

[Act 1995 No 41]



Co-operatives Amendment Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Co-operatives Act 1992* to make miscellaneous changes in the following areas:

- the application of various provisions of the *Corporations Law* to co-operatives (including the appointment of external administrators, insolvency, winding up, and the issue of debentures),
- the management of co-operatives (including the requisitioning of general meetings, lodging of annual returns and duties and liabilities of directors),
- powers and responsibilities of co-operatives in connection with the obtaining of financial accommodation (including the issue of CCU's and compulsory loans by members),
- functions of the Registrar with respect to certificate evidence and the consideration of applications for registration of co-operatives.

Amended in committee—see table at end of volume.

The amendments proposed to be made by the Bill are as follows:

- (a) New provisions of the *Corporations Law* dealing with the appointment of external administrators are applied to co-operatives, with certain modifications. Consequential changes are made to provisions dealing with official management (which is now obsolete). Modifications allow the Registrar to appoint an administrator for the purposes of the applied provisions of the *Corporations Law* and provide that the administrator need not be a registered liquidator. The Bill also applies new provisions of the *Corporations Law* allowing for the reciprocal application of orders in other jurisdictions concerning the administration or winding up of co-operatives. **(Schedule 1 (1), (2), (11), (12), (17), (33)–(36), (43)–(60))**
- (b) An existing provision of the Act which disapplies the *Corporations Law* to co-operatives is amended to make it clear that the provision does not prevent Parts 7.11 and 7.12 of the *Corporations Law* (containing requirements relating to issues of securities such as prescribed interests) applying to co-operatives, other than in relation to shares in, debentures of, deposits with, or CCU's issued by a co-operative. This will confirm the existing view that the *Corporations Law* applies to the issue of prescribed interests by co-operatives. **(Schedule 1 (8)–(10))**
- (c) Requirements relating to the requisitioning of general meetings of a co-operative are altered so that a general meeting will be able to be convened on the requisition of 50 members or any members who are together able to cast 20% (rather than 5%, as is presently required) of the total votes able to be cast at a meeting of the co-operative. **(Schedule 1 (13))**
- (d) The existing requirement that a director's resignation does not take effect until 1 month after notice of resignation is given is altered so that a resignation can take effect immediately. **(Schedule 1 (16))**
- (e) New provisions of the *Corporations Law* relating to insolvency are applied to co-operatives. At present, the Act applies to co-operatives provisions of the *Corporations Law* providing for the duties of officers of a company when the company is trading while insolvent. These provisions (in particular section 592 of the *Corporations Law*) have been amended and substantially replaced by Part 5.7B of the *Corporations Law*. The proposed amendments apply these new provisions of the *Corporations Law*. Consequential savings and transitional provisions are enacted to save the operation of the now defunct provisions of the *Corporations Law* that are applied by the current provisions of the Act until the application of the new provisions commences. **(Schedule 1 (3), (19), (34) (proposed section 343B), (66) (proposed clause 16 of Schedule 6))**

- (f) The provision of the Act dealing with the grounds for refusal of an application for registration of a co-operative is amended to make it clear that the Registrar can refer an application to the Co-operatives Council as an alternative to refusing the application, for the Council's recommendation on whether the application should be granted or refused. **(Schedule 1 (6))**
- (g) The existing provision in the Act dealing with the standard of care and diligence required of officers of co-operatives is amended to adopt an objective standard (in line with the parallel provision of the *Corporations Law*), namely the degree of care and diligence that a reasonable person in a like position in a co-operative would exercise. **(Schedule 1 (18))**
- (h) The Bill will require a co-operative to lodge annual returns within 4 months after the end of the financial year of the co-operative, instead of at least 14 days before the annual general meeting of the co-operative as at present. **(Schedule 1 (20))**
- (i) The Bill will remove an existing provision that prevents a co-operative from obtaining financial accommodation, or giving security in connection with obtaining financial accommodation, unless authorised by its rules to do so. The existing power for the regulations to impose restrictions or requirements on co-operatives in relation to the obtaining of financial accommodation is retained. An existing provision dealing with the legal capacity of co-operatives is amended to make it clear that the provision is subject to the regulations (and not just the Act). A consequential change is made to the provision dealing with the contents of the rules of a co-operative to remove a provision that is inconsistent with the existing abolition by the Act of the doctrine of ultra vires in relation to co-operatives. Consequential changes are also made. **(Schedule 1 (7), (21), (22), (25), (42))**
- (j) An existing provision of the Act which adopts Part 7.12 of the *Corporations Law* is amended to make it clear: that those provisions are adopted only for the purposes of applying to the issue of debentures of a co-operative. This does not prevent the *Corporations Law* from applying of its own force to prescribed interests issued by a co-operative, as referred to above. It will also be made clear that the adopted provisions do not apply to compulsory loans by members under section 268 of the Act. The existing provision is further amended to apply Part 7.11 of the *Corporations Law* (dealing with unlawful conduct in relation to the issue of securities) to the issue of debentures of a co-operative. **(Schedule 1 (23), (24))**

- (k) An existing provision that allows a co-operative to raise money by requiring members to lend money to the co-operative is amended to require a co-operative proposing to raise funds in this way to issue a disclosure statement, approved by the Registrar, setting out how the funds raised are to be used, the total amount of the loan to be raised and the basis on which the contribution of each member is to be calculated. This is similar to the disclosure statement required in relation to a proposal by a co-operative to raise funds by requiring members to take up or subscribe for additional shares. **(Schedule 1 (26))**
- (l) The Bill will make it clear that the holders of CCU's issued by a co-operative rank in accordance with the terms of issue of the CCU's for priority of payment of capital and interest in a winding up and that the terms of issue can provide for a ranking anywhere from behind contributories (shareholders) up to and including equality with other creditors. **(Schedule 1 (27)–(29))**
- (m) The existing provision of the Act which applies the winding up provisions of the *Corporations Law* is amended to make it clear that the applied provisions are to be read subject to specific provisions of the Act which deal with the liability of members of the co-operative. **(Schedule 1 (30), (32))**
- (n) The Registrar is given power to intervene as a party in any proceedings relating to a matter arising under the Act or the regulations. The ASC has a parallel power under the *Corporations Law*. **(Schedule 1 (37))**
- (o) The existing provision in the Act that confers power on the Court to grant injunctions is amended to enable a person to seek an injunction under the section in respect of actual or threatened conduct if the person's interests have been, are or would be affected by the conduct. Currently only the Registrar can seek an injunction under the provision. The amendment will bring the provision into line with the parallel provision of the *Corporations Law*. **(Schedule 1 (41))**
- (p) An existing evidentiary provision of the Act will be expanded to allow the Registrar to give certificate evidence as to whether or not a requirement of the Act has been complied with within a specified period or by a particular date (whether or not that requirement relates to a function of the Registrar). **(Schedule 1 (38))**

- (q) The Bill inserts additional provisions with respect to the interpretation and application of provisions of the Corporations Law adopted by the Act. For example, definitions in relation to adopted provisions are to be read as if they formed part of the Act and regulations and penalties made under an adopted provision are to be read as forming part of the Act. The amendment makes it clear that applied provisions of the Corporations Law are applied as in force from time to time. (Schedule 1 (14), (39), (40))
- (r) Consequential savings and transitional provisions are enacted. An additional transitional provision is added to the original transitional provisions of the Act to make it clear that the Registrar can exercise functions in relation to defunct co-operatives even if they became defunct under the Co-operation Act 1923, which is now superseded. (Schedule 1 (61)–(66))
- (s) Minor or consequential amendments are also made. (Schedule 1 (4), (5), (15), (31))

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Schedule of amendments to the *Co-operatives Act 1992*.

Schedule 1 contains the amendments to the *Co-operatives Act 1992* described above.