Schedule 3, Part 2, Division 2**

Renumber items [34] and [35] as items [70] and [71], respectively.

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**[9] Schedule 3, Part 3 Section 325 of Act—Application of Corporations Law to winding up**

Renumber items [36]–[38] as items [72]–[74], respectively.

**[10] Schedule 3, item [73]**

Omit “If the Commission”. Insert instead “Where the Commission”.

BY AUTHORITY