

# Co-operatives Act 1992 No 18

[1992-18]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Co-operatives Amendment Act 1997 No 39](#), Sch 1 [212] and [218] (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010 No 119](#), Sch 1.10 [1]-[5] (not commenced — to commence on 30.1.2012)

### Authorisation

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# Co-operatives Act 1992 No 18



New South Wales

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# Co-operatives Act 1992 No 18



New South Wales

An Act to provide for the establishment of co-operatives and the regulation of their operations; and for related purposes.

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Name of Act

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

#### 2 Commencement

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

#### 3 Objects of this Act (cf Vic Act s 3)

The objects of this Act are:

- (a) to enable the formation, registration and operation of co-operatives, and
- (b) to promote co-operative philosophy, principles, practices and objectives, and
- (c) to protect the interests of co-operatives, their members and the public in the operations and activities of co-operatives, and
- (d) to ensure that the directors of co-operatives are accountable for their actions and decisions to the members of co-operatives, and
- (e) to encourage and facilitate self-management by co-operatives at all levels, and
- (f) to encourage the development, integration and strengthening of co-operatives at local, regional, national and international levels by supporting and fostering State and National peak organisations and co-operative instrumentalities.

#### 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.

## Division 2 Interpretation

### 4 Division of functions under this Act

- (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.

### 5 Definitions (cf Vic Act s 4)

- (1) In this Act:

**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.

**alter**, in relation to the rules of a co-operative, includes add to, substitute and rescind.

**associate** has the meaning given by Schedule 2.

**association** means an association registered under this Act.

**board** means the board of directors of a co-operative and includes a committee of management of a co-operative.

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

**component co-operative** means a member of an association.

**co-operative** means a body registered under this Act as a co-operative and includes an association or federation.

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth.



**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.

**deed of arrangement** means a deed of arrangement executed under Part 5.3A of the Corporations Act as applying under this Act or such a deed as varied and in force from time to time.

**deposit taking co-operative** means a co-operative which is permitted to under section 263A accept money on deposit.

**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.

**federation** means a federation registered under this Act.

**financial records** includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers, and
- (b) documents of prime entry, and
- (c) working papers and other documents needed to explain:
  - (i) the methods by which financial statements are made up, and
  - (ii) adjustments to be made in preparing financial statements.

**financial statements** means:

- (a) a profit and loss statement, and

- (b) a balance sheet, and
- (c) a statement of cash flows, and
- (d) if required by the accounting standards under the Corporations Act applying under this Act—a consolidated profit and loss statement, balance sheet and statement of cash flows.

**foreign co-operative** means a body corporate that is registered, incorporated or formed under, or subject to, a law in force outside New South Wales (including outside Australia), that regulates co-operatives or organisations having attributes the same as or similar to co-operatives but does not include:

- (a) a body incorporated under the Corporations Act, or
- (b) a financial institution or foreign society registered under financial institutions legislation within the meaning of the *Financial Institutions (NSW) Code*.

**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.

**model rules** means the model rules approved by the Registrar under Part 5.

**mortgage** includes lien, charge or other security over property.

**non-trading co-operative** means a non-trading co-operative that complies with section 15.

**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 and manager, appointed under a power contained in an instrument, of property of the co-operative, or
- (d) an administrator of a deed of arrangement executed by the co-operative, or
- (e) a liquidator or provisional liquidator appointed in a voluntary winding up of the co-operative, or
- (f) an administrator of the co-operative appointed under Part 5.3A of the Corporations Act as applying under this Act or under Division 6 of Part 12 of this Act, 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, financial records, financial statements, 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.

**Register** means the Register of Co-operatives established under Part 15.

**Registrar**—see section 5B.

**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.

**seal**, in relation to a co-operative, means common seal or official seal.

**share** means share in the share capital of a co-operative.

**subordinated debt** has the meaning given by section 265.

**subsidiary** has the same meaning as in the Corporations Act.

**surplus**, in relation to a co-operative, means the excess of income over expenditure after making proper allowance for taxation expense, depreciation in value of the property of the co-operative and for future contingencies.

**trading co-operative** means a trading co-operative that complies with section 14.

- (2) Words and expressions that have a defined meaning in the Corporations Act 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 Act.
- (3) In this Act:
  - (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, in relation to a duty, a reference to the performance of the duty.

- (4) Notes included in this Act do not form part of this Act.
- (5) A reference in this Act to a provision of the Corporations Act that is applied by or under this Act (or a part of this Act) is a reference to that provision to the extent that it is declared to apply to a matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* as a law of this State.

**Note—**

For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings, drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the *Co-operatives Act 1996* of Victoria, abbreviated in the notes as “Vic Act”.

**5A Qualified privilege** (cf Vic Act s 5)

- (1) If this Act provides that a person has qualified privilege in respect of an act, matter or thing, the person, in respect of that act, matter or thing:
  - (a) has qualified privilege in proceedings for defamation, or
  - (b) is not, in the absence of malice on the person’s part, liable to an action for defamation at the suit of a person.

- (2) In subsection (1):

**malice** includes ill-will to the person concerned or any other improper motive.

- (3) Neither this section nor a provision of this Act that provides as mentioned in subsection (1) limits or affects any right, privilege or immunity that a person has, apart from this section or such a provision, as defendant in proceedings, or an action, for defamation.

**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.

## **Division 3 The co-operative principles**

**6 Co-operative principles** (cf Vic Act s 6)

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 and open membership**

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender,

social, racial, political or religious discrimination.

#### **Democratic member control**

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are organised in a democratic manner.

#### **Member economic participation**

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. They usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

#### **Autonomy and independence**

Co-operatives are autonomous, self help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

#### **Education, training and information**

Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public, particularly young people and opinion leaders, about the nature and benefits of co-operation.

#### **Co-operation among co-operatives**

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

#### **Concern for the community**

While focusing on member needs, co-operatives work for the sustainable development of their communities through policies accepted by their members.

### **7 Interpretation to promote co-operative principles** (cf Vic Act s 7)

- (1) 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.

## Division 4 Application of Corporations Act to co-operatives

### 8 Definitions (cf Vic Act s 8)

In this Division:

**excluded Corporations legislation provision** means any provision of the Corporations legislation that does not apply to co-operatives as a law of the Commonwealth.

### 9 Excluded matter (cf Vic Act s 9)

- (1) A co-operative is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation other than to the extent specified in this section.

**Note—**

This section ensures that neither the Corporations Act nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply to a co-operative, other than to the extent specified in this section. Section 5F of the Corporations Act provides that if a State law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation other than to a specified extent, then that legislation will not apply, except to the specified extent, in relation to that matter in the State concerned. However, other provisions of this Act apply certain provisions of the Corporations legislation to co-operatives as laws of this State.

- (2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to co-operatives to the extent that those provisions would otherwise be applicable to them:
- (a) provisions that relate to any matter that the regulations provide is not to be excluded from the operation of the Corporations Act,
  - (b) provisions that relate to the role of a co-operative in the formation of a company,
  - (c) provisions that relate to substantial holdings of shares, by or involving a co-operative, in a company,
  - (d) provisions that confer or impose functions on a co-operative as a member, or former member, of a corporation,
  - (e) provisions that relate to dealings by a co-operative in securities of a body corporate, other than securities of the co-operative itself,
  - (f) provisions that confer or impose functions on a co-operative in its dealings with a corporation, not being dealings in securities of the co-operative,
  - (g) provisions that relate to securities of a co-operative, other than shares in, CCUs issued by, debentures of or deposits with a co-operative,
  - (h) provisions relating to derivatives,

- (i) provisions relating to:
    - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities, or
    - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act,
  - (j) provisions relating to the carrying on of a financial services business (as defined in section 761A of the Corporations Act) relating to securities,
  - (k) provisions relating to financial statements, and audits of financial statements, of:
    - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities, or
    - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act,
  - (l) provisions relating to money and scrip of clients of:
    - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities, or
    - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act,
  - (m) provisions relating to registers of interests in securities,
  - (n) provisions relating to powers of a Court to cure procedural irregularities and to make other orders.
- (3) It is declared that subsection (1) does not operate to exclude the operation of the following provisions of the Corporations Act except in relation to shares in, CCUs issued by, debentures of or deposits with a co-operative:
- (a) Part 1.2A (Disclosing entities),
  - (b) Chapter 2L (Debentures),
  - (c) Chapter 6D (Fundraising),
  - (d) Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services).
- (4) Subsection (1) does not apply if the co-operative is directed by an order of the Court

under section 98 (j), or applies in accordance with the provisions of Division 3 of Part 12, to become registered as a company under the Corporations Act to the extent necessary for a co-operative to be registered as a company under Chapter 5B of that Act.

**10 Applying the Corporations legislation to co-operatives** (cf Vic Act s 10)

- (1) The regulations may declare any matter relating to co-operatives to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to any excluded Corporations legislation provision or provisions (with such modifications as may be specified in the declaration).

**Note—**

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) Without limiting subsection (1), any such regulations may:
- (a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any excluded Corporations legislation provision that is the subject of the declaration, and
  - (b) provide for ASIC to exercise a function under any excluded Corporations legislation provision that is the subject of the declaration, but only if:
    - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
    - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (c) specify that a reference to ASIC in any excluded Corporations legislation provision that is the subject of the declaration is to be read as a reference to another person, and
  - (d) identify any excluded Corporations legislation provision to which the declaration relates by reference to that provision as in force at a particular time, and
  - (e) specify a court of this State (other than the Supreme Court) to exercise any



function conferred on a court or the Court by any excluded Corporations legislation provision to which the declaration relates.

- (3) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

#### **11 Modifications to applied provisions** (cf Vic Act s 11)

- (1) If a provision of this Act declares a matter to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* (the **declaratory provision**) in relation to any provisions of the Corporations legislation (the **applied provisions**), the declaratory provision is taken to specify the following modifications:
- (a) a reference in the applied provisions to the constitution of a company is to be read as a reference to rules,
  - (b) a cross-reference in the applied provisions to another provision of the Corporations Act is, if that cross-reference is not appropriate (because for example the provision cross-referred to is not among the applied provisions), to be read as a cross-reference to the equivalent provision of this Act,
  - (c) a reference in the applied provisions to the Commonwealth is to be read as a reference to New South Wales,
  - (d) any of the applied provisions that are not relevant to co-operatives or which are incapable of application to co-operatives are to be ignored,
  - (e) modifications directed by the Registrar under subsection (2).
- (2) 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 applied provisions.

#### **12 (Repealed)**

### **Part 2 Formation**

#### **Division 1 Types of co-operatives**

##### **13 Types of co-operatives** (cf Vic Act s 13)

- (1) A body may be registered under this Act as a co-operative.
- (2) A co-operative may be either:
- (a) a trading co-operative, or
  - (b) a non-trading co-operative.

**14 Trading co-operatives** (cf Vic Act s 14)

- (1) A trading co-operative must have a share capital.
- (2) A trading co-operative is a co-operative that gives returns or distributions on surplus or share capital.
- (3) A trading co-operative must have a membership of:
  - (a) 2 or more co-operatives, in the case of an association, and
  - (b) 2 or more associations, in the case of a federation, and
  - (c) 5 or more active members, in the case of any other trading co-operative, or such lesser number as the Registrar may approve in a particular case.

**15 Non-trading co-operatives** (cf Vic Act s 15)

- (1) A non-trading co-operative must not give returns or distributions on surplus or share capital to members other than the nominal value of shares (if any) at winding up.
- (2) A non-trading co-operative may or may not have a share capital.
- (3) A non-trading co-operative must have a membership of:
  - (a) 2 or more co-operatives, in the case of an association, and
  - (b) 2 or more associations, in the case of a federation, and
  - (c) 5 or more active members, in the case of any other non-trading co-operative, or such lesser number as the Registrar may approve in a particular case.

**Division 2 Formation meeting**

**16 Formation meeting** (cf Vic Act s 16)

- (1) Before a proposed co-operative (other than an existing body corporate) can be registered, a formation meeting must be held in accordance with this section.
- (2) At the formation meeting:
  - (a) a disclosure statement approved under section 17 must be presented to the meeting, and
  - (b) the proposed rules of the co-operative approved under section 18 in respect of the proposed co-operative, and including active membership provisions in accordance with Part 6, must be passed by two-thirds of the proposed members of the proposed co-operative attending the meeting, and
  - (c) the proposed members of the proposed co-operative must sign the application for

- membership which must be in a form approved by the Registrar, and
- (d) the proposed members must elect the first directors of the proposed co-operative in accordance with the proposed rules, and
  - (e) the proposed members must authorise a person:
    - (i) to apply to the Registrar for registration of the proposed co-operative, and
    - (ii) to do any act or thing necessary to have the proposed co-operative registered.
- (3) The formation meeting must be held by:
- (a) not less than 2 suitably qualified co-operatives, in the case of an association, and
  - (b) not less than 2 suitably qualified associations, in the case of a federation, and
  - (c) not less than 5 persons suitably qualified to be members of the proposed co-operative in the case of any other co-operative, or such lesser number as the Registrar may have approved under section 14 or 15.
- (4) For the purposes of subsection (3), a person is suitably qualified to be a member if:
- (a) there are reasonable grounds to believe the person will be an active member of the proposed co-operative, and
  - (b) in the case of a natural person, the person has attained the age of 18, and
  - (c) the person satisfies any other requirements for membership set out in the proposed rules.
- (5) Each co-operative forming a proposed association and each association forming a proposed federation may be represented at the formation meeting by one person.

### **Division 3 Approval of disclosure statement and rules**

#### **17 Approval of disclosure statement** (cf Vic Act s 17)

- (1) A draft disclosure statement of a proposed co-operative must be submitted to the Registrar at least 28 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 disclosure statement of a proposed trading co-operative must contain the information necessary to ensure 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 including so far as applicable:
  - (a) the estimated costs of formation, and
  - (b) the nature of the proposed membership of the co-operative, and

- (c) the rights and liabilities attaching to shares in the proposed co-operative (including the capital required for the co-operative), and
  - (d) the projected income and expenditure of the co-operative for its first year of operation, and
  - (e) information about any contracts required to be entered into by the co-operative, and
  - (f) any other information that the Registrar directs.
- (3) The disclosure statement of a proposed trading co-operative must not include a statement purporting to be made by an expert or to be based on a statement made by an expert unless:
- (a) the expert has given, and has not withdrawn, the expert's written consent to the submission of the disclosure statement with the statement included in the form and context in which it is included, and
  - (b) there appears in the disclosure statement a statement that the expert has given, and has not withdrawn, the expert's consent.
- (4) The disclosure statement of a proposed non-trading co-operative must be in a form approved by the Registrar and contain such information as is required by the Registrar.
- (5) The Registrar may:
- (a) approve the draft statement as submitted, or
  - (b) approve the draft statement with specified amendments, or
  - (c) approve a different statement to that submitted, or
  - (d) refuse to approve the statement.
- (5A) The Registrar may require the person who submitted the draft statement to give the Registrar any additional information that the Registrar reasonably requires. When the information has been provided the Registrar may then act under subsection (5).
- (6) Approval may be given at any time before the formation meeting is held.
- (7) Subject to subsection (8), the Registrar approves of a disclosure statement by giving notice of the approval of the statement to the person who submitted the draft statement to the Registrar.
- (8) 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 or requires additional information, or
  - (c) the Registrar gives notice of refusal to approve the disclosure statement.
- (9) A notice under this section must be in writing.
- (10) The Registrar may approve a disclosure statement with or without conditions.
- (11) In the case of a proposed non-trading co-operative, 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.

**Note—**

This section draws a distinction between requirements for disclosure statements for proposed trading and non-trading co-operatives. While the requirements for non-trading co-operatives are less onerous than those for trading co-operatives, the Registrar may require a non-trading co-operative to comply with requirements that are comparable to those for trading co-operatives.

**18 Approval of rules** (cf Vic Act s 18)

- (1) A draft of the rules proposed for the co-operative (including active membership provisions in accordance with Part 6) must be submitted to the Registrar at least 28 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 proposed rules must:
- (a) be in accordance with section 107, and
  - (b) be in a form that may reasonably be approved, and
  - (c) if the rules contain any alterations of the model rules, be accompanied by a statement setting out the alterations and the reasons for the alterations.
- (3) If the rules do not make provision for any matter included in the model rules, the Registrar may approve the relevant provisions of the model rules as rules of the co-operative.
- (4) The Registrar may:
- (a) approve the rules as submitted, or
  - (b) approve different rules to those submitted, or
  - (c) refuse to approve the rules.
- (5) The Registrar approves of the rules by giving written notice of the approval of the

rules to the person who submitted the draft alterations to the Registrar.

- (6) The Registrar must give written notice of the refusal to approve the rules to the person who submitted the rules to the Registrar.

## **Division 4 Registration of proposed co-operative**

### **19 Application for registration of proposed co-operative** (cf Vic Act s 19)

- (1) An application for registration of a proposed co-operative (other than an existing body corporate) must:
- (a) be made in the form approved by the Registrar, and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) be signed by:
    - (i) at least 2 directors in the case of an association or federation, and
    - (ii) at least 5 suitably qualified members, including 2 directors elected at the formation meeting, in the case of any other proposed co-operative, or such lesser number of qualified members as the Registrar may have approved under section 14 or 15, and
  - (d) be accompanied by:
    - (i) 2 copies of the proposed rules signed and certified by the persons who acted as chairperson and secretary at the formation meeting, and
    - (ii) a copy of the disclosure statement presented to the formation meeting signed and certified by the persons who acted as chairperson and secretary at the formation meeting, and
    - (iii) a statement listing the name, address, occupation and place and date of birth of each director, and
    - (iv) any other particulars that the Registrar may require in a particular case.
- (2) The application must be lodged with the Registrar within 2 months after closure of the formation meeting for the proposed co-operative or within such extended period as the Registrar may allow.

### **20 Registration of co-operative** (cf Vic Act s 20)

- (1) When an application is made under this Division for registration of a proposed co-operative, the Registrar must register the co-operative and its rules if satisfied that the requirements for registration of the co-operative have been met.
- (2) The requirements for registration of a co-operative under this Division are as follows:

- (a) the proposed rules of the proposed co-operative must be the rules approved by the Registrar under section 18, and
  - (b) the requirements of this Act and the regulations must have been complied with in respect of the proposed co-operative and compliance must be likely to continue, and
  - (c) the proposed co-operative must be designed to function in accordance with the co-operative principles or, if it is not designed to function entirely in accordance with the co-operative principles, the Registrar must be satisfied that there are special reasons why the co-operative should be registered under this Act, and
  - (d) there must be no reasonable cause for refusing registration of the proposed co-operative.
- (3) If the Registrar is not satisfied that the requirements for registration of the co-operative have been met, the Registrar is to:
- (a) refuse registration of the co-operative, or
  - (b) refer the application to the Council for its recommendation.
- (4) If the Registrar refuses registration of the co-operative, the applicants for registration may request the Registrar to refer the application to the Council and the Registrar must comply with such a request. A request made by or on behalf of a majority of the persons elected as referred to in section 16 (2) (d) (the persons to be proposed as the first directors of the co-operative) is taken to have been made by the applicants for registration.
- (5) If the application is referred to the Council, the Council must either recommend registration or recommend refusal of registration but may only recommend refusal if of the opinion that:
- (a) the requirements for registration of the co-operative have not been met, or
  - (b) the proposed co-operative would not be a genuine co-operative, or
  - (c) the proposed co-operative is not designed or intended to serve fairly the interests of its members and prospective members.
- (6) The Registrar is required to comply with the Council's recommendation.

**21 Incorporation and certificate of registration** (cf Vic Act s 21)

- (1) The incorporation of the co-operative takes effect on the registration of the co-operative.
- (2) On the registration of the co-operative, the Registrar must issue a certificate of registration.

## **Division 5 Registration of existing body corporate**

### **22 Existing body corporate can be registered** (cf Vic Act s 22)

A body corporate (other than a co-operative deemed to be registered under this Act) may apply to the Registrar to be registered as a co-operative under this Act, if before or after the commencement of this Act, the body corporate was:

- (a) incorporated or registered or deemed to be registered under the Corporations Act, or
- (b) incorporated or registered under any other Act relating to the incorporation or registration of bodies corporate.

### **23 Formation meeting** (cf Vic Act s 23)

(1) Before applying for registration as a co-operative, the body corporate must pass a special resolution in accordance with its articles of association or rules approving of:

- (a) the proposed registration, and
- (b) any alterations of its existing memorandum and articles of association or rules necessary to enable the body corporate to comply with this Act.

(2) At the meeting to pass the special resolution:

- (a) the proposed rules of the proposed co-operative approved under section 18, and including active membership provisions in accordance with Part 6, must also be passed by special resolution, and
- (b) in the case of a proposed trading co-operative, a disclosure statement approved under section 17 must be presented to the meeting.

### **24 Application for registration** (cf Vic Act s 24)

An application for registration must be:

- (a) in the form approved by the Registrar, and
- (b) accompanied by the fee prescribed by the regulations, and
- (c) accompanied by:
  - (i) a declaration in writing signed by the directors or the committee of management of the body corporate stating that at a meeting of the directors or committee they formed the opinion that the body corporate will be able to pay its debts as they fall due, and
  - (ii) a report in the form approved by the Registrar as to the affairs of the body corporate and showing its assets and liabilities, made up to the latest practicable date before the application, and



- (iii) a copy of the memorandum and articles of association or rules of the body corporate in force at the date of the application, and
- (iv) 2 copies of the proposed rules of the co-operative, as provided for by the special resolution, and
- (vi) a list containing the name, address, occupation and place and date of birth of each director, and
- (vii) evidence to the satisfaction of the Registrar of the incorporation of the existing body corporate, and
- (viii) any other particulars that the Registrar may require in a particular case.

**25 Requirements for registration** (cf Vic Act s 25)

- (1) When an application is made for registration of a co-operative under this Division, the Registrar must register the body corporate as a co-operative under this Act and register its rules under this Act if the Registrar is satisfied that the requirements for registration of the co-operative have been met.
- (2) The requirements for registration of a co-operative under this Division are as follows:
  - (a) the proposed rules of the proposed co-operative must be the rules approved by the Registrar under section 18, and
  - (b) the requirements of this Act and the regulations must have been complied with in respect of the proposed co-operative and compliance must be likely to continue, and
  - (c) there must be no reasonable cause for refusing registration of the proposed co-operative.
- (3) If the Registrar is not satisfied that the requirements for registration of the co-operative have been met the Registrar may refuse to register the co-operative and its rules.
- (4) If the Registrar has determined under this section to register a body corporate under this Act, the body corporate must notify the authority responsible for registering the body corporate under the law under which it was previously registered of that determination.
- (5) Despite anything to the contrary in this Division, the registration of a body corporate as a co-operative does not take effect until the body corporate ceases to be registered under the law under which it was previously registered.
- (6) The body corporate must notify the Registrar in writing within 7 days after ceasing to be registered under that other law.

**26 Certificate of registration** (cf Vic Act s 26)

- (1) On the registration of the body corporate as a co-operative the Registrar must:
  - (a) issue a certificate of registration, and
  - (b) publish notice of the issue of the certificate in the Gazette.
- (2) The corporate name of a body corporate registered as a co-operative is the name approved by the Registrar, as specified in the certificate of registration issued by the Registrar.

**27 Effect of registration** (cf Vic Act s 27)

- (1) The body corporate is to be taken to be incorporated under this Act on its registration.
- (2) Except as expressly provided in this Act or the regulations, the registration and incorporation of the body corporate as a co-operative does not prejudice any right of a member in respect of any shares held at the time of registration and incorporation.
- (3) The change of registration and incorporation does not affect the identity of the body corporate which is deemed to be the same body after registration as a co-operative as it was before and no act, matter or thing is affected by the change.

## **Division 6 Conversion of co-operative**

**28 Conversion of co-operative** (cf Vic Act s 28)

- (1) A co-operative may, by alteration of its rules, convert from a trading co-operative to a non-trading co-operative or vice versa.
- (2) An alteration of the rules for the conversion of a co-operative must be approved by special resolution passed by means of a special postal ballot.

## **Division 7 Appeals**

**28A Appeal against refusal to approve draft disclosure statement** (cf Vic Act s 29)

The person who submitted a draft disclosure statement to the Registrar under this Act may appeal to the Court against:

- (a) a decision of the Registrar to refuse to approve the statement, or
- (b) a failure of the Registrar to approve the statement.

**28B Appeal against refusal to approve draft rules** (cf Vic Act s 30)

The person who submitted draft rules to the Registrar under this Act may appeal to the Court against:

- (a) a decision of the Registrar to refuse to approve the rules, or
- (b) a failure of the Registrar to approve the rules.

**28C Appeal against refusal to register** (cf Vic Act s 31)

The applicants for registration of a proposed co-operative under this Part may appeal to the Court against:

- (a) a decision of the Council to recommend the refusal of the registration of a co-operative, or
- (b) in the case of a body corporate converting to a co-operative, against a failure of the Registrar to register the co-operative.

**28D Registrar to comply with Court order** (cf Vic Act s 32)

The Registrar must comply with an order of the Court on an appeal under this Division.

## **Division 8 General**

**28E Stamp duty exemption for certain co-operatives** (cf Vic Act s 33)

- (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.

**28F Acceptance of money by proposed co-operative** (cf Vic Act s 34)

- (1) A proposed co-operative or any person on its behalf or otherwise which accepts any money for the proposed co-operative before the proposed co-operative is registered must hold that money on trust until the co-operative is registered.
- (2) If a co-operative is not registered within the period of 3 months after the acceptance of any money under subsection (1), the proposed co-operative or the person who accepted the money on its behalf must refund the money to the person who paid it.

Maximum penalty: 60 penalty units.

**28G Issue of duplicate certificate** (cf Vic Act s 35)

The Registrar must issue a duplicate certificate of registration:

- (a) if the Registrar is satisfied that the original certificate is lost or destroyed, and
- (b) on payment of the fee prescribed by the regulations.

## **Part 3 Legal capacity, powers etc**

### **Division 1 General powers**

#### **29 Effect of incorporation** (cf Vic Act s 36)

As a body corporate, a co-operative:

- (a) has perpetual succession, and
- (b) has a common seal, and
- (c) may sue and be sued in its corporate name, and
- (d) subject to this Act, is capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property, and
- (e) may do and suffer all acts and things that bodies corporate may by law do and suffer and which are necessary or expedient.

#### **30 Power to form companies, enter into joint ventures etc**

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**

#### **31 Interpretation**

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.

#### **32 Objects of this Division**

- (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.

### **33 Legal capacity** (cf Vic Act s 40)

- (1) A co-operative has, both within and outside the State, the legal capacity of a natural person.
- (2) Without limiting subsection (1), a co-operative 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 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).
- (3) Subsections (1) and (2) have effect in relation to a co-operative:
  - (a) subject to this Act and the regulations 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 that 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.
- (4) 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.

### **34 Restrictions on co-operatives in rules**

- (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.

### **35 Results of contravention of restriction in rules**

- (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

### 36 Assumptions entitled to be made (cf Vic Act s 43)

- (1) A person is entitled to make the assumptions in section 37 in relation to:
  - (a) dealings with a co-operative, and
  - (b) dealings with a person who has, or purports to have, directly or indirectly acquired title to property from a co-operative.
- (2) If a person is entitled to assume a matter, the co-operative or anyone referred to in subsection (1) is not entitled to assert in proceedings in relation to the dealings that the matter is incorrect.

### 37 Assumptions (cf Vic Act s 44)

- (1) **Rules complied with** A person may assume that the co-operative's rules have been complied with.
- (2) **Director or officer** A person may assume that anyone who appears, from information provided by the co-operative that is available to the public from the Registrar, to be a director or officer of the co-operative:
  - (a) has been duly appointed, and
  - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or officer of a similar co-operative.
- (3) **Officer or agent** A person may assume that anyone who is held out by the co-operative to be an officer or agent of the co-operative:
  - (a) has been duly appointed, and
  - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of officer or agent of a similar co-operative.
- (4) **Officer or agent with authority to warrant that document is genuine or true copy** A person may assume that anyone who is, or may be assumed to be, an officer or agent of the co-operative who has the authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.
- (5) **Document duly executed** A person may assume that a document has been duly executed by the co-operative if it is signed by 2 people, one of whom is, or may be assumed to be, a director of the co-operative, and the other a director or officer of the co-operative.
- (6) **Document duly sealed** A person may assume that a document has been duly sealed by

the co-operative if it bears what appears to be an impression of the co-operative's seal and the sealing of the document appears to be witnessed by 2 people, one of whom is, or may be assumed to be, a director of the co-operative, and the other a director or officer of the co-operative.

- (7) **Proper performance of duties** A person may assume that the officers and agents of the co-operative properly perform their duties to the co-operative.

**38 Person who knows or ought to know is not entitled to make assumptions** (cf Vic Act s 45)

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.

**39 (Repealed)**

**40 Lodgment of documents etc not to constitute constructive notice**

- (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.

**41 Effect of fraud**

- (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.

## **Divisions 4, 5**

### **42-44 (Repealed)**

## **Division 6 Authentication and execution of documents and confirmation of contracts**

### **45 Contractual formalities**

- (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.

### **46 Execution under common seal**

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.

### **47 Authentication need not be under seal** (cf Vic Act s 50)

A document or proceeding requiring authentication by a co-operative may be authenticated by the signature of 2 people, one of whom is a director of the co-operative and one of whom is a director or an officer of the co-operative and need not be authenticated under the seal of the co-operative.

### **48 Co-operative may authorise person to execute deeds**

- (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.

**48A Common seal** (cf Vic Act s 48)

A document or proceeding requiring authentication by a co-operative may be authenticated under the common seal of the co-operative.

**49 Official seal**

- (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.

**50 Other requirements as to consent or sanction not affected**

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.

**51 Transitional**

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 Pre-registration contracts**

**52 Contracts before registration** (cf Vic Act s 56)

- (1) If a person enters into, or purports to enter into, a contract on behalf of, or for the benefit of, a proposed co-operative, the co-operative becomes bound by the contract and entitled to its benefit if the co-operative, or a co-operative that is reasonably identifiable with it, is registered and ratifies the contract:
  - (a) within a reasonable period after the contract is entered into, or

- (b) within any period agreed to by the parties to the contract.
- (2) The person is released from any liability under the pre-registration contract if the co-operative enters into another contract in substitution for it:
  - (a) within a reasonable period after the pre-registration contract is entered into, or
  - (b) within any period agreed to by the parties to the pre-registration contract.
- (3) The person is liable to pay damages to each other party to the pre-registration contract if a co-operative is not registered, or a co-operative is registered but does not ratify the contract or enter into a substitute for it:
  - (a) within a reasonable period after the contract is entered into, or
  - (b) within any period agreed to by the parties to the contract.
- (4) The maximum amount of damages the person is liable to pay to a party is the amount the co-operative would be liable to pay to the party if the co-operative had been registered and had ratified the contract and then completely failed to perform it.
- (5) If proceedings are brought to recover damages under subsection (3) because the co-operative is registered but does not ratify the pre-registration contract or enter into a substitute for it, the Court may do anything that it thinks just in the circumstances, including ordering the co-operative:
  - (a) to pay all or part of the damages that the person is liable to pay, or
  - (b) to transfer property that the co-operative received because of the contract to a party to the contract, or
  - (c) to pay an amount to a party to the contract.
- (6) If the co-operative ratifies the pre-registration contract but fails to perform all or part of it, the Court may order the person to pay all or part of the damages that the co-operative is ordered to pay.

**53 Person may be released from liability but is not entitled to indemnity** (cf Vic Act s 57)

- (1) Any of the parties to the pre-registration contract may release the person who entered into, or purported to enter into, the contract from any liability in relation to the contract.
- (2) The release must be in writing.
- (3) The party giving the release is not entitled to recover damages under section 52 from the person.
- (4) Despite any rule of law or equity, the person does not have any right of indemnity

against the co-operative in respect of the person's liability under this Division. This is so even if the person was acting, or purporting to act, as trustee for the co-operative.

**54 Division replaces other rights and liabilities** (cf Vic Act s 58)

This Division replaces any rights or liabilities anyone would otherwise have in relation to the pre-registration contract.

**55-61 (Repealed)**

**Part 4 Membership**

**Division 1 General**

**62 Becoming a member** (cf Vic Act s 64)

- (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.
- (2A) A person under the age of 18 years may be admitted as a member of the co-operative unless the rules of the co-operative otherwise provide.
- (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 merged, the members of the merged co-operative are:
  - (a) the members of the merging co-operatives, and
  - (b) other persons admitted as members of the merged co-operative in accordance with its rules.

**63 Membership may be joint**

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

**64 Qualification for membership—likelihood of being active member**

- (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.

**65 Members under 18 years of age** (cf Vic Act s 69)

- (1) A member of a co-operative is not entitled to avoid any obligation or liability as a member under any contract, deed or other document entered into as a member on any ground relating to minority.
- (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 the vote attached to membership.
- (4) This section applies only to natural persons.

**66 Members of associations** (cf Vic Act s 65)

- (1) The members of an association are:
  - (a) the component co-operatives by which the association is formed, and
  - (b) any other co-operative, admitted to membership in accordance with the rules of the association, and
  - (c) any other body corporate or other body admitted to membership in accordance with subsection (2).
- (2) A body corporate or other body (not being a co-operative) may be admitted to membership of the association as a component co-operative if:
  - (a) it is incorporated or registered under any other law, whether or not a law of New South Wales, and
  - (b) in the opinion of the board of the association, it is designed to function in accordance with co-operative principles, and
  - (c) it is eligible to be admitted to membership in accordance with the rules of the association.

**67 Members of federations** (cf Vic Act s 66)

- (1) The members of a federation of associations are:
  - (a) the associations by which the federation is formed, and

(b) any other associations admitted to membership in accordance with the rules of the federation, and

(c) any other bodies corporate admitted to membership in accordance with subsection (2).

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

**68 Representatives of bodies corporate** (cf Vic Act s 70)

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

(2) A body corporate must not appoint a person to represent the body corporate as a member of a co-operative, if he or she is currently a member of the co-operative or a representative of another body corporate member.

Maximum penalty: 10 penalty units.

(3) 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.

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

(5) A person appointed in accordance with this section to represent a member who is a body corporate is to be considered to be that member for the purpose of voting at meetings of a co-operative.

**69 Notification of shareholders and share holdings** (cf Vic Act s 71)

On the request of the board of directors of the co-operative, a body corporate which is a member of the co-operative must make available for inspection by the board of directors of the co-operative:

(a) a list of the names of all the shareholders of that body corporate and the number of shares held by each shareholder, or

(b) in the case of a body corporate without share capital, a list of the members of the body corporate.

Maximum penalty: 20 penalty units.

**70 Circumstances in which membership ceases—all co-operatives** (cf Vic Act s 72)

- (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:
    - (i) the member becomes bankrupt, or
    - (ii) the member's property becomes subject to control under the law relating to bankruptcy,unless provision is made to the contrary in the rules of the co-operative,
  - (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 deregistered.
- (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.

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

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.

**72 (Repealed)**

**73 Carrying on business with too few members** (cf Vic Act s 74)

- (1) If a co-operative continues to carry on business for more than 28 days 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 28 days 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) for an association or federation—2 members, or
  - (b) for any other co-operative—5 members, or such lesser number as the Registrar may have approved on the formation of the co-operative.
- (4) The Registrar may, by order, extend and further extend in a particular case the period of 28 days referred to in subsection (1).
- (5) An application for an extension must be made:
- (a) in a form approved by the Registrar, and
  - (b) before the period to be extended expires.

**Division 2 Rights and liabilities of members**

**74 Rights of membership not exercisable until registered etc** (cf Vic Act s 75)

- (1) 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.
- (2) The board of a co-operative must ensure that the name of a person admitted to membership is recorded in the register of members within 28 days after the person is admitted to membership.

Maximum penalty: 20 penalty units.



## **75 Liability of members to creditors**

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

## **76 Liability of members to co-operative**

- (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.

## **76A Co-operative to provide information to person intending to become member** (cf Vic Act s 77)

- (1) The board of a co-operative must provide each person intending to become a member of the co-operative with:
  - (a) a consolidated copy of the rules of the co-operative, and
  - (b) a copy of all special resolutions applicable to the member passed by the members of the co-operative, except special resolutions providing for an alteration of the rules of the co-operative, and
  - (c) a copy of the last annual report of the co-operative under section 252.
- (2) The board of a non-trading co-operative or, with the consent of the Registrar, the board of a trading co-operative may comply with subsection (1) by:
  - (a) giving the person intending to become a member notice that the documents referred to in that subsection may be inspected by the person at the registered office of the co-operative and at each other office of the co-operative in or outside New South Wales (including outside Australia), and
  - (b) making those documents available for inspection.
- (3) The Registrar's consent under subsection (2) may be given unconditionally or subject to conditions. The board of a co-operative to which consent has been granted subject to conditions must comply with those conditions in order to comply with subsection (2).

**77 Entry fees and regular subscriptions** (cf Vic Act s 78)

- (1) The rules of a co-operative may:
  - (a) require the payment by members of entry fees and regular subscriptions, and
  - (b) provide for the repayment of those fees and subscriptions on a person ceasing to be a member.
- (1A) A member's regular subscription may be based on the dealings between the member and the co-operative or may be otherwise determined in accordance with the rules of the co-operative.
- (2) A co-operative must give to any person intending to become a member written notice of any entry fees or regular subscriptions 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 fees or regular subscriptions except:
  - (a) those fees or subscriptions of which the person was given written notice before becoming a member, and
  - (b) any regular subscriptions which may be imposed by any subsequent alteration of the rules and of which the member has been given notice.

**78 Members etc may be required to deal with co-operative**

- (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.

#### **79 Fines payable by members**

- (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.

#### **80 Charge and set-off of co-operative** (cf Vic Act s 81)

- (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 fees and regular subscriptions 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.

### **81 Repayment of shares on expulsion**

- (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.
- (4A) However, if the board considers that repayment within 12 months would adversely affect the financial position of the co-operative, or the former member consents in writing:
  - (a) the board may defer payment until a later time determined by the board, or
  - (b) the co-operative may appropriate the amount as a donation to the co-operative, but only if the former member consents in writing to the donation.
- (4B) If payment is deferred, the amount owing to the former member must be applied as follows:
  - (a) if the co-operative is a deposit-taking co-operative—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 and to the requirements of section 136),
  - (b) the co-operative may allot or issue debentures or CCUs of the co-operative to the

former member in satisfaction of the amount.

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

### **Division 3 Death of member**

#### **81A Meaning of “interest”**

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.

#### **82 Transfer of share or interest on death of member** (cf Vic Act s 84)

Subject to section 170A, 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.

#### **83 Transfer of small shareholdings and interests on death**

- (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.

**84 (Repealed)**

**85** (Renumbered as sec 81A)

**86 Value of shares and interests**

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.

**87 Stamp Duties Act 1920**

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](#).

**88 Co-operative protected**

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**

**89 Grievance procedure** (cf Vic Act s 88)

- (1) The rules of a co-operative must set out a grievance procedure for dealing with any dispute under the rules between:
  - (a) a member and another member, or
  - (b) a member and the co-operative.
- (2) A member may appoint any person to act on behalf of the member in the grievance procedure.
- (3) The grievance procedure must allow for natural justice to be applied.
- (4) In this section and section 90, **member** includes any person who was a member not more than 6 months before the dispute occurred.

**90 Application to Court** (cf Vic Act s 89)

- (1) The Court may, on the application of a member or the co-operative, make an order declaring and enforcing:
  - (a) the rights or obligations of members of the co-operative between themselves, or
  - (b) the rights or obligations of the co-operative and any member between themselves.

- (2) An order may be made under this section whether or not a right of a proprietary nature is involved and whether or not the applicant has an interest in the property of the co-operative.
- (3) The Court may refuse to make an order on the application or may make an order for costs against a party, whether successful or not, if it is of the opinion that:
  - (a) the issue raised in the application is trivial, or
  - (b) having regard to the importance of the issue, the nature of the co-operative, any other available method of resolving the issue, the costs involved, lapse of time, acquiescence or any other relevant circumstance, it was unreasonable to make the application, or
  - (c) the unreasonable or improper conduct of a party:
    - (i) has been responsible for the making of the application, or
    - (ii) has added to the cost of the proceedings.

**91-95 (Repealed)**

**Division 5 Oppressive conduct of affairs**

**95A Extended meaning of “member”** (cf Vic Act s 90)

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.

**95B Application of Division** (cf Vic Act s 91)

This Division does not apply in respect of anything done under or for the purposes of Part 6.

**96 Who may apply for court order**

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.

**97 (Repealed)**

**98 Orders that Court may make** (cf Vic Act s 93)

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,
- (j) an order directing a co-operative to become registered as a company under the Corporations Act,
- (k) an order as to costs.

**99 Basis on which Court makes orders**

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 member 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.

#### **100 Winding up not to be ordered if oppressed members prejudiced**

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.

#### **101 Application of winding up provisions** (cf Vic Act s 96)

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 Court by the co-operative.

#### **102 Changes to rules**

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.

#### **103 Copy of order to be lodged with Registrar** (cf Vic Act s 98)

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: 10 penalty units.

#### **104 Compliance with orders**

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.

### **Division 6 Proceedings on behalf of co-operative by members and others**

**105 Bringing, or intervening in, proceedings on behalf of co-operative** (cf Vic Act s 99)

- (1) A person may bring proceedings on behalf of a co-operative, or intervene in any proceedings to which a co-operative is a party, for the purpose of taking responsibility on behalf of the co-operative for those proceedings, or for a particular step in those proceedings, (for example, compromising or settling them), if:
  - (a) the person is:
    - (i) a member, former member, or person entitled to be registered as a member, of the co-operative or of a related body corporate, or
    - (ii) an officer or former officer of the co-operative, or
    - (iii) the Registrar, and
  - (b) the person is acting with leave granted under section 105A.
- (2) Proceedings brought on behalf of a co-operative may be brought in the co-operative's name.

**105A Applying for and granting leave** (cf Vic Act s 100)

- (1) A person referred to in section 105 (1) (a) may apply to the Court for leave to bring, or to intervene in, proceedings.
- (2) The Court may grant the application if it is satisfied that:
  - (a) it is probable that the co-operative will not itself bring the proceedings, or properly take responsibility for them, or for the step in them, and
  - (b) the applicant is acting in good faith, and
  - (c) it is in the best interests of the co-operative that the applicant be granted leave, and
  - (d) if the applicant is applying for leave to bring proceedings, there is a serious question to be tried, and
  - (e) either:
    - (i) at least 14 days before making the application, the applicant gave written notice to the co-operative of the intention to apply for leave and of the reasons for applying, or
    - (ii) it is appropriate to grant leave even if subparagraph (i) is not satisfied.

**105B Substitution of another person for person granted leave** (cf Vic Act s 101)

- (1) Any of the following persons may apply to the Court for an order that they be

substituted for a person to whom leave has been granted under section 105A:

- (a) a member, former member, or person entitled to be registered as a member, of the co-operative or a related body corporate, or
  - (b) an officer, or former officer, of the co-operative, or
  - (c) the Registrar.
- (2) The application may be made whether or not the other person has already brought the proceedings or made the intervention.
- (3) The Court may make the order if it is satisfied that:
- (a) the applicant is acting in good faith, and
  - (b) in all the circumstances, it is appropriate to make the order.
- (4) An order substituting one person for another person has the effect that:
- (a) the grant of leave is taken to have been made in favour of the substituted person, and
  - (b) if the other person has already brought the proceedings or intervened, the substituted person is taken to have brought those proceedings or to have made that intervention.

**105C Effect of ratification by members** (cf Vic Act s 102)

- (1) A ratification or approval of conduct by members of a co-operative:
- (a) does not prevent a person from bringing or intervening in proceedings with leave under section 105A or from applying for leave under that section, and
  - (b) does not have the effect that proceedings brought or intervened in with leave under section 105A must be determined in favour of the defendant, or that an application for leave under that section must be refused.
- (2) The Court may take into account a ratification or an approval of the conduct by members of a co-operative in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 105A or in relation to an application for leave under that section.
- (3) In taking a ratification or approval into account under subsection (2), the Court may have regard to:
- (a) how well-informed about the conduct the members were when deciding whether to ratify or approve the conduct, and
  - (b) whether the members who ratified or approved the conduct were acting for proper

purposes.

**105D Leave to discontinue, compromise or settle proceedings brought, or intervened in, with leave** (cf Vic Act s 103)

Proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Court.

**105E General powers of the Court** (cf Vic Act s 104)

- (1) The Court may make any orders, and give any directions, that it thinks just in relation to proceedings brought or intervened in with leave, or in relation to an application for leave, including:
  - (a) interim orders, and
  - (b) directions about the conduct of the proceedings, including requiring mediation, and
  - (c) an order directing the co-operative, or an officer of the co-operative, to do, or not to do, any act, and
  - (d) an order appointing an independent person to investigate, and report to the Court, on:
    - (i) the financial affairs of the co-operative, or
    - (ii) the facts or circumstances which gave rise to the cause of action the subject of the proceedings, or
    - (iii) the costs incurred in the proceedings and the person granted leave.
- (2) A person appointed by the Court under subsection (1) (d) is entitled, on giving reasonable notice to the co-operative, to inspect and make copies of any books of the co-operative for any purpose connected with their appointment.

**105F Power of Court to make costs order** (cf Vic Act s 105)

At any time, the Court may, in relation to proceedings brought or intervened in with leave under section 105A or an application for leave under that section, make any orders it thinks just about the costs of the person who applied for or was granted leave, of the co-operative or of any other party to the proceedings or application, including an order requiring indemnification for costs.

## **Part 5 Rules**

**106 Effect of rules**

- (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.

**107 Content of rules** (cf Vic Act s 107)

- (1) The rules of a co-operative must set out or otherwise make provision for the matters specified in Schedule 1.
- (2) The rules must be divided into paragraphs numbered consecutively.
- (3) The rules may state the objects of the co-operative.
- (4) The rules may incorporate any provision of the model rules approved under section 109A.
- (5) The rules may provide for the imposition of a fine on a member for any infringement of the rules.
- (6) If the rules provide for the imposition of a fine, the rules must specify the maximum fine that may be imposed on a member.
- (7) The maximum fine fixed by the rules must not exceed any amount that may be prescribed as the maximum fine.
- (8) The rules may contain other provisions not inconsistent with this Act or the regulations.

**108 Purchase and inspection of copy of rules** (cf Vic Act s 108)

- (1) Any member 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 \$5.
- (2) The amount required by the rules must not exceed the fee prescribed by the regulations for obtaining a copy of the rules from the Registrar.
- (3) Any person is entitled to obtain from the Registrar a copy of the rules of a co-operative on payment of the fee prescribed by the regulations.

**109 (Repealed)**

**109A Model rules** (cf Vic Act s 110)

- (1) The Registrar may by notice published in the Government Gazette approve model rules for co-operatives or for any class of co-operatives and alter or repeal the model rules from time to time.
- (2) The model rules may make provision for anything for which the rules of a co-operative may make provision.
- (3) If the model rules provide for a matter and the rules of a co-operative of the class to which the model rules apply do not provide for that matter, the provision of the model rules relating to that matter is deemed to be included in the rules of the co-operative.

**110 Rules can only be altered in accordance with this Act** (cf Vic Act s 111)

- (1) The rules of a co-operative cannot be altered except as provided by this Act.
- (2) (Repealed)

**111 Alteration by special resolution** (cf Vic Act s 113)

The rules of a co-operative must be altered by special resolution unless otherwise specified in this Act.

**112 Alteration by resolution of the board**

- (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.

**113 Alteration does not take effect until registered** (cf Vic Act s 115)

- (1) An alteration of the rules of a co-operative does not take effect unless and until it is registered by the Registrar.
- (2) An application for registration of an alteration must:
  - (a) be made in a form approved by the Registrar, and
  - (b) be made within 28 days, or such other period as may be prescribed by the

regulations, after the alteration is made, and

(c) be accompanied by a consolidated copy of the rules of the co-operative, including the alteration.

(3) The Registrar must register the alteration unless:

(a) the Registrar is satisfied that the alteration is contrary to this Act or the regulations, or

(b) the Registrar has other reasonable cause to refuse to register the alteration.

(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 giving financial accommodation to the co-operative on the faith of the certificate or in favour of any guarantor of that financial accommodation, conclusive evidence that the alteration in the rules was duly made.

**113A Appeal against refusal to register alteration** (cf Vic Act s 117)

A co-operative may appeal to the Court against:

(a) a decision of the Registrar to refuse to register an alteration of its rules, or

(b) a failure of the Registrar to register an alteration of its rules.

**113B Registrar to comply with Court order** (cf Vic Act s 118)

The Registrar must comply with an order of the Court on an appeal under this Part.

**114 False copies of rules**

(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**

### **115 Primary activity—meaning**

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.

### **116 Active membership—explanation**

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.

### **117 Active membership provisions and resolutions—explanation**

- (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**

### **118 Number of primary activities required**

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

### **119 Rules to contain active membership provisions**

- (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.

**120 Failure to have active membership provisions**

- (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.

**121 Factors and considerations for determining primary activities etc** (cf Vic Act s 124)

- (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.

(5) Nothing in this section limits the right of active members other than the board of the co-operative to propose an active membership resolution.

**122 Regular subscription—active membership of non-trading co-operative** (cf Vic Act s 126)

(1) Active membership provisions for a non-trading co-operative 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.

**123 Active membership provisions—trading co-operatives** (cf Vic Act s 125)

(1) (Repealed)

(2) The only active membership provisions which may be contained in the rules of a trading 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**

#### **124 Prior approval of active membership resolutions**

- (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.

#### **125 Appeal against refusal of approval**

- (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.

#### **126 Notice of meeting**

- (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.

**126A Eligibility to vote on active membership resolution** (cf Vic Act s 128)

The only members of a co-operative who are eligible to vote on an active membership resolution when the rules do not contain active membership provisions are those members who would be active members if the resolution had already taken effect.

**126B Eligibility of directors to vote on proposal at board meeting** (cf Vic Act s 129)

If the board of a co-operative is meeting to consider a proposal to submit an active membership resolution to a meeting of the co-operative:

- (a) subject to paragraph (b), a director is only eligible to vote on that proposal if he or she would be eligible to vote on the resolution at the meeting of the co-operative, or
- (b) if less than 2 directors (whether or not they are present at the meeting of the board of directors) would be eligible to vote on the resolution at the meeting of the co-operative, all the directors are eligible to vote on that proposal at the meeting of the board of directors.

**126C Other entitlements of members not affected** (cf Vic Act s 130)

A provision of this Division which renders a member of a co-operative ineligible to vote on a resolution does not affect any other right, entitlement, obligation or duty of the member as a member.

## **Division 4 Cancellation of membership etc of inactive members**

**127 Cancellation of membership of inactive member** (cf Vic Act s 131)

- (1) The board of a co-operative must 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 at least the required period 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 required period 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 required period.

(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.

(5) A person may apply to the Council for an order under section 129 in respect of the cancellation of the person's membership under this section.

(6) In this section ***the required period*** in relation to a co-operative, means:

(a) 3 years, or

(b) if a shorter period is provided for in the rules of the co-operative, that shorter period.

**128 Shares to be forfeited if membership cancelled** (cf Vic Act s 134)

(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.

(3) Nothing in this section affects the operation of section 134.

**129 Order of Council against cancellation**

(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.

**130 Deferral of forfeiture by board** (cf Vic Act s 134)

- (1) The board of a co-operative may by resolution defer cancellation of a member's membership for a period of up to 12 months:
- (a) if the board has reasonable grounds to believe that a member has ceased to be an active member due to unusual circumstances which prevent the member fulfilling his or her active membership obligations, or
  - (b) if:
    - (i) the board thinks that during that period an active membership resolution may be put to the members of the co-operative, and
    - (ii) the effect of the resolution would be relevant to the question of whether the member is an active member.
- (2) The board of the co-operative must review the resolution to defer before the end of the deferral period to determine if a further resolution should be made under subsection (1).

**131 Cancellation of membership prohibited in certain circumstances** (cf Vic Act s 135)

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:

- (aa) if the co-operative is insolvent or there are reasonable grounds for suspecting that the co-operative is insolvent, or
- (a) if the co-operative is under administration under Part 5.3A of the Corporations Act as applying under this Act, 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 (whether or not a receiver and manager) 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 Act, 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.

**132 Notice of intention to cancel membership**

- (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.

**133 Failure to cancel membership—offence by director** (cf Vic Act s 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: 20 penalty units.

**134 Repayment of amounts due in respect of cancelled membership** (cf Vic Act s 138)

- (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) apply that amount in accordance with subsection (2) if:
    - (i) the board is of the opinion that repayment would adversely affect the financial position of the co-operative, or
    - (ii) the board and the former member so agree.
- (2) The amount due may be applied as follows:
  - (a) if the co-operative is a deposit-taking co-operative, 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 CCUs 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).
- (5) If:
  - (a) a former member cannot be found, after the use of all due diligence by the co-operative to find the former member, and
  - (b) the amount otherwise required to be paid under this section does not exceed \$100 (or any other amount that may be prescribed by the regulations),the co-operative may retain that amount.

**135 Interest on deposits, debentures and CCUs** (cf Vic Act s 139)

- (1) This section applies when the amount due to a former member under section 81 or 134 is applied as a deposit with the co-operative or the co-operative allots or issues debentures or CCUs to the former member in satisfaction of the amount.
- (2) The deposit, debenture or CCU bears interest during any period:
  - (a) in the case of a co-operative with share capital:
    - (i) at the rate (or, if 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
    - (ii) 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
    - (iii) if a rate of dividend has never been determined in respect of the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable, or
  - (b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable, or
  - (c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at that higher rate.



- (3) 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.
- (4) The following provisions of the Corporations Act (as applied by section 266 of this Act) do not apply to an allotment or issue of debentures under this section:
  - (a) Chapter 2L (Debentures),
  - (b) Chapter 6D (Fundraising).

### **136 Repayment of deposits, debentures and CCUs**

- (1) A deposit, debenture or CCU to which an amount due to a former member is transferred under section 81 or 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) of any deposit, debenture or CCU to which an amount due to a former member was transferred before the date of assent to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1997*, 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.

### **137 Register of cancelled memberships**

A co-operative is to keep a register specifying the prescribed particulars of persons whose membership has been cancelled under this Part.

### **138 (Repealed)**

## **Division 5 Entitlements of former members**

### **139 Former shareholders to be regarded as shareholders for certain purposes**

- (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 a merger 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.

**140 Entitlements of former shareholders on mergers etc** (cf Vic Act s 144)

- (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 a merger 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 1 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).

**141 Set-off of amounts repaid etc on forfeited shares** (cf Vic Act s 145)

- (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 CCUs 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 139 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 28 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.

#### **142 Entitlement to distribution from reserves**

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.

#### **143 Minister may exempt co-operatives from provisions**

- (1) 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.
- (2) An exemption may be granted unconditionally or subject to conditions. A co-operative that contravenes a condition of an exemption is taken not to be exempt from the relevant provision or provisions of this Division.

## **Part 7 Shares**

### **Division 1 Preliminary**

#### **144 Share capital required except for non-profit co-operatives**

- (1) (Repealed)
- (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.

#### **145 Restrictions on conversion to co-operative without share capital**

- (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 CCUs 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.

#### **146 Nature of share in co-operative**

- (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 1A Disclosure**

### **146A Disclosure to intending members in trading co-operative**

- (1) The board of a trading co-operative must give a person who intends to acquire shares in the co-operative and is not already a member of the co-operative a current disclosure statement that:
  - (a) has been approved by the Registrar under section 17 (Approval of disclosure statement), or
  - (b) complies with section 146B and has been filed by the co-operative with the Registrar.
- (2) The disclosure statement must be given before the person becomes bound to acquire the shares.
- (3) The disclosure statement is in addition to any information required to be provided to the person under Part 4 (Membership).
- (4) A disclosure statement is current until whichever of the following happens first after the statement is prepared:
  - (a) there is a change in the rights or liabilities attaching to any class of share in the co-operative,
  - (b) there is a significant change in the financial position or prospects of the co-operative,
  - (c) any of the next financial, directors' or auditors' reports required to be prepared under section 243 (1) become available.
- (5) If a disclosure statement stops being a current disclosure statement because of a change mentioned in subsection (4) (a) or (b), the co-operative must, within 14 days after the change:
  - (a) give the Registrar written notice:
    - (i) that the disclosure statement is no longer current because of a change mentioned in subsection (4) (a), or
    - (ii) that the disclosure statement is no longer current because of a change mentioned in subsection (4) (b), and
  - (b) file a current disclosure statement with the Registrar that complies with section 146B.

### **146B Content of disclosure statement to intending members**

A disclosure statement given to a person because of section 146A (1) (b) must contain:

- (a) a statement of the rights and liabilities attaching to shares in the co-operative concerned, and
- (b) a copy of the last annual report of the co-operative required under section 252, unless a copy of the report:
  - (i) has already been given to the person under this Act, or
  - (ii) has been made available for inspection under a notice given to the person under section 76A, and
- (c) any other relevant information about the financial position and prospects of the co-operative if there has been a significant change since the date of the last annual report, and
- (d) any other information that the Registrar directs.

### **146C Exemptions from disclosure requirements**

- (1) The Registrar may, by notice in the Gazette, exempt the board or boards of a trading co-operative or a class of trading co-operatives from a requirement under section 146A or 146B.
- (2) An exemption under this section may be given only if the Registrar is satisfied that compliance with the requirement would be inappropriate in the circumstances or would impose an unreasonable burden.
- (3) An exemption under this section may be given unconditionally or subject to conditions. A board that contravenes a condition of an exemption is taken not to be exempt from a requirement under section 146A or 146B.

## **Division 2 Issue of shares**

### **146D Adoption of certain Corporations Act provisions about shares**

- (1) The shares of a co-operative are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to sections 716 (2), 722, 723, 724, 725, 728, 729, 730, 733, 734 and 737 of the Corporations Act, subject to the following modifications:
  - (a) a reference in those sections to a company is to be read as a reference to a co-operative, and
  - (b) a reference in those sections to ASIC is to be read as a reference to the Registrar, and

(c) a reference in those sections to a disclosure document is to be read so as to include a reference to a disclosure statement, of any type, under this Act, and

(d) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

(2) However, subsection (1) applies only if:

(a) the shares are offered to persons who are not members of the co-operative, or

(b) the invitation is made to persons who are not members of the co-operative.

**147 Shares—general** (cf Vic Act s 150)

(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) A co-operative may have more than one class of shares provided the share holding and the rights of shareholders comply with the co-operative principles.

(4) Subject to this Part and Part 4, shares must not be issued to a non-member.

**148 Minimum number of shares to be subscribed for**

(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).

**149 Minimum paid up amount** (cf Vic Act s 151)

(1) No share 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.



- (3) This section does not apply to a bonus share issued under section 151 (4) (a), 156 or 282.

**150 Shares not to be issued at a discount**

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

**151 Issue of shares at a premium** (cf Vic Act s 153)

- (1) A trading co-operative may issue shares at a premium.
- (2) A premium may be in the form of cash or other valuable consideration.
- (3) If a trading co-operative issues shares for which it receives a premium, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to a share premium account.
- (4) The share premium account is to be regarded as paid up share capital of the trading co-operative 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 CCUs.

**152 Joint ownership of shares**

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

**153 Dividends etc**

- (1), (2) (Repealed)
- (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.

**154 Issue of shares to active members in exchange for property**

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.

**155 Members may be required to take up additional shares** (cf Vic Act s 155)

- (1) If authorised by the rules of the co-operative, the board of a trading 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 trading co-operative may deduct amounts in payment for 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, and
  - (c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date specified in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution.
- (4) Any proposal to deduct amounts in payment for additional shares from money due to members in respect of their dealings with the trading co-operative must clearly show:
  - (a) the basis on which the deductions are to be made, and
  - (b) the time and manner of making those deductions.
- (5) A proposal approved under this section is binding on:
  - (a) all members of the trading co-operative at the date of the passing of the special resolution other than a member who has given a notice of resignation in accordance with subsection (3) (c), and
  - (b) all persons who become members of the trading co-operative after that date and before the total number of shares to be issued pursuant to the proposal has been

issued.

- (6) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the special resolution.
- (7) The requirements in respect of a proposal to take up additional shares under subsection (3) do not apply to the issue of bonus shares under section 151 (4) (a), 156 or 282 (1) (b).

**156 Bonus share issues** (cf Vic Act ss 156 and 158)

- (1) The rules of a trading 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 under this section 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.
- (f) (Repealed)

### **Division 3 Beneficial and non-beneficial interests in shares**

#### **157 Notice of non-beneficial ownership at time of transfer**

- (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.

#### **158 Notice of non-beneficial ownership not notified at time of transfer** (cf Vic Act s 160)

- (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.
- (5) This section does not apply 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.

#### **159 Registration as beneficial owner of shares notified as non-beneficially transferred**

- (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.

**160 Notification of change in nature of shareholding** (cf Vic Act s 162)

- (1) A person must notify the co-operative in accordance with this section of the change in the person's shareholding in the co-operative if the person:
  - (a) commences to hold any shares beneficially that the person currently holds non-beneficially, or
  - (b) commences to hold any shares non-beneficially that the person currently holds beneficially.

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

- (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).

**161 Presumption of awareness**

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.

**162 Presumption that shares held non-beneficially**

- (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.

### **163 Noting of beneficial and non-beneficial interests in register of members**

- (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.

### **164 Registration as trustee etc on death of owner of shares**

- (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.

### **165 Registration as administrator of estate on incapacity of shareholder**

- (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.

### **166 Registration as Official Trustee in Bankruptcy**

- (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.

#### **167 Liabilities of person registered as trustee or administrator**

- (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.

#### **168 Notification of trusts in register of members**

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.

#### **169 No notice of trust except as provided by this Division**

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**

#### **170 Sale or transfer of shares** (cf Vic Act s 172)

- (1) A share in a co-operative cannot be sold or transferred except:
  - (a) in accordance with Division 3 of Part 4 and section 170A 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.



- (2) A share in a co-operative cannot be sold or transferred except in accordance with the rules of the co-operative.

**170A Transfer on death of member** (cf Vic Act s 173)

- (1) On the death of a member, the member's share in the co-operative cannot be transferred to a person other than an administrator or executor except with the consent of the board of the co-operative.
- (2) The board may only give its consent under subsection (1) if there are reasonable grounds for believing that the person will be an active member of the co-operative.

**170B Restriction on total shareholding** (cf Vic Act s 174)

The board of a co-operative must not consent under section 170 or 170A to the sale or transfer of a share if as a result of the sale or transfer the nominal value of the shares held by the purchaser or transferee would exceed:

- (a) 20% of the nominal value of the share capital of the co-operative, or
- (b) if a lower percentage is specified in the rules of the co-operative, that lower percentage of the nominal value of the share capital of the co-operative.

**171 Transfer not effective until registered**

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**

**172 Purchase and repayment of shares** (cf Vic Act s 176)

- (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 determined by the board that is less than the nominal value of the share but only:
  - (a) 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, or
  - (b) in accordance with the rules of the co-operative.
- (5) This section does not apply if the member has been expelled from the co-operative or the member's membership has been otherwise cancelled under Part 6.
- (6) A co-operative must not repurchase shares or repay amounts paid up on shares if:
  - (a) the co-operative is likely to become insolvent because of the repurchase of the shares or because of the repayment of amounts paid up on the shares, or
  - (b) the co-operative is insolvent.

**173 Deposits, debentures or CCUs in lieu of payment when share repurchased** (cf Vic Act s 177)

- (1) If a co-operative repurchases a share of a member, the co-operative may instead of paying the purchase price to the member:
  - (a) in the case of a deposit-taking co-operative, apply the amount as an interest bearing deposit by the member with the co-operative, or
  - (b) allot or issue debentures or CCUs of the co-operative to the member in satisfaction of the amount.
- (2) Subsection (1) applies only:
  - (a) if the board is of the opinion that payment of the repurchase price would adversely affect the financial position of the co-operative, or
  - (b) if the board and the member so agree.
- (3) The deposit, debenture or CCU bears interest during any period:
  - (a) in the case of a co-operative with share capital:
    - (i) at the rate (or, if 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

- (ii) 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
  - (iii) if a rate of dividend has never been determined in respect of the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable, or
- (b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable, or
- (c) if the rules provide for a rate to be payable that is higher than the rate applicable under paragraph (a) or (b), at that higher rate.
- (4) The deposit, debenture or CCU must 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.
- (5) The deposit, debenture or CCU must in any case be repaid within 10 years (or within any shorter period that the rules of the co-operative may require) after the repurchase of the shares concerned.

#### **174 Cancellation of shares**

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**

#### **175 Voting to which this Part applies**

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

#### **176 Voting** (cf Vic Act s 180)

- (1) The right to vote attaches to membership and not share holding.
- (2) Except as provided in subsections (3) and (4), each member has only one vote at a meeting of the co-operative.
- (3) 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.
- (4) If the rules so provide, the chairperson has a second vote at a board meeting or general meeting.

- (5) In the case of joint membership:
  - (a) the joint members have only one vote between them, and
  - (b) that vote may be exercised (subject to the grant of a proxy or power of attorney) only by the joint member determined in accordance with the rules.
- (6) If shares are held jointly, each member (other than a joint member) holding the share is entitled to vote at a general meeting.

#### **177 Rules of certain co-operatives formed to carry on club may restrict voting rights**

- (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.
- (3) This section applies only to the following co-operatives:
  - (a) any co-operative that holds a club licence under the *Liquor Act 2007* (regardless of when it was registered under this Act),
  - (b) any co-operative that was registered under this Act before the date of assent to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1997*,
  - (c) any co-operative that does not trade outside this State (regardless of when it was registered under this Act).

#### **178 Effect of relevant share and voting interests on voting rights**

- (1) Subject to section 176 (5) and (6), 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.

**179 Voting by proxy** (cf Vic Act s 181)

- (1) If the rules so provide, voting may be by proxy at a general meeting.
- (2) The instrument of proxy may specify the manner in which a proxy is to vote in respect of a particular resolution.
- (3) The proxy must vote in the manner authorised by an instrument of proxy referred to in subsection (2).
- (4) A person must 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.
- (5) A person must not act as proxy for more than 10 persons (or any lesser number of persons specified in the rules of the co-operative) on any one occasion.
- (6) Subsection (5) does not apply if the proxy acts under an instrument of proxy referred to in subsection (2).

**180 Effect of unpaid borrowings**

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 as in force immediately before the date of assent to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1997*.

**181 Inactive members not entitled to vote**

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

**181A Control of the right to vote** (cf Vic Act s 185)

- (1) A person must not directly or indirectly control the exercise of the right to vote of a member.

Maximum penalty: 60 penalty units or imprisonment for 6 months, or both.
- (2) If a person controls the exercise of the right to vote of a member at a meeting of a co-operative:
  - (a) the vote of that member, and
  - (b) the vote of that person, if that person is a member,

are invalid.

- (3) Nothing in this section prevents the exercise of a vote by means of a proxy or power of attorney.

### **182 Effect of sale etc of shares**

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.

### **183 Restriction on voting entitlement under power of attorney**

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.

### **183A Restriction on voting by representatives of bodies corporate** (cf Vic Act s 183)

A person is not entitled to exercise, as the representative of a body corporate, the power of a body corporate member of the co-operative to vote if the person has that power as the representative of another body corporate member of the co-operative.

### **184 Rights of representatives to vote etc**

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).

### **185 Other entitlements etc of members unaffected by ineligibility to vote**

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.

### **186 Vote of disentitled member to be disregarded**

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**

### **187 Decisions of co-operative usually to be by ordinary resolution**

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.

### **188 Ordinary resolutions**

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.

### **189 Special resolutions** (cf Vic Act s 192)

- (1) A special resolution is a resolution of a co-operative which is passed:
  - (a) by a two-thirds majority at a general meeting of members, or
  - (b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members, or
  - (c) by a three-quarters majority in a special 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 by postal ballot (including a special postal ballot).
- (3) A resolution is not to be considered to have been passed as a special resolution unless not less than 21 days' notice has been given to the members of the co-operative specifying:
  - (a) the intention to propose the special resolution, and
  - (b) the reasons for the making of the special resolution, and
  - (c) the effect of the special resolution being passed.
- (4) (Repealed)

### **190 How majority obtained is ascertained** (cf Vic Act s 193)

- (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) (Repealed)

**190A Disallowance by Registrar** (cf Vic Act s 194)

The Registrar may disallow a proposed special resolution before it is passed by written notice to the co-operative if the Registrar is of the opinion that the effect of the special resolution if passed would be in contravention of this Act or the regulations or any other law.

**190B Effect of special resolution** (cf Vic Act s 196)

- (1) Subject to subsection (2), a special resolution has effect from the date that it is passed.
- (2) A special resolution relating to any of the following has no effect until it is registered:
  - (a) the removal of an auditor,
  - (b) the expulsion of a member,
  - (c) any matter for which a special resolution is required to be passed by special postal ballot (other than a special postal ballot in favour of a voluntary winding up).

**191 Declaration of passing of special resolution**

- (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.

**192 Lodgment of special resolution** (cf Vic Act s 197)

- (1) A co-operative must lodge 2 copies of each special resolution passed by the co-operative with the Registrar in accordance with this section for registration.
- (2) The copies must:
  - (a) be lodged within 28 days after the passing of a special resolution or such further period as the Registrar allows, and
  - (b) be signed by a director and the secretary of the co-operative, and
  - (c) be accompanied by the lodgment fee prescribed by the regulations.
- (3) A co-operative and any officer of the co-operative that knowingly fails to lodge the required copies in accordance with this section is guilty of an offence.

Maximum penalty: 20 penalty units.



- (4) This section and section 192A do not apply to a special resolution altering the rules of a co-operative.

**192A Decision of Registrar on application to register special resolution** (cf Vic Act s 198)

- (1) 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 must register the resolution.
- (2) If the Registrar is of the opinion that the effect of a special resolution lodged for registration would be in contravention of this Act or the regulations or any other law, the Registrar may:
- (a) refuse to register the special resolution, and
  - (b) give written notice to the co-operative that the special resolution:
    - (i) has no effect, in the case of a special resolution referred to in section 190B (2), and
    - (ii) has no effect as from the date that it was passed, in any other case.
- (3) A certificate of registration of a special resolution given by the Registrar is, in favour of any person giving financial accommodation to the co-operative on the faith of the certificate or in favour of any guarantor of that advance, conclusive evidence that the resolution was duly passed.

**193 Postal ballots**

- (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.

**194 Special postal ballots** (cf Vic Act s 200)

- (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 21 days 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.
- (5) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the notice of the special postal ballot.

**194A When is a special postal ballot required?** (cf Vic Act s 201)

In addition to any requirement of this Act, the rules of a co-operative must require a special postal ballot to be conducted for the purpose of passing a special resolution in relation to any of the following matters relating to a co-operative:

- (a) a conversion of a trading co-operative to a non-trading co-operative,
- (b) transfer of incorporation,
- (c) an acquisition or disposal of assets referred to in section 285,
- (d) the maximum permissible level of share interest in the co-operative,
- (e) takeover,
- (f) merger,
- (g) transfer of engagements,
- (h) members' voluntary winding up.

**195 Holding of postal ballot on requisition** (cf Vic Act s 202)

- (1) The board of a co-operative must conduct a postal ballot (including a special postal ballot) for the passing of a special resolution on the written requisition of such number

of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the co-operative) 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:
    - (i) the proposed special resolution to be voted on, and
    - (ii) the reasons for the making of the special resolution, and
    - (iii) the effect of the special resolution being passed,
  - (b) it must be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more 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.
- (5) If the special resolution for which the requisitioned postal ballot is conducted is not passed, the co-operative may recover the expenses of the postal ballot from the members who requisitioned the postal ballot as a debt due to the co-operative.

**195A Expenses involved in postal ballots on requisition** (cf Vic Act s 203)

- (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 of the postal ballot** for the purposes of section 195.
- (2) Those expenses include (but are not limited to) the following expenses:
  - (a) the cost of obtaining expert advice (including legal and financial advice) and of commissioning expert reports,
  - (b) costs attributable to the use of staff of the co-operative in connection with preparing for and holding the ballot,
  - (c) the cost of producing, printing and posting the ballot papers and other material associated with the ballot.

**196 Resolution by circulation of document—fewer than 50 members**

- (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.

### **197 Circulation of members resolutions etc**

- (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**

#### **198 Annual general meetings** (cf Vic Act s 204)

- (1) The first annual general meeting of a co-operative must be held at any time within 18 months after the incorporation of the co-operative.
- (2) The second or any subsequent annual general meeting of a co-operative must be held within:
  - (a) 5 months after the close of the financial year of the co-operative, or
  - (b) any further time that may be allowed by the Registrar or is prescribed by the regulations.

#### **199 Special general meetings** (cf Vic Act s 205)

A special general meeting of a co-operative may be convened at any time by the board of directors.

#### **199A Notice of meetings** (cf Vic Act s 206)

The board must give each member at least 14 days notice of each general meeting.

**199B Quorum at meetings** (cf Vic Act s 207)

- (1) The quorum for a meeting of a co-operative must be specified in the rules.
- (2) An item of business must not be transacted at a meeting of a co-operative unless a quorum of members entitled to vote is present during the transaction of that item.

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

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.

**201 Decision at meetings**

- (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 chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a casting vote, if the rules of the co-operative so provide.

**202 Convening of general meeting on requisition** (cf Vic Act s 209)

- (1) The board of a co-operative must convene a general meeting of the co-operative on the written requisition of such number of members who together are able to cast at least 20% (or any lesser percentage specified in the rules of the co-operative) 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.

**203 Minutes** (cf Vic Act s 210)

- (1) Minutes of each general meeting, board meeting and sub-committee meeting must be entered in the appropriate records within 28 days after the meeting and confirmed at and signed by the chairperson of the next succeeding meeting.
- (2) The minutes of each general meeting must be available for inspection by members.
- (3) The rules may provide that the minutes of board meetings and sub-committee meetings be available for inspection by members.
- (4) Minutes must be kept in the English language.

## **Part 9 Management and administration of co-operatives**

### **Division 1 The Board**

**204 Board of directors** (cf Vic Act s 211)

- (1) Subject to this Act and the rules of a co-operative, the business of a co-operative is to be managed by a board of directors.
- (2) The board of directors may exercise all the powers of the co-operative that are not, by



this Act or the rules of the co-operative, required to be exercised by the co-operative in general meeting.

- (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.

**205 Election of directors** (cf Vic Act s 212)

- (1) Except as provided in subsections (2), (3) and (4), the directors of a co-operative are to be elected in the manner specified in the rules of the co-operative.
- (2) The first directors of:
  - (a) a co-operative formed under this Act are to be elected at its formation meeting, and
  - (b) a co-operative which was a body corporate incorporated under another Act are to be the directors in office at the date of registration under this Act.
- (3) If so authorised by the rules of the co-operative, a board of directors may appoint a person to fill a casual vacancy in the office of a director until the next annual general meeting.
- (4) A motion approving or nominating for election 2 or more persons as directors by a single resolution must not be made at a meeting of a co-operative unless a resolution that it be so made has first been agreed to by the meeting without any vote being given against it.
- (5) If a resolution is passed following a motion in contravention of subsection (4):
  - (a) the resolution is void, and
  - (b) there is no provision for the automatic re-election of retiring directors in default of another election.
- (6) This section does not apply to a resolution altering the rules to prevent the election of 2 or more directors by ballot.
- (7) A nomination for election or appointment to the office of a director must provide details of the qualifications and experience of the person nominated.

- (8) Except as specified in this Act or in the rules of a co-operative, a director is eligible for re-election at the expiration of his or her term of office.
- (9) 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.

**206 Qualification of directors** (cf Vic Act s 213)

- (1) A person is not qualified to be a director of a co-operative unless he or she is:
  - (a) an active member of the co-operative or a representative of a body corporate which is an active member of the co-operative (**active member director**), or
  - (b) an employee of the co-operative or a person qualified as provided by the rules (**independent director**).
- (2) (Repealed)
- (3) A simple majority of directors must be active member directors. However, this subsection does not prevent the rules of a co-operative from requiring that a greater number of directors than a simple majority be active member directors.
- (4) A director who is an active member director of the co-operative is to be counted as an active member director for the purposes of determining how many directors are active member directors of the co-operative even though he or she was elected as provided by section 216 (Election of employees as directors).
- (5) (Repealed)

**206A (Repealed)**

**207 Qualifications for directors of associations and federations**

- (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.

**208 Disqualified persons** (cf Vic Act s 214)

- (1) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person:
  - (a) is the auditor of the co-operative or a partner, employee or employer of the auditor, or

- (b) has been convicted, whether before or after the commencement of this section, within or outside New South Wales:
- (i) on indictment of an offence in connection with the promotion, formation or management of a body corporate, or
  - (ii) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months, or
  - (iii) of any offence under section 184, 344, 590, 592, 670A or 728 of the Corporations Act, or
  - (iv) of any offence under any provision of a previous law of New South Wales or of another State or Territory, with which any of the provisions referred to in subparagraph (iii) corresponds,

within a period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison, except with the leave of the Court.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

- (2) A person must not act as a director or directly or indirectly take part in or be concerned with the management of a co-operative if the person:
- (a) has been convicted of any offence under this Act, within a period of 5 years after the conviction, except with the leave of the Court, or
  - (b) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act, or
  - (c) is an insolvent under administration (as defined in the Corporations Act), or
  - (d) has been convicted of a contravention of section 181, 182 or 183 of the Corporations Act (as applied under this Act).

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

- (3) In any proceeding for an offence against subsection (1), a certificate by an authority prescribed by the regulations stating that a person was released from prison on a specified date, is in the absence of evidence to the contrary, proof that that person was released from prison on that date.
- (4) A person who intends to apply for leave of the Court must give the Registrar at least 21 days notice of his or her intention.
- (5) The Court may grant leave subject to any condition or limitation it considers appropriate.
- (6) A person must comply with any condition or limitation subject to which leave is

granted.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

- (7) On the application of the Registrar, the Court may revoke its leave.
- (8) Subject to this section, a co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 2D.6 of the Corporations Act, subject to the following modifications:
  - (a) a reference in those provisions to corporations is to be read as a reference to co-operatives,
  - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

See the note to section 10 (1).

**209 Meeting of the board of directors** (cf Vic Act s 215)

- (1) Meetings of the board of directors must be held at least once every 3 months and may be held as often as may be necessary.
- (2) A meeting of the board of directors may be called by a director giving notice individually to every other director.
- (3) A meeting of the board of directors may be called or held using any technology consented to by the board. The consent may be a standing one.
- (4) A quorum of a meeting of the board of directors is 50 per cent of the number of directors or such greater number of the directors as is specified in the rules.
- (4A) However, for a quorum to exist the number of active member directors present must exceed the number of independent directors present by at least one or by any greater number specified in the rules of the co-operative.
- (5) 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.

**210 Transaction of business outside meetings** (cf Vic Act s 216)

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

- (3) Separate copies of a resolution may be distributed for signing by the directors if the wording of the resolution and approval is identical in each copy.
- (4) For the purpose of the approval of a resolution under this section, the chairperson of the board and each director of the board have the same voting rights as they have at an ordinary meeting of the board.
- (5) The resolution is approved when the last director required for the majority signs.
- (6) A resolution approved under this section must be recorded in the minutes of the meetings of the board within 28 days after the resolution is approved.
- (7) Papers may be circulated among directors of the board for the purposes of this section by facsimile or other transmission of the information in the papers concerned.

### **211 Deputy directors**

- (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.

### **212 Filling of vacancies on board**

- (1) A casual vacancy on the board of a co-operative (being a vacancy under section 218) is to be filled:
  - (a) by election by the members held:
    - (i) at a meeting of the co-operative, or
    - (ii) by means of a postal ballot, or
    - (iii) in the manner specified in the rules of the co-operative for the ordinary election of directors, or
  - (b) as provided for by section 205 (3), or
  - (c) 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 by the board to fill a vacancy under this section is until the next annual general meeting of the co-operative.

**213 Delegation by board** (cf Vic Act s 218)

- (1) If the rules of a co-operative so provide, the board may, by resolution, delegate the exercise of such of the board's functions (other than this power of delegation) as are specified in the resolution:
  - (a) to a director, or
  - (b) to a committee of 2 or more directors, or
  - (c) to a committee of members of the co-operative, or
  - (d) to a committee of members of the co-operative and other persons if members comprise the majority of persons on the committee.
- (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.

**214 Exercise of functions on behalf of board**

- (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.

### **215 Minister may appoint director**

- (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.

### **216 Election of employees as directors**

- (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.

## **217 Revocation of approval etc**

- (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.

### **218 Removal from and vacation of office**

- (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 or herself from 3 consecutive ordinary meetings of the board without its leave,
  - (c) if the director resigns the office of director by notice in writing given by the director to the co-operative,
  - (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.

## **Division 1A Secretary of a co-operative**

### **219 Secretary**

- (1) A co-operative must have a secretary, who is to be appointed by the board.
- (2) The board may appoint a person to act as the secretary during the absence or

incapacity of the secretary.

- (3) A person is not qualified to be appointed as, or to act as, a secretary unless the person is an adult who is ordinarily resident in Australia.
- (4) A person who was acting as a secretary of a co-operative immediately before the commencement of this section is taken to have been appointed, and to be qualified, in accordance with this section.

## **Division 2 Duties and liabilities of directors, officers and employees**

### **220 Meaning of “officer”**

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, or
- (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 administrator of a deed of arrangement executed by the co-operative, or
- (e) a liquidator or provisional liquidator appointed in a voluntary winding up of the co-operative, or
- (f) an administrator of the co-operative appointed under Part 5.3A of the Corporations Act as applying under this Act, or
- (g) a trustee or other person administering a compromise or arrangement made between the co-operative and another person or other persons.

### **221 Officers must act honestly** (cf Vic Act s 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—240 penalty units or imprisonment for 5 years, or both, or

(b) otherwise—60 penalty units.

**222 Standard of care and diligence required** (cf Vic Act s 222)

(1) In the exercise of his or her powers and the discharge of his or her duties, an officer of a co-operative must exercise the degree of care and diligence that a reasonable person in a like position in a co-operative would exercise in the co-operative's circumstances.

Maximum penalty: 20 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.

**223 Improper use of information or position** (cf Vic Act s 223)

(1) An officer or employee or former officer or former employee of a co-operative or a member of a committee referred to in section 213 (1) must not make improper use of information acquired by reason of his or her position as such an officer or employee or member 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 or a member of a committee referred to in section 213 (1) must not make improper use of his or her position as an officer or employee or member, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the co-operative.

(3) 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—a penalty not exceeding 240 penalty units or imprisonment for 2 years, or both, or

(b) in any other case—a penalty not exceeding 60 penalty units.

**224 Court may order payment of compensation**

(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.

**225 Recovery of damages by co-operative**

(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.

## **226 Other duties and liabilities not affected**

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.

## **227 (Repealed)**

## **228 Indemnification of officers and auditors**

- (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.

**229 Application of Corporations Act provisions concerning officers of co-operatives** (cf Vic Act s 228)

A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to sections 589–598 and 1307 of the Corporations Act, subject to the following modifications:

- (a) a reference in those sections to a company is to be read as a reference to a co-operative,
- (b) a reference in those sections to ASIC is to be read as a reference to the Registrar,
- (c) section 592 (1) (a) is to be read as if the reference to 23 June 1993 were a reference to 15 December 1995,
- (d) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

See the note to section 10 (1).

### **Division 3 Restrictions on directors and officers**

**230 Directors' remuneration** (cf Vic Act s 229)

A director of a co-operative must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the co-operative.

**231 (Repealed)**

**232 Financial accommodation to directors and associates** (cf Vic Act s 231)

(1) In this section:

**associate** of a director means:

- (a) the director's spouse, or
- (b) a person when acting in the capacity of trustee of a trust under which:
  - (i) the director or director's spouse has a beneficial interest, or
  - (ii) a body corporate mentioned in paragraph (c) has a beneficial interest, or
- (c) a body corporate if:
  - (i) the director or director's spouse has a material interest in shares in the body corporate, and
  - (ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the body corporate.

(2) For the purposes of this section, a person has a **material interest** in a share in a body corporate if:

- (a) the person has power to withdraw the share capital subscribed for the share or to exercise control over the withdrawal of that share capital, or
- (b) the person has power to dispose of or to exercise control over the disposal of the share, or
- (c) the person has power to exercise or to control the exercise of any right to vote conferred on the holder of the share.

(3) A co-operative must not provide financial accommodation to a director, or to a person the co-operative knows or should reasonably know is an associate of a director, unless:

- (a) the accommodation is:
  - (i) approved under subsection (4), or
  - (ii) given under a scheme approved under subsection (4), or
  - (iii) provided on terms no more favourable to the director or associate than the terms on which it is reasonable to expect the co-operative would give if dealing with the director or associate at arm's length in the same circumstances, and
- (b) the directors have approved the accommodation, at a meeting of the board at which a quorum was present, by a majority of at least two-thirds of the directors

present and voting on the matter.

Maximum penalty: 500 penalty units.

(4) For the purposes of subsection (3) (a) (i) and (ii), financial accommodation or a scheme is approved if:

- (a) it is approved by a resolution passed at a general meeting,
- (b) the full details of the accommodation or scheme were made available to members at least 21 days before the meeting.

(5) A director or an associate of a director who obtains financial accommodation given in contravention of subsection (3) is guilty of an offence.

Maximum penalty: 240 penalty units or 2 years imprisonment, or both.

(6) For the purposes of this section, a concessional rate of interest for a borrower from a co-operative is a normal term only if the borrower is entitled to the concession by being a member of a class of borrowers from the co-operative specified in its rules as being entitled to the concession.

(7) If a director of a co-operative or an associate of a director accepts in payment of a debt owed by a member of the co-operative to the director or associate, any proceeds of financial accommodation provided to the member by the co-operative, this section has effect as if the financial accommodation has been provided to the director or associate.

(8) In this section, a reference to:

- (a) the provision of financial accommodation to a director or an associate of a director, or
- (b) the obtaining of financial accommodation by a director or an associate of a director, or
- (c) a debt owed to a director or an associate of a director,

includes a reference to a provision of financial accommodation to, or an obtaining of financial accommodation by, the director or associate, or a debt owed to the director or associate, jointly with another person.

### **233 Restriction on directors of certain co-operatives selling land to co-operative**

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.

**233A Management contracts** (cf Vic Act s 233)

- (1) In this section, **management contract** means a contract or other arrangement under which:
  - (a) a person who is not an officer of the co-operative agrees to perform the whole, or a substantial part, of the functions of the co-operative, whether under the control of the co-operative or not, or
  - (b) a co-operative agrees to perform the whole or a substantial part of its functions:
    - (i) in a particular way, or
    - (ii) in accordance with the directions of any person, or
    - (iii) subject to specified restrictions or conditions.
- (2) A co-operative must not enter into a management contract unless that contract has first been approved by special resolution.
- (3) A management contract entered into in contravention of subsection (2) is void.

**Division 4 Directors' interests in contracts etc**

**234 Declaration of interest** (cf Vic Act s 234)

- (1) A director of a co-operative who is or becomes in any way (whether directly or indirectly) interested in a contract, or proposed contract with the co-operative must declare the nature and extent of the interest to the board of directors under this section.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.
- (2) In the case of a proposed contract, the declaration must be made:
  - (a) at the meeting of the board at which the question of entering into the contract is first considered, or
  - (b) if the director was not at that time interested in the proposed contract, at the next meeting of the board held after the director becomes interested in the proposed contract.
- (3) If a director becomes interested in a contract with the co-operative after it is made, the declaration must be made at the next meeting of the board held after the director becomes interested in the contract.
- (4) For the purposes of this section, a general written notice given to the board by a director to the effect that the director:
  - (a) is a member of a specified entity, and



(b) is to be regarded as interested in any contract which may, after the giving of the notice, be made with the entity,

is a sufficient declaration.

(5) A director of a co-operative who holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests might be created that could conflict with the director's duties or interests as director must, under subsection (6), declare at a meeting of the board of directors the fact and the nature, character and extent of the conflict.

Maximum penalty: 240 penalty units or imprisonment for 2 years, or both.

(6) A declaration required by subsection (5) in relation to holding an office or having an interest must be made by a person:

(a) if the person holds the office or has the interest when he or she becomes a director, at the first meeting of the board held after:

(i) the person becomes a director, or

(ii) the relevant facts as to holding the office or having the interest come to the person's knowledge,

whichever is the later, or

(b) if the person starts to hold the office or acquires the interest after the person becomes a director, at the first meeting of the board held after the relevant facts as to holding the office or having the interest come to the person's knowledge.

(7) If a director has made a declaration under this section, then unless the board otherwise determines, the director must not:

(a) be present during any deliberation of the board in relation to the matter, or

(b) take part in any decision of the board in relation to the matter.

(8) For the purposes of the making of a determination of the board under subsection (7) in relation to a director who has made a declaration under this section, the director must not:

(a) be present during any deliberation of the board for the purpose of making the determination, or

(b) take part in the making by the board of the determination.

(9) This section does not extend to or in respect of a vote relating to a transaction referred to in section 241.

(10) Any vote cast in contravention of this section is not to be counted.

**235-237 (Repealed)**

**238 Declarations to be recorded in minutes**

Every declaration under this Division is to be recorded in the minutes of the meeting at which it was made.

**239 Division does not affect other laws or rules**

Except as provided in section 241, 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.

**240 (Repealed)**

**241 Certain interests need not be declared** (cf Vic Act s 237)

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
- (a1) a lease of land to the director by 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.

**242 (Repealed)**

**Division 5 Financial statements, reports and audits**

**243 Requirements for financial records, statements and reports**

- (1) A co-operative must:
  - (a) keep financial records and prepare financial statements and financial reports as required by the regulations, and

- (b) ensure that those financial statements and financial reports 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 Part 2F.3, sections 249K and 249V and Chapter 2M of the Corporations Act (including the conferring of jurisdiction on a court of this State),
  - (b) requiring financial statements to be prepared in accordance with any accounting standards in force for the purposes of Chapter 2M of the Corporations Act (with or without modifications specified in the regulations),
  - (c) requiring the submission of financial statements and financial reports 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 financial statements and financial reports 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 financial statements and financial reports, including the reports to be prepared by directors in relation to those financial statements and financial reports,
  - (g) the sending of copies of financial statements and financial reports to members.
- (3) (Repealed)

#### **244 Power of Registrar to grant exemptions**

- (1) The Registrar may, by order in writing, exempt a co-operative or any class of co-operatives, any person or firm appointed or proposed to be appointed as an auditor or any other person 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, or

(c) if it applies to a person or firm—when the order is served on the person or firm.

#### **245 Meaning of “entity” and “control”**

In this Division, the terms **entity** and **control** have the same meanings in relation to a co-operative as they have under the Corporations Act in relation to a corporation.

#### **246 Disclosure by directors**

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.

#### **247 Protection of auditors etc**

(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 financial statements, financial reports 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.

### **248 Financial year**

- (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**

### **249 Registers to be kept by co-operatives** (cf Vic Act s 244)

- (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 CCUs 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,
  - (f1) a register of notifiable interests in accordance with section 294,
  - (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.

### **250 Location of registers** (cf Vic Act s 245)

- (1) A register kept under this Division must be kept at:
  - (a) the co-operative's registered office, or

- (b) an office at the co-operative's principal place of business, or
  - (c) an office (whether of the co-operative or of someone else) where the work involved in maintaining the register is done, or
  - (d) another office approved by the Registrar.
- (2) The office must be in New South Wales.
- (3) The co-operative must lodge with the Registrar a notice of the address at which the register is kept within 28 days after the register is:
- (a) established at an office that is not the co-operative's registered office, or
  - (b) moved from one office to another.

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

**251 Inspection of registers etc** (cf Vic Act s 246)

- (1) A co-operative must have at the office where the registers are kept and available during all reasonable hours for inspection by any member 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 minutes of each general meeting of the co-operative,
  - (d) a copy of the last annual report of the co-operative under section 252,
  - (e) the register of directors, members and shares,
  - (f) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative,
  - (g) such other registers as the regulations provide are to be open for inspection under this section.

Maximum penalty: 20 penalty units.

- (2) If a register is not kept on a computer, the person inspects the register itself.
- (3) If the register is kept on a computer, the person inspects a hard copy of the information on the register unless the person and the co-operative agree that the person can access the information by computer.
- (4) A member is entitled to make a copy of entries in a register specified in subsection (1) 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.

- (5) The fee required by the rules must not exceed the fee prescribed by the regulations for a copy of any entry in the Register.
- (6) A co-operative must:
- (a) permit a member to inspect a document or make a copy of a document that the member is entitled to inspect or make under this section, and
  - (b) give the member all reasonable assistance to inspect the document or make the copy.

Maximum penalty: 20 penalty units.

- (7) A co-operative must have at the place where the registers are kept and available during all reasonable hours for inspection by any person such documents in relation to the co-operative as are prescribed by the regulations.

Maximum penalty: 20 penalty units.

**251A Use of information on registers** (cf Vic Act s 247)

- (1) A person must not:
- (a) use information about a person obtained from a register kept under this Division to contact or send material to the person, or
  - (b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person,

unless the requirements of subsection (2) are met.

Maximum penalty: 50 penalty units or imprisonment for one year, or both.

- (2) The requirements of this section for use or disclosure of the information are that the use or disclosure of the information is:
- (a) relevant to the holding of the directorship, membership, shares, loans, securities, debentures or deposits concerned or the exercise of the rights attaching to them, or
  - (b) approved by the board, or
  - (c) necessary to comply with a requirement of this Act.
- (3) A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.
- (4) A person who makes a profit from a contravention of subsection (1) owes a debt to the co-operative. The amount of the debt is the amount of the profit.

**251B Notice of appointment etc of directors and officers** (cf Vic Act s 248)

- (1) A co-operative must give notice to the Registrar in accordance with this section 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:
  - (a) be in the form approved by the Registrar, and
  - (b) be given within 28 days after the appointment or cessation of appointment, and
  - (c) specify the particulars prescribed by the regulations of the appointment or cessation of appointment.

Maximum penalty: 20 penalty units.

**252 Annual report** (cf Vic Act s 249)

- (1) A co-operative must send to the Registrar within the required period in each year an annual report containing each of the following:
  - (a) a list in the form approved by the Registrar specifying the secretary, directors and the principal executive officers of the co-operative and of each of its subsidiaries, as at the date the annual report is filed with the Registrar,
  - (b) if the co-operative is required under section 243 to prepare a financial report of the co-operative for its most recently ended financial year—a copy of the financial report,
  - (c) a copy of the financial report of each subsidiary of the co-operative for the most recently ended financial year of the subsidiary (unless the legislation under which the subsidiary is incorporated does not require an annual report to be prepared by that subsidiary),
  - (d) a copy of any report by the auditor or the directors of the co-operative or subsidiary:
    - (i) prepared under section 243, or
    - (ii) on a financial report mentioned in paragraph (b) or (c),
  - (e) a return in the form prescribed by the regulations containing such other particulars as may be so prescribed.

Maximum penalty: 20 penalty units.

- (2) For the purposes of subsection (1) **the required period** is:



- (a) 28 days after the annual general meeting of the co-operative, or
- (b) if the annual general meeting of the co-operative is not held within the period specified in section 198 (2) (a), 28 days after the end of that period.

### **253 List of members to be furnished at request of Registrar**

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.

### **254 Special return to be furnished at request of Registrar**

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**

### **255 Name to include certain matter** (cf Vic Act s 252)

- (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.
- (4) A body corporate which is formed or incorporated under any Act other than this Act must not register under that other Act by any name which includes the word "Co-operative" or the abbreviation "Co-op." or any word or words importing a similar meaning.

Maximum penalty: 20 penalty units.

- (5) Subsection (4) does not apply to:
  - (a) a co-operative housing society within the meaning of the *Co-operation Act 1923*, or
  - (b) a credit union or foreign society within the meaning of the *Financial Institutions (NSW) Code*, or
  - (c) a company or society formed or incorporated under any other Act before the commencement of the *Co-operation Act 1923*, or

- (d) the Farmers and Settlers Co-operative Insurance Company of Australia Limited, or
  - (e) a foreign co-operative registered under Part 13A, or
  - (f) a co-operative exempted by the regulations from the operation of that subsection and that complies with any conditions to which the exemption is made subject, or
  - (g) a co-operative exempted by the Registrar in writing from the operation of that subsection and that complies with any conditions to which the exemption is made subject, 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) 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.
- (7) An exemption granted by the Registrar may be limited as to time.
- (8) 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.

#### **256 Approval for omission of “Limited”**

- (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.

### **257 Use of abbreviations**

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.

### **258 Name to appear on business documents etc** (cf Vic Act s 254)

- (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) In this section:

***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 by the regulations as a class of business documents.

### **259 Change of name of co-operative** (cf Vic Act s 255)

- (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 such as is likely to be confused with the name of a body corporate or a registered business name.

**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.

**261 Registered office of co-operative** (cf Vic Act s 256)

- (1) A co-operative must have a 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 28 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**

#### **262 Meaning of obtaining financial accommodation** (cf Vic Act s 257)

A reference in this Division to the obtaining of financial accommodation includes a reference to the obtaining of credit and the borrowing or raising of money by any means.

#### **263 Fund raising to be in accordance with Act and regulations** (cf Vic Act s 258)

- (1) The regulations may impose requirements and restrictions on the obtaining of financial accommodation and the giving of security in connection with the obtaining of financial accommodation by a co-operative.
- (2), (3) (Repealed)

#### **263A Limits on deposit taking** (cf Vic Act s 259)

A co-operative must not accept money on deposit unless:

- (a) the co-operative was authorised by its rules (in whatever terms made or adopted) immediately before 1 December 1997 to accept money on deposit, or
- (b) the co-operative was a deposit-taking body corporate immediately before it became a co-operative and it is authorised by its rules to accept money on deposit, or
- (c) in the case of a merged co-operative, one or more of the co-operatives involved in the merger was a deposit-taking co-operative immediately before the registration of the merged co-operative and the merged co-operative is authorised by its rules to accept money on deposit.

#### **263B Members etc not required to see to application of money** (cf Vic Act s 260)

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 any provision of this Act or the regulations or the rules of the co-operative.

#### **264 Registrar's directions concerning fund raising**

- (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.

### **265 Subordinated debt**

- (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 Act (as applying under Division 4 of Part 12 of this Act).

### **266 Application of Corporations Act to issues of debentures** (cf Vic Act s 263)

- (1) Subject to subsection (2), the debentures of a co-operative are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 1.2A (Disclosing entities), Chapter 2L (Debentures), Chapter 6D (Fundraising) and Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services) of the Corporations Act, subject to the following modifications:
- (a) the provisions apply as if a co-operative were a company,
  - (b) a reference in those provisions to a corporation includes a reference to a co-operative,
  - (c) a reference in those provisions to ASIC is a reference to the Registrar.

**Note—**

See the note to section 10 (1).

- (2) The provisions of the Corporations Act made applicable to the debentures of a co-operative by this section do not apply to the following:
  - (a) a loan to which section 268 of this Act applies,
  - (b) an issue of debentures of a co-operative that is made:
    - (i) solely to members, or
    - (ii) solely to members and employees of the co-operative, or
    - (iii) to a person who on becoming an inactive member of the co-operative has had his or her share capital converted to debt.
- (3) Expressions used in this section that are not defined in this Act have the same meaning as in the Corporations Act.
- (4) The Registrar may exempt a co-operative from any of the requirements of the Corporations Act applied by this section.
- (5) An exemption may be granted unconditionally or subject to conditions. A co-operative that contravenes a condition of an exemption is taken not to be exempt from the requirements of the Corporations Act applied by this section.

**266A Disclosure statement** (cf Vic Act s 264)

- (1) This section applies to the issue of debentures of a co-operative where the issue is made:
  - (a) solely to members, or
  - (b) solely to members and employees of the co-operative.
- (2) Before issuing to the person debentures to which this section applies, a co-operative must provide a person with a disclosure statement, approved by the Registrar, and containing such information as is reasonably necessary to enable a person to make an informed assessment of the financial prospects of the co-operative, including:
  - (a) the purpose for which the money raised by the co-operative by the issue of debentures is to be used, and
  - (b) the rights and liabilities attaching to the debentures, and
  - (c) the financial position of the co-operative, and
  - (d) the interests of the directors of the co-operative in the issue of the debentures,



and

(e) any compensation or consideration to be paid to officers or members of the co-operative in connection with the issue of debentures, and

(f) such other matters as the Registrar directs.

(3) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the issue of debentures.

**266B Approval of board for transfer of debentures** (cf Vic Act s 265)

A debenture of a co-operative cannot be sold or transferred except with the consent of the board and in accordance with the rules of the co-operative.

**267 Application of Corporations Act—re-issue of redeemed debentures**

Debentures issued by a co-operative to any of its members are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to section 563AAA of the Corporations Act as if a co-operative were a company.

**268 Compulsory loan by member to co-operative** (cf Vic Act s 267)

(1) If the rules of the co-operative so provide, 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 special resolution of the co-operative.

(2) The proposal must not require a loan to be for a term exceeding 7 years or such other term as is prescribed by the regulations.

(3) The proposal must:

(a) be accompanied by a disclosure statement, approved by the Registrar, that explains the purpose for which the money raised by the co-operative pursuant to the proposal is to be used and includes any other information that the Registrar directs, and

(b) clearly show the total amount of the loan to be raised by the co-operative and the basis on which the money required to be lent by each member is to be calculated, and

(c) be accompanied by a statement informing the member that the member may inform the board by notice on or before the date specified in the statement (being a date before the passing of the special resolution) that the member resigns on the passing of the special resolution.

- (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) A proposal to deduct money 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.
- (6) When approved, the proposal is binding on:
  - (a) all members of the co-operative at the date of passing of the special resolution other than a member who has given a notice of resignation in accordance with subsection (3) (c), and
  - (b) 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.
- (7) Sections 17 (except subsections (2), (4) and (11)) and 28A apply to the approval of a disclosure statement under this section with any necessary modifications and in particular as if any reference in section 17 to a formation meeting were a reference to the special resolution.

**268A Interest payable on compulsory loan** (cf Vic Act s 268)

- (1) The rate of interest payable by a co-operative in respect of a loan under section 268 during any period is:
  - (a) in the case of a co-operative with share capital:
    - (i) the rate (or, if 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
    - (ii) 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
    - (iii) if a rate of dividend has never been determined in respect of the share capital of the co-operative, at the rate that the board of the co-operative considers reasonable, or
  - (b) in the case of a co-operative without share capital, at the rate that the board of the co-operative considers reasonable, or
  - (c) if the rules provide for a rate to be payable that is higher than the rate applicable

under paragraph (a) or (b), at that higher rate.

- (2) A 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.

## **Division 2 Co-operative capital units (CCUs)**

### **269 General nature of CCU**

- (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.
- (5) Despite any rule of law or equity to the contrary, a condition subject to which a CCU is issued, whether the CCU is issued before or after the commencement of this subsection, is not invalid merely because the CCU is, by the condition, made irredeemable or redeemable only on the happening of a contingency however remote or at the end of a period however long.

### **269A Priority of CCUs on winding up**

- (1) On a winding up of a co-operative, a debt owed to a person as the holder or former holder of a CCU issued by the co-operative is to rank for priority of payment in accordance with the terms of issue of the CCU.
- (2) Such a debt may rank as a secured debt if it is secured but if it is unsecured may not rank in priority to other unsecured debts. It may rank equally with or behind unsecured debts and (if the debt ranks behind unsecured debts) may rank in priority

to, equally with or behind debts due to contributories.

**270 Division 1 applies to issue of CCUs**

- (1) The issuing of CCUs is to be considered to be the obtaining of financial accommodation and accordingly Division 1 applies to the issue of CCUs.
- (2) For the purpose of Division 1, a CCU is to be considered to be a debenture.

**271 CCUs can be issued to non-members**

CCUs may be issued to persons whether or not they are members of the co-operative.

**272 Minimum requirements for rules concerning CCUs**

The rules of a co-operative that permit the co-operative to issue CCUs 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 CCUs,
- the rights of the holders of CCUs 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 CCUs 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.

**273 CCUs not to be issued unless terms of issue approved by Registrar**

- (1) A co-operative is not to issue CCUs 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 specify the following (but this subsection does not limit the contents of the terms of issue):
  - (a) details of entitlement to repayment of capital,
  - (b) details of entitlement to participate in surplus assets and profits,

- (c) details of entitlement to interest on capital (whether cumulative or non-cumulative interest),
  - (d) details of how capital and interest on capital are to rank for priority of payment on a winding up.
- (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 CCUs, the terms of redemption and the manner of transferability of CCUs.
- (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.

#### **274 Directors' duties concerning CCUs**

In discharging their duties, it is proper for the directors of a co-operative to take into account that the holders of CCUs have none of the rights and entitlements of, and are not entitled to be regarded as, members of the co-operative.

#### **275 Redemption of CCUs**

- (1) The redemption of CCUs is not to be considered to be a reduction in the share capital of the co-operative.
- (2) A co-operative may redeem CCUs 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) CCUs 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 CCUs, made for the purpose of the redemption.
- (4) An issue of CCUs 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 CCUs.
- (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.

#### **276 Capital redemption reserve**

- (1) This section applies if CCUs 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 CCUs 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.

### **277 Issue of shares in substitution for redemption**

- (1) If a co-operative has redeemed or is about to redeem CCUs 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 CCUs redeemed or to be redeemed, as if those CCUs 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 CCUs redeemed or to be redeemed, as if those CCUs had never been issued.
- (2) This section applies only if the terms of issue of the CCUs provide for the conversion of CCUs held by an active member of the co-operative into shares of the co-operative.

## **Division 3 Charges**

### **278 Registration of charges**

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.

### **279 Receivers and managers**

Schedule 4 has effect.

## **Division 4 Disposal of surplus from activities**

### **280 Retention of surplus for benefit of co-operative** (cf Vic Act s 271)

The board of a co-operative may resolve to retain all or any part of the surplus arising in any year from the business of the co-operative to be applied for the benefit of the co-operative.

### **281 Application for charitable purposes or members' purposes** (cf Vic Act s 272)

- (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. The expression **charitable purpose** includes any benevolent, philanthropic or patriotic purpose.

- (2) The rules of a trading 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 supporting any activity approved by the co-operative.
- (3) The rules must limit the amount that may be applied under subsection (1) or (2) to a specified proportion of the surplus.
- (4) A co-operative may apply part of the surplus for a purpose and to the extent authorised by rules under subsection (1) or (2).

**282 Distribution of surplus or reserves to members** (cf Vic Act s 273)

- (1) The rules of a trading 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 or a part of the reserves of the co-operative by:
  - (a) distribution to members as a rebate on the basis of business done with the co-operative, or
  - (b) the issue of bonus shares to members on the basis of the members' dealings with the co-operative or on the basis of shares held by the members, or
  - (c) the issue to members of a limited dividend for shares held by the members.
- (2) The amount of any rebate or dividend payable to a member under subsection (1) may, with the consent of the member, be applied:
  - (a) in payment for the issue to the member of bonus shares, or
  - (b) as a loan to the co-operative.
- (3) In this section **limited dividend** means a dividend that does not exceed the amount prescribed by the regulations or such other amount or rate as the Registrar may approve in any particular case.

**283 Application of surplus to other persons** (cf Vic Act s 274)

- (1) If authorised by its rules, any part of the surplus arising in any year from the business of a trading co-operative may be credited to any person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by him or her with the co-operative, if:
  - (a) the person was a member at the time the business was done and the membership has lapsed, or
  - (b) the person has applied for membership after the business was done.
- (2) Nothing in this section precludes the payment of a bonus to an employee in accordance with the terms of his or her employment.

## **Division 5 Prudential standards etc**

### **284 Prudential standards may be prescribed**

- (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.

**285 Acquisition and disposal of assets** (cf Vic Act s 275)

(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 as a going concern, the undertaking of the co-operative or a part of the undertaking that relates to its primary activities the value of which represents 5% or more of the total value of the undertaking,
- (b) acquire from or dispose to a director or employee of the co-operative, or a relative (within the meaning of the Corporations Act) of such a director or employee or of 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 that relate to its primary activities,
- (c) acquire an asset the value of which exceeds 5% or more of the assets of the co-operative 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 the 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: 60 penalty units.

## **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**

- (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.

#### **287 Notice required to be given of substantial share interest**

- (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: 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.

**288 Requirements for notices** (cf Vic Act s 279)

A notice required under this Division must:

- (a) be in the form approved by the Registrar, and
- (b) specify the prescribed particulars of the interest or change being notified.

**289 Maximum permissible level of share interest**

- (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 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.
- (4) The Council's approval may be given unconditionally or subject to conditions. A person who contravenes a condition of an approval is taken not to have been given approval.

**290 Shares to be forfeited to remedy contravention**

- (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).

### **291 Powers of board in response to suspected contravention**

- (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.

### **292 Powers of Court with respect to contraventions**

- (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.

### **293 Co-operative to inform Registrar of interest over 20%**

- (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.

#### **294 Co-operative to keep register**

(1) A co-operative must keep a register of notifiable interests in which are 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.

#### **295 Unlisted companies to provide list of shareholders etc** (cf Vic Act s 286)

(1) This section applies to a company (within the meaning of the Corporations Act) that is not a listed corporation (within the meaning of that Act).

(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 Act) 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 Act) of the company.

(3) Such a list is to be furnished within 28 days after the end of each financial year of the company and within 28 days 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.

### **296 Excess share interest not to affect loan liability**

- (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.

### **297 Extent of operation of Division**

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.

### **298 Registrar may grant exemption from Division**

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**

### **299 Share offers to which Division applies**

- (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 Act,
  - (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.

### **300 Requirements to be satisfied before offer can be made**

- (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.

### **301 Some offers totally prohibited if they discriminate**

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.

### **302 Offers to be submitted to board first**

- (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.

**303, 304 (Repealed)**

**305 Announcements of proposed takeovers concerning proposed company**

- (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 Act.
- (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 Act 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* as in force on 12 March 2000.

### **306 Additional disclosure requirements for offers involving conversion to company**

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 Act, 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.

### **307 Consequences of prohibited offer**

- (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.

### **308 Council may grant exemptions**

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 Merger, transfer of engagements, winding up etc**

### **Division 1 Merger and transfer of engagements**

#### **309 Application of Division** (cf Vic Act s 298)

This Division does not apply to a merger or transfer of engagements to which Part 13A applies.

#### **310 Mergers and transfers of engagements of local co-operatives** (cf Vic Act s 299)

Any 2 or more co-operatives may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division.

#### **311 Requirements before application can be made** (cf Vic Act s 300)

- (1) Before co-operatives can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives by:
  - (a) a special resolution passed by means of a special postal ballot, or
  - (b) if permitted by subsection (2)—a resolution of the board of the co-operative.
- (2) The proposed merger or transfer of engagements may be approved by resolution of the board of a co-operative if the Registrar consents to that procedure applying in the particular case.

#### **311A Disclosure statement required** (cf Vic Act s 301)

- (1) A resolution of a co-operative is not effective for the purposes of this Division unless this section and section 194 (1), (2) and (4) have been complied with.
- (2) Each co-operative must send to each of its members a disclosure statement approved by the Registrar specifying:
  - (a) the financial position of the each co-operative concerned in the proposed merger or transfer of engagements as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement, and
  - (b) any interest that any officer of each co-operative has in the proposed merger or transfer of engagements, and
  - (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of each co-operative in relation to the proposed merger or transfer of engagements, and

- (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements, and
  - (e) in the case of a transfer of engagements, whether it is a total or partial transfer of engagements, and
  - (f) any other information that the Registrar directs.
- (3) The disclosure statement must be sent to the members of each co-operative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later 21 days before the day on which the ballot commences.

**311B Making an application** (cf Vic Act s 302)

- (1) An application for approval of a merger or transfer of engagements under this Division must be made to the Registrar in the manner and form required by the Registrar.
- (2) An application for approval of a merger must be accompanied by 2 copies of the proposed rules of the merged co-operative and any other particulars required by the Registrar.

**311C Approval of merger** (cf Vic Act s 303)

- (1) The Registrar must approve a merger pursuant to an application under this Division if satisfied that:
  - (a) this Division has been complied with in relation to the application, and
  - (b) the proposed rules of the merged co-operative are consistent with this Act and the regulations and are such that may reasonably be approved, and
  - (c) the certificates of registration of the co-operatives have been surrendered to the Registrar, and
  - (d) there is no good reason why the merged co-operative and its rules should not be registered.
- (2) On approving an application for merger, the Registrar must:
  - (a) cancel the registration of the co-operatives involved in the merger, and
  - (b) register the merged co-operative and its rules, and
  - (c) issue to the merged co-operative a certificate of registration under this Act.
- (3) A merger takes effect on the issue of the certificate of registration for the merged co-operative.

### **312 Exemptions concerning mergers**

- (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 concerning mergers to which this Division applies and may grant such an exemption unconditionally or subject to conditions.
- (2), (3) (Repealed)

### **313 Approval of transfer of engagements** (cf Vic Act s 304)

- (1) The Registrar must approve a transfer of engagements pursuant to an application under this Division if satisfied that:
  - (a) this Division has been complied with in relation to the application, and
  - (b) the rules or proposed rules of the transferee co-operative are adequate, and
  - (c) in the case of a total transfer of engagements from a co-operative, the certificate of registration of the co-operative has been surrendered to the Registrar, and
  - (d) there is no good reason why the transfer of engagements should not take effect.
- (2) A transfer of engagements takes effect on the day specified in the approval of the Registrar.

### **314 Transfer of engagements by direction of Registrar** (cf Vic Act s 305)

- (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: 20 penalty units.

### **315 Representations to Council on direction to transfer engagements**

- (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**

### **316 Application for transfer** (cf Vic Act s 307)

- (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 Act,
  - (b) an incorporated association under the [Associations Incorporation Act 2009](#),
  - (c) a building society,
  - (d) a credit union,
  - (e) a friendly society,
  - (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 an application is made, the co-operative must by special resolution passed by means of a special postal ballot:

- (a) approve the proposed application, and
  - (b) determine under what name the co-operative is to apply to be incorporated or registered, and
  - (c) adopt any memorandum or articles of association or constitution, replaceable rules or other 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.
- (5) For the avoidance of doubt, a co-operative is authorised for the purposes of section 601BC (8) (d) of the Corporations Act to become registered as a company under that Act if the co-operative applies for the transfer in accordance with the provisions of this Division.

### **317 Meaning of “new body” and “transfer”**

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**.

### **318 New body ceases to be registered as co-operative**

On the transfer of a co-operative under this Division, it ceases to be registered as a co-operative under this Act.

### **319 Transfer not to impose greater liability etc**

- (1) Any memorandum or articles of association or constitution, replaceable rules or other 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.

### **320 Effect of new certificate of incorporation**

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.

### **321 New body is a continuation of the co-operative**

- (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 merger etc on property, liabilities etc) applies to a transfer under this Division.
- (3) If the new body is a company under the Corporations Act, subsections (1) and (2) have effect subject to the provisions of section 601BM of that Act.

#### **Note—**

Section 601BM of the Corporations Act provides that the registration of a body as a company under Part 5B.1 of that Act does not:

- (a) create a new legal entity, or
- (b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members), or
- (c) render defective any legal proceedings by or against the body or its members.

### **321A Registration under the [Associations Incorporation Act 2009](#)**

- (1) Sections 320 and 321 do not apply to or in respect of a co-operative that applies for registration under the [Associations Incorporation Act 2009](#).

#### **Note—**

See sections 6 and 9 of the [Associations Incorporation Act 2009](#) in relation to the registration under that Act of registrable corporations. See also the definition of **registrable corporation** in section 4 of that Act.

- (2) For the purposes of section 6 (3) (g) of the [Associations Incorporation Act 2009](#), the Registrar may issue a document declaring that the requirements of this Act in relation to the transfer of a co-operative's registration under this Act to registration under that Act have been complied with.

- (3) If a former co-operative becomes registered under the *Associations Incorporation Act 2009*, the Registrar may cancel its registration under this Act.

### **322 Stamp duty**

- (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 Act 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 as 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**

### **323 Methods of winding up**

- (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 Act may be so wound up.

### **324 Winding up on Registrar's certificate**

- (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 Act) 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.
- (4A) The Registrar may exempt the liquidator from the requirement to provide the security required by subsection (4), either unconditionally or subject to conditions. A liquidator who contravenes a condition of an exemption is taken not to be exempt from the requirement.
- (5) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the Registrar.



**325 Application of Corporations Act to winding up** (cf Vic Act s 316)

The winding up or deregistration of a co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Parts 5.4–5.7 and Part 5A.1 of the Corporations Act, subject to the following modifications:

- (a) a reference in those provisions to a special resolution or an extraordinary resolution is to be read as a reference to a special resolution within the meaning of this Act,
- (b) a reference in those provisions to ASIC is to be read as a reference to the Registrar,
- (c) section 461 (1) (h) is to be read as if “ASIC has stated in a report prepared under Division 1 of Part 3 of the ASIC Act that, in its opinion:” were omitted and “the Registrar has, as a result of an inquiry conducted under Division 2 or Division 4 of Part 14 of the *Co-operatives Act 1992*, stated that:” were inserted instead,
- (d) section 464 (1) is to be read as if “Where ASIC is investigating, or has investigated, under Division 1 of Part 3 of the ASIC Act:” were omitted and “Where the Registrar is holding or has held an inquiry under Division 2 or Division 4 of Part 14 of the *Co-operatives Act 1992* in relation to:” were inserted instead,
- (e) section 513B (Voluntary winding up) is to be read as if it were amended by inserting after paragraph (d):

“(da) if the winding up is on the certificate of the Registrar—on the date that the certificate is given, or”,

- (f) section 516 is to be read as if “together with any charges payable by him or her to the co-operative in accordance with the rules” were inserted after “past member”,
- (g) section 542 (3) is to be read as if the following paragraph were inserted after paragraph (c):

“, and

(d) in the case of a winding up on a certificate of the Registrar under section 323 of the *Co-operatives Act 1992*—with the consent of the Registrar.”

- (h) a reference in those provisions to a registered liquidator includes a reference to a person approved by the Registrar as a liquidator of a co-operative,
- (i) a reference in those provisions to section 233 (Orders the Court can make) of the Corporations Act is to be read as a reference to Division 5 (Oppressive conduct of affairs) of Part 4 of this Act,

- (j) for the purposes of the application of those provisions to a winding up on the certificate of the Registrar, the winding up is to be considered to be a voluntary winding up (but section 490 of the Corporations Act does not apply),
- (k) those provisions are to be read subject to sections 76 (Liability of members to co-operative) and 331 (Liability of member to contribute in a winding up where shares forfeited etc) of this Act for the purposes of determining the liability of members and past members to contribute on a winding up of a co-operative,
- (l) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

See the note to section 10 (1).

**326 Restrictions on voluntary winding up**

- (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.

**327 Commencement of members' voluntary winding up**

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.

**328 Distribution of surplus—non-trading co-operatives** (cf Vic Act s 319)

- (1) On a winding up of a non-trading co-operative, the surplus property of the co-operative must 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.

**329 Liquidator—vacancy may be filled by Registrar**

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 Act (as applied by this Division), the Registrar may appoint a person to be liquidator.

**330 Review of liquidator's remuneration** (cf Vic Act s 321)

Any member or creditor of a co-operative or the liquidator may at any time before the completion of the winding up of the co-operative apply to the Court to review the amount of the remuneration of the liquidator.

**331 Liability of member to contribute in a winding up where shares forfeited etc**

(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 Administration of co-operative—application of Corporations Act**

**332 Adoption of Part 5.3A of Corporations Act** (cf Vic Act s 323)

A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 5.3A and Division 3 of Part 5.9 of the Corporations Act, subject to the following modifications:

- (a) those provisions are to be read as if a co-operative were a company,
- (b) those provisions are to be read as including the provisions of section 332A of this Act,
- (c) a reference in those provisions to sections 128 and 129 of the Corporations Act is to be read as a reference to sections 36–38 and 41 of this Act,
- (d) a reference in those provisions to an administrator appointed under a provision of Part 5.3A is to be read as including a reference to an administrator appointed by the Registrar under the provision included by paragraph (b),
- (e) a reference in those provisions to ASIC is to be read as a reference to the Registrar,
- (f) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

See the note to section 10 (1).

**332A Appointment of administrator by Registrar**

- (1) The Registrar may, after an inquiry into the affairs of a co-operative under Division 2 or 4 of Part 14, appoint a person as an administrator for the purposes of the provisions of Part 5.3A of the Corporations Act (as applying under section 332) if the Registrar is of the opinion that the co-operative is insolvent or likely to become insolvent at some future time.
- (2) The person appointed by the Registrar need not be a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth.

**Division 6 Appointment of administrator**

**333 Appointment of administrator of co-operative** (cf Vic Act s 324)

- (1) The Registrar may, by written notice, appoint an administrator to conduct the affairs of a co-operative.
- (2) A notice of appointment of an administrator must specify:
  - (a) the date of appointment, and
  - (b) the appointee's name, and

(c) the appointee's business address.

- (3) If the appointee's name or business address changes, the appointee must immediately give written notice of the change to the Registrar.
- (4) The Registrar must not appoint an administrator unless the necessary grounds for the taking of that action exist, as referred to in section 343.

**334 Effect of appointment of administrator** (cf Vic Act s 325)

- (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, and
  - (d) the administrator may terminate any contract for providing other services to the co-operative.
- (2) An administrator of a co-operative has the functions of the board of the co-operative, including the board's powers of delegation.
- (3) A director of a co-operative must not be appointed or elected while the administrator is in office except as provided by this Division.

**335 Revocation of appointment** (cf Vic Act s 326)

- (1) An administrator holds office until the administrator's appointment is revoked or the administrator dies.
- (2) The Registrar may, by written notice, revoke the appointment of an administrator.
- (3) When a liquidator of a co-operative is appointed, the appointment of any administrator of the co-operative is automatically revoked.
- (4) Immediately on the revocation of an administrator's appointment, the administrator must prepare and submit a report to the Registrar showing how the administration was carried out, and for that purpose an administrator has access to the co-operative's records and documents.
- (5) On providing the report and accounting fully in relation to the administration of the co-operative to the satisfaction of the Registrar, the administrator is released from any further duty to account in relation to the administration of the co-operative other than on account of fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations.

- (6) Before revoking the appointment of an administrator of a co-operative, the Registrar must:
  - (a) appoint another administrator, or
  - (b) appoint a liquidator, or
  - (c) 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
  - (d) appoint directors of the co-operative.
- (7) Directors elected or appointed under subsection (6):
  - (a) take office on revocation of the administrator's appointment, and
  - (b) in the case of directors appointed under subsection (6), hold office until the next annual general meeting of the co-operative after the revocation of that appointment.

**336 Expenses of administration** (cf Vic Act s 327)

- (1) The expenses of and incidental to the conduct of a co-operative's affairs by an administrator are payable from the co-operative's funds.
- (2) The expenses of conducting a co-operative's affairs include:
  - (a) if the administrator is not an officer or employee of the public service, remuneration of the administrator at a rate approved by the Registrar, or
  - (b) if the administrator is an officer or employee of the public service, the amount that the Registrar certifies should be paid to the credit of the public service as repayment of the administrator's remuneration.
- (3) An amount certified under subsection (2) (b) may be recovered in a court of competent jurisdiction as a debt due to the Crown.
- (4) An administrator has, in relation to the expenses specified in subsection (1), the same priority on the winding up of a co-operative as the liquidator of the co-operative has.

**337 Liabilities arising from administration** (cf Vic Act s 328)

- (1) If a co-operative incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act or the regulations or the rules of the co-operative by an administrator, the administrator is liable for the loss.
- (2) An administrator is not liable for any loss that is not a loss to which subsection (1) applies but must account for the loss in a report given under section 335.

**337A Additional powers of Registrar** (cf Vic Act s 329)

- (1) If the Registrar appoints directors of a co-operative under section 335, the Registrar may, by written notice given to the co-operative, specify:
  - (a) a time during which this section is to apply in relation to the co-operative, and
  - (b) the terms and conditions on which all or any of the directors hold office, and
  - (c) the rules that are to be the co-operative's rules.
- (2) While this section applies to a co-operative, the Registrar may:
  - (a) from time to time remove and appoint directors, and
  - (b) from time to time, vary, revoke or specify new terms and conditions in place of all or any of the terms and conditions specified under subsection (1), and
  - (c) amend all or any of the rules specified under subsection (1).
- (3) The Registrar may, by written notice given to the co-operative, extend the time for which this section is to apply in relation to a co-operative.
- (4) A rule specified by the Registrar under this section as a rule of a co-operative:
  - (a) is not to be altered except in the way set out in this section, and
  - (b) if it is inconsistent with any other rule of the co-operative, prevails over the other rule, and the other rule is to the extent of the inconsistency invalid, and
  - (c) has the same evidentiary value as is by this Act accorded to the co-operative's rules and to copies of them.

**337B Stay of proceedings** (cf Vic Act s 330)

- (1) If the Registrar appoints an administrator to conduct a co-operative's affairs, a person must not begin or continue any proceeding in a court against the co-operative until the administrator's appointment is revoked except with the leave of the Court and, if the Court grants leave, in accordance with any terms and conditions that the Court imposes.
- (2) A person intending to apply for leave of the Court under subsection (1) must give the Registrar not less than 10 days' notice of intention to apply.
- (3) On the hearing of an application under subsection (1), the Registrar may be represented and may oppose the granting of the application.

**337C Administrator to report to Registrar** (cf Vic Act s 331)

On the receipt of a request from the Registrar, the administrator of a co-operative must,

without delay, prepare and give to the Registrar a report showing how the administration is being carried out.

### **338 Council may direct revocation of administrator's appointment**

- (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 merger etc on property, liabilities etc**

### **339 How this Division applies to a merger** (cf Vic Act s 332)

- (1) This Division applies to a merger of co-operatives.
- (2) In the application of this Division to a merger:

**new body** means the co-operative that results from the merger.

**original body** means each co-operative that is a party to the merger.

**relevant day** means the day on which the merged co-operative is registered under this Act.

### **340 How this Division applies to a transfer of engagements** (cf Vic Act s 333)

- (1) This Division applies to a transfer of the engagements of a co-operative to another co-operative under Division 1.
- (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 by the Registrar under that section 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.

**341 How this Division applies to a transfer of incorporation**

- (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.

**342 Effect of merger on property, liabilities etc** (cf Vic Act s 335)

- (1) In this section:

**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) (Repealed)
- (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**

### **343 Grounds for winding up, transfer of engagements, appointment of administrator**

- (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.

**343A (Repealed)**

**343B Application of Corporations Act concerning insolvent co-operatives** (cf Vic Act s 338)

A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 5.7B of the Corporations Act, subject to the following modifications:

- (a) those provisions are to be read as if a co-operative were a company,
- (b) a reference in those provisions to any provision of sections 286–290 of the Corporations Act is to be read as a reference to the equivalent provisions of the regulations under section 243 of this Act,
- (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

See the note to section 10 (1).

## **Part 13 Arrangements and reconstructions**

## **Division 1 General requirements**

### **344 Requirements for binding compromise or arrangement**

- (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.

### **345 Court ordered meeting of creditors**

- (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.

### **346 Registrar to be given notice and opportunity to make submissions**

- (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.

### **347 Results of 2 or more meetings**

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.

### **348 Persons disqualified from administering compromise etc**

- (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.

### **349 Application of provisions of Corporations Act to person appointed**

- (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) A person appointed to administer a compromise or arrangement is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to section 536 of the Corporations Act as if:
  - (a) the appointment were an appointment as a liquidator of the co-operative, and
  - (b) a reference in that section to a liquidator were a reference to that person, and
  - (c) a reference in that section to ASIC were a reference to the Registrar.

#### **Note—**

See the note to section 10 (1).

### **350 Copy of order to be attached to rules**

- (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.

**351 Directors to arrange for reports** (cf Vic Act s 346)

- (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 merger 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 Australian legal practitioners 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: 20 penalty units.

**352 Power of Court to restrain further proceedings**

- (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.

**353 Court need not approve compromise or arrangement takeovers** (cf Vic Act s 348)

- (1) The Court need not 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**

### **354 Explanatory statement required to accompany notice of meeting etc**

- (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.

### **355 Requirements for explanatory statement**

- (1) An explanatory statement must be as 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.

### **356 Contravention of Division—offence by co-operative**

- (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.

### **357 Provisions for facilitating reconstructions and mergers** (cf Vic Act s 352)

- (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 merger 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 Act.
- (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 deregistration, 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 merger 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**

### **358 Definitions**

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.

### **359 Schemes and contracts to which Division applies**

- (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.

### **360 Acquisition of shares pursuant to notice to dissenting shareholder** (cf Vic Act s 355)

- (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 28 days 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.

### **361 Restrictions when excluded shares exceed 10%**

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).

### **362 Remaining shareholders may require acquisition** (cf Vic Act s 357)

- (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 28 days 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.

**363 Transfer of shares pursuant to compulsory acquisition** (cf Vic Act s 358)

- (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 28 days 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.

**364 Disposal of consideration for shares compulsorily acquired**

- (1) All sums received by the transferor under this Division are to be paid into a separate account with a bank, building society or credit union 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) Anything sum paid or consideration transferred to the Minister under subsection (2) is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 9.7 of the Corporations Act, subject to the following modifications:

- (a) a reference in those provisions to unclaimed property includes any such sum or consideration,
- (b) a reference in those provisions to ASIC is to be read as a reference to the Minister,
- (c) a reference in those provisions to the Commonwealth is to be read as a reference to New South Wales,
- (d) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

See the note to section 10 (1).

- (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**

### **365 Notification of appointment of scheme manager** (cf Vic Act s 360)

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: 10 penalty units.

### **366 Power of Court to require reports**

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.

### **367 Effect of out-of-jurisdiction compromise or arrangement**

- (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.

### **368 Jurisdiction to be exercised in harmony with Corporations Act jurisdiction**

The jurisdiction of the Court under this Part is intended to complement the Court's jurisdiction under the Corporations Act (as applied under this Act) and should be exercised in harmony with that jurisdiction.

### **369 Registrar may appear etc**

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 13A Foreign co-operatives**

### **Division 1 Introductory**

#### **369A Definitions** (cf Vic Act s 365)

In this Part:

**co-operatives law** means a law that under an order in force under section 369B is declared to be a co-operatives law for the purposes of this Part.

**non-participating co-operative** means a foreign co-operative other than a participating co-operative.

**participating co-operative** means a foreign co-operative that is registered, incorporated or formed under, or subject to, a co-operatives law.

**participating State** means any State in which a co-operatives law is in force.

**State** includes the Australian Capital Territory and the Northern Territory.

#### **369B Co-operatives law** (cf Vic Act s 366)

- (1) Subject to subsection (2), the Governor may, by order published in the Gazette, declare that a law of a State other than New South Wales is a co-operatives law for the purposes of this Part.
- (2) An order must not be made under subsection (1) in respect of the law of another State unless the Governor is satisfied that the law:

- (a) substantially corresponds to the provisions of this Act, and
- (b) contains provisions that are referred to in this Part as provisions of a co-operatives law that correspond to specified provisions of this Act.

## **Division 2 Registration of foreign co-operatives**

### **369C Operation of foreign co-operatives in New South Wales** (cf Vic Act s 367)

A foreign co-operative must not carry on business in New South Wales unless it is registered under this Part.

Maximum penalty: 240 penalty units.

### **369D What constitutes carrying on business** (cf Vic Act s 368)

- (1) A foreign co-operative carries on business in New South Wales if it:
  - (a) solicits for members in New South Wales, or
  - (b) seeks share capital in New South Wales, or
  - (c) provides any goods or services within New South Wales.
- (2) A foreign co-operative is not to be regarded as carrying on business in New South Wales only by reason that in New South Wales it:
  - (a) is or becomes a party to any action or suit or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute, or
  - (b) holds meetings of its directors or members or carries on other activities concerning its internal affairs, or
  - (c) maintains any bank account, or
  - (d) effects any sale through an independent contractor, or
  - (e) solicits or procures any offer that becomes a binding contract only if the offer is accepted outside New South Wales, or
  - (f) creates evidence of any debt or creates a charge on real and personal property, or
  - (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to the debts, or
  - (h) conducts an isolated transaction that is completed within a period of 31 days not being one of a number of similar transactions repeated from time to time.

### **369E Application for registration of participating co-operative** (cf Vic Act s 369)

- (1) A participating co-operative that proposes to carry on business as a co-operative in



New South Wales may apply to the Registrar in the manner prescribed by the regulations to be registered as a foreign co-operative.

- (2) An application by a participating co-operative must be accompanied by:
- (a) a certificate, not more than 2 months old, from the Registrar of the participating State, in which the participating co-operative is registered, incorporated or formed stating that the co-operative is complying with the provisions of the co-operatives law of that State prescribed for the purpose of the section of that law that corresponds with section 369N, and
  - (b) the documents prescribed for the purpose of the section of the co-operatives law of that State that corresponds with section 369N, and
  - (c) a copy of the current rules of the co-operative, and
  - (d) a statement, verified as prescribed by the regulations, setting out:
    - (i) the full name and address of each person who will act as agent of the co-operative in New South Wales, and
    - (ii) the address of the proposed registered office of the co-operative in New South Wales, and
    - (iii) a copy of an instrument appointing a person resident in New South Wales (other than a body corporate incorporated outside New South Wales) as a person on whom all notices and legal process may be served on behalf of the co-operative, and
  - (e) any other documents or information that are prescribed by the regulations, and
  - (f) the fee prescribed by the regulations.

**369F Application for registration of non-participating co-operative** (cf Vic Act s 370)

- (1) A non-participating co-operative that proposes to carry on business as a co-operative in New South Wales may apply to the Registrar in the manner prescribed by the regulations to be registered as a foreign co-operative.
- (2) An application by a non-participating co-operative must be accompanied by:
- (a) a copy of the current rules of the co-operative, and
  - (b) a statement, verified as prescribed by the regulations, setting out:
    - (i) the full name and address of each person who will act as agent of the co-operative in New South Wales, and
    - (ii) the address of the proposed registered office of the co-operative in New South

Wales, and

(iii) a copy of an instrument appointing a person resident in New South Wales (other than a body corporate incorporated outside New South Wales) as a person on whom all notices and legal process may be served on behalf of the co-operative, and

(c) any other documents or information that are prescribed by the regulations, and

(d) the fee prescribed by the regulations.

**369G Registrar to approve rules of non-participating co-operative** (cf Vic Act s 371)

A non-participating co-operative is not eligible for registration unless the Registrar is satisfied that the rules of the co-operative:

(a) comply with co-operative principles, and

(b) include acceptable active membership provisions, and

(c) provide procedures acceptable to the Registrar for disclosure of information, and

(d) provide that a member has one vote only, and

(e) make adequate provision for the duties of directors, and

(f) provide for acceptable accounting standards for the co-operative.

**369H Name of foreign co-operative** (cf Vic Act s 372)

(1) A foreign co-operative is eligible for registration under this Part if the name under which it proposes to carry on business in New South Wales is not such as is likely to be confused with the name of a body corporate or a registered business name.

(2) If the Registrar advises the foreign co-operative that the name under which it proposes to carry on business in New South Wales is likely to be confused with the name of a body corporate or registered business name, the co-operative may amend its application by substituting another name.

**369I Registration of foreign co-operative** (cf Vic Act s 373)

If, on due application, the Registrar is satisfied that the foreign co-operative is eligible for registration, the Registrar must register the foreign co-operative as a foreign co-operative and issue a certificate of registration in accordance with the regulations.

**369J Application of Act and regulations to foreign co-operatives** (cf Vic Act s 374)

The provisions of this Act and the regulations prescribed by the regulations apply, with all necessary modifications and any modifications prescribed by the regulations, to a foreign co-operative which is registered under this Part as if the foreign co-operative were a co-

operative.

**369K Registrar to be notified of certain changes** (cf Vic Act s 375)

Within 28 days of any alteration affecting:

- (a) the rules or constitution of a foreign co-operative registered under this Part, or
- (b) the directors of the foreign co-operative, or
- (c) the agents (or their addresses) of the foreign co-operative, or
- (d) the person appointed as the person on whom notices and legal process may be served on behalf of the foreign co-operative, or
- (e) the address of the registered office in New South Wales of the foreign co-operative, or
- (f) the address of the registered office in the participating State of a participating co-operative registered under this Part, or
- (g) the name under which the participating co-operative carries on business in the participating State, or
- (h) the address of the registered office of a non-participating co-operative registered under this Part in the State or country in which it is registered, incorporated or formed, or
- (i) the name under which a non-participating co-operative registered under this Part carries on business in the State or country in which it is registered, incorporated or formed,

the foreign co-operative must lodge with the Registrar particulars of the alteration accompanied by any documents prescribed by the regulations.

**369L Balance sheets** (cf Vic Act s 376)

- (1) A foreign co-operative registered under this Part must, within 6 months (or such longer period as the Registrar may allow) of the end of each of its financial years, lodge with the Registrar:
  - (a) in the case of a participating co-operative, a copy of the balance sheet relating to its financial affairs as at the end of the financial year, in the form and with any accompanying documents required by the co-operatives law of the participating State concerned, and
  - (b) in the case of a non-participating co-operative, a copy of the balance sheet relating to its financial affairs as at the end of the financial year, in the form and with any accompanying documents required by the Registrar.

Maximum penalty: 20 penalty units.

- (2) If the Registrar is of the opinion that a balance sheet lodged with the Registrar under this section does not sufficiently disclose the financial affairs of the foreign co-operative, the Registrar may, by written notice, require the foreign co-operative to give the Registrar further information or documents.
- (3) A foreign co-operative must comply with a notice given to it under subsection (2) within the period specified in the notice.

Maximum penalty: 60 penalty units.

**369M Cessation of business** (cf Vic Act s 377)

- (1) A foreign co-operative registered under this Part must, within 7 days of ceasing to carry on business as a co-operative in New South Wales, notify the Registrar in writing of that fact.

Maximum penalty: 60 penalty units.

- (2) On notifying the Registrar that it has ceased to carry on business as a co-operative in New South Wales, a foreign co-operative is no longer obliged to comply with this Part.
- (3) Unless the Registrar has been notified in writing that the foreign co-operative has resumed carrying on business as a co-operative in New South Wales, the Registrar must, one year after receiving a notification under subsection (1), cancel the registration of the foreign co-operative.

**369N Co-operative proposing to register as a foreign co-operative** (cf Vic Act s 378)

- (1) A co-operative that proposes to apply to be registered as a foreign co-operative in another participating State may apply to the Registrar for a certificate that it is complying with all provisions of this Act prescribed by the regulations including, if the Registrar has varied a requirement in relation to that co-operative, the provision as varied.
- (2) The Registrar must issue the certificate to the co-operative unless he or she is of the opinion that the co-operative is not complying with the provisions so prescribed.
- (3) If the Registrar issues the certificate, he or she must also give to the co-operative the documents prescribed by the regulations.

## **Division 3 Mergers and transfers of engagements**

**3690 Who is the appropriate Registrar?** (cf Vic Act s 379)

In this Division:

***appropriate Registrar*** in relation to a proposed merger or transfer of engagements

means:

- (a) the New South Wales Registrar, if the merger is to result in a New South Wales co-operative or the transfer is to a New South Wales co-operative, or
- (b) the Registrar for the participating State concerned, if the merger is to result in a co-operative under the co-operatives law of that participating State or the transfer is to such a co-operative.

**369P Authority for merger or transfer of engagements** (cf Vic Act s 380)

- (1) A New South Wales co-operative and a participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division.
- (2) A New South Wales co-operative and a non-participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division if:
  - (a) the merger is to result in a New South Wales co-operative, or
  - (b) the transfer is to a New South Wales co-operative.

**369Q Requirements before application can be made**

- (1) Before a New South Wales co-operative and a participating co-operative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives:
  - (a) by a special resolution passed by special postal ballot, or
  - (b) if permitted by subsection (3), by a special resolution, or by a resolution of the board, of the co-operative.
- (2) Before a New South Wales co-operative and a non-participating co-operative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer of engagements:
  - (a) must be approved:
    - (i) in the case of the non-participating co-operative, by a special resolution of the co-operative, and
    - (ii) in the case of the New South Wales co-operative, by a special resolution passed by special ballot, or
  - (b) if permitted by subsection (3), must have been approved:
    - (i) in the case of the non-participating co-operative, by a resolution of the board of the co-operative, and

- (ii) in the case of the New South Wales co-operative, by a special resolution, or by a resolution of the board, of the co-operative.
- (3) The proposed merger or transfer of engagements may be approved by special resolution, or by resolution of the board, of the co-operative if:
  - (a) the New South Wales Registrar consents to that procedure applying in the particular case, and
  - (b) in the case of a merger or transfer affecting a participating co-operative, the Registrar for the participating State concerned also consents to that procedure applying in the particular case.
- (4) A consent referred to in subsection (3) may be granted subject to conditions, including any condition that a disclosure statement be provided to members or directors. A co-operative that contravenes a condition of a consent is taken not to have been given consent.

**369R Disclosure statement required** (cf Vic Act s 382)

- (1) A special resolution of the New South Wales co-operative or foreign co-operative is not effective for the purposes of this Division unless this section has been complied with.
- (2) Each co-operative must send to each of its members a disclosure statement approved by the appropriate Registrar specifying:
  - (a) the financial position of the New South Wales co-operative and the foreign co-operative as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement, and
  - (b) any interest that any officer of the New South Wales co-operative or the foreign co-operative has in the proposed merger or transfer of engagements, and
  - (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the New South Wales co-operative or foreign co-operative in relation to the proposed merger or transfer of engagements, and
  - (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements, and
  - (e) in the case of a transfer of engagements—whether it is a total or partial transfer of engagement, and
  - (f) in the case of a merger—whether the merged co-operative will result in a New South Wales co-operative or a co-operative under the co-operatives law of the participating State concerned, and

(g) any other information that the Registrar directs.

- (3) The disclosure statement must be sent to the members of the New South Wales co-operative or foreign co-operative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than:
- (a) where the resolution is to be decided at a meeting—21 days before the date of the meeting, or
  - (b) where the resolution is to be decided by a postal ballot—21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.
- (4) The appropriate Registrar may exempt the New South Wales co-operative or foreign co-operative from complying with this section.
- (5) The appropriate Registrar may grant an exemption, or approve a disclosure statement, subject to any conditions it considers appropriate.

**369S Making an application** (cf Vic Act s 383)

- (1) An application for approval of a merger or transfer of engagements under this Division must be made to the New South Wales Registrar and, if the merger or transfer of engagements affects a participating co-operative, to the Registrar for the participating State concerned in the manner and form required by the Registrar concerned.
- (2) An application for approval of a merger must be accompanied by:
- (a) 2 copies of the proposed rules of the merged co-operative, and
  - (b) in the case of a non-participating co-operative, details of voting on the special resolution (if any) of the co-operative, and
  - (c) any other information required by the Registrar to whom the application is made.

**369T Approval of merger** (cf Vic Act s 384)

- (1) If the New South Wales Registrar is the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that:
- (a) this Division has been complied with in relation to the application, and
  - (b) the proposed rules of the merged co-operative are adequate, and
  - (c) the certificate of registration of the New South Wales co-operative has been surrendered to the New South Wales Registrar, and
  - (d) in the case of a merger with a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the Registrar

for the participating State concerned, and

- (e) in the case of a merger with a non-participating co-operative, the merged co-operative will comply with this Act, and
- (f) there is no good reason why the merged co-operative and its rules should not be registered.

- (2) If the New South Wales Registrar is not the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that the merger has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).
- (3) On approving an application for merger, the New South Wales Registrar must:
  - (a) cancel the registration of the New South Wales co-operative involved in the merger, and
  - (b) if the merger is to result in a New South Wales co-operative, register the merged co-operative and its rules and issue to it a certificate of registration under this Act.
- (4) A merger takes effect on the issue of the certificate of registration for the merged co-operative (whether under this Act or under the co-operatives law of the participating State concerned).

**369U Approval of transfer of engagements** (cf Vic Act s 385)

- (1) If the New South Wales Registrar is the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that:
  - (a) this Division has been complied with in relation to the application, and
  - (b) the rules or proposed rules of the transferee co-operative are adequate, and
  - (c) in the case of a total transfer of engagements from a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the Registrar for the participating State concerned, and
  - (d) in the case of a total transfer of engagements from a non-participating co-operative, the certificate of registration of the non-participating co-operative has been surrendered to the Registrar, and
  - (e) in the case of a transfer of engagements by a non-participating co-operative, the transferee co-operative will comply with this Act, and
  - (f) there is no good reason why the transfer of engagements should not take effect.
- (2) If the New South Wales Registrar is not the appropriate Registrar, he or she must



approve a transfer of engagements pursuant to an application under this Division if satisfied that the transfer has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).

- (3) A transfer of engagements takes effect on the day specified in the approval of the New South Wales Registrar.

**369V Effect of merger or transfer of engagements** (cf Vic Act s 386)

- (1) In this section:

**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).

**original co-operative** means:

- (a) in the case of a transfer of engagements, the transferor co-operative, or  
(b) in the case of a merger, each of the co-operatives that are merging.

**successor co-operative** means:

- (a) in the case of a transfer of engagements, the transferee co-operative, or  
(b) in the case of a merger, the co-operative formed by the merger.

- (2) When a merger or transfer of engagements takes effect under this Division (**the transfer day**), the following provisions apply to the extent necessary to give effect to the merger or transfer:

- (a) persons who were members of the original co-operative immediately before the transfer day are members of the successor co-operative in accordance with its rules, and  
(b) the assets of the original co-operative vest in the successor co-operative without the need for any conveyance, transfer, assignment or assurance, and  
(c) the rights and liabilities of the original co-operative become the rights and liabilities of the successor co-operative, and  
(d) all proceedings by or against the original co-operative that are pending

immediately before the transfer day are taken to be proceedings pending by or against the successor co-operative, and

- (e) any act, matter or thing done or omitted to be done by, to or in respect of the original co-operative before the transfer day is (to the extent to which that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the successor co-operative, and
- (f) 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) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section in respect of a transfer of engagements is not liable to stamp duty or to any fee chargeable under any Act for registration.

(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 in respect of a merger is not liable to stamp duty or to any fee chargeable under any Act for registration if the co-operative formed by the merger is a non-trading co-operative.

**369W Division applies instead of certain other provisions of this Act** (cf Vic Act s 387)

- (1) This Division applies instead of Division 1 of Part 12, in respect of the merger of a New South Wales co-operative with a foreign co-operative.
- (2) This Division applies instead of Division 1 of Part 12, in respect of a transfer of engagements between a New South Wales co-operative and a foreign co-operative.

## **Part 14 Supervision and protection of co-operatives**

### **Division 1 Supervision and inspection**

#### **370 Definitions**

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.

### **371 “Co-operative” includes subsidiaries, foreign co-operatives and co-operative ventures**

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 deregistered.

### **372 Appointment of inspectors**

- (1) The Registrar may appoint persons to be inspectors for the purposes of this Act.
- (2) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an inspector appointed under subsection (1).

### **373 Registrar and investigators have functions of inspectors**

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.

### **374 Inspector’s certificate of authority**

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.

### **375 Inspectors may require certain persons to appear, answer questions and produce documents**

- (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, Australian legal practitioner, 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.

### **376 Inspectors' powers of entry**

- (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).

### **377 Powers of inspectors on premises entered**

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.

### **378 Functions of inspectors in relation to relevant documents**

- (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.

**379 Offence—failing to comply with requirements of inspector** (cf Vic Act s 397)

- (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: 120 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: 120 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: 120 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: 50 penalty units or imprisonment for 6 months, or both.

**380 Protection from incrimination**

- (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.

**381 Search warrants**

- (1) An inspector may apply to an authorised officer 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 officer 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) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, 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 officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**382 Copies or extracts of records to be admitted in evidence** (cf Vic Act s 400)

- (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 either orally or by an affidavit or statutory declaration by a person who has compared the copy or extract with the record or the relevant part of the record.

**383 Privilege** (cf Vic Act s 401)

- (1) An Australian 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 Australian legal practitioner in his or her capacity as an Australian legal practitioner, or
  - (b) the Australian legal practitioner is not able to comply with the requirement

without disclosing a privileged communication made by or on behalf of or to the Australian legal practitioner in his or her capacity as an Australian legal practitioner.

- (2) The Australian 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 Australian 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 administration under Part 5.3A of the Corporations Act, as applying under this Act, or in the course of being wound up) the administrator or the liquidator agrees to the Australian legal practitioner complying with the requirement.
- (4) If the Australian 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 Australian legal practitioner), and
  - (b) sufficient particulars to identify the document containing the communication (if the communication was made in writing).

Maximum penalty: 60 penalty units.

### **384 Police aid for inspectors**

- (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**

### **385 Definitions** (cf Vic Act s 403)

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.

**investigator** means a person appointed under section 386.

**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, Australian legal practitioner, 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).

### **386 Appointment of investigators** (cf Vic Act s 404)

- (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.
- (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.

### **387 Powers of investigators**

- (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.

### **388 Examination of involved person**

- (1) An Australian 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.

**389 Privilege** (cf Vic Act s 407)

- (1) An involved person who is an Australian 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 Australian legal practitioner in his or her capacity as an Australian legal practitioner.
- (2) The Australian 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 administration under Part 5.3A of the Corporations Act, as applying under this Act, or in the course of being wound up) the administrator or the liquidator agrees to the Australian legal practitioner producing the document.
- (3) If the Australian 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 Australian legal practitioner), and
  - (b) sufficient particulars to identify the document.

Maximum penalty: 60 penalty units.

**390 Offences by involved person** (cf Vic Act s 408)

- (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: 240 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.

**391 Offences relating to documents** (cf Vic Act s 409)

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: 120 penalty units or imprisonment for 12 months, or both.

**392 Record of examination** (cf Vic Act s 410)

- (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 an Australian legal practitioner with a copy of a record of examination made by an investigator if the Registrar is satisfied that the Australian 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) An Australian 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)): 60 penalty units.

**393 Report of investigator**

- (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.

### **394 Proceedings following inquiry**

- (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.

### **395 Admission of investigator's report as evidence**

- (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.

### **396 Costs of inquiry**

- (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**

#### **397 Falsification of records** (cf Vic Act s 415)

A person who makes, orders or allows to be made any entry or erasure in, or any omission from:

- (a) any financial records or financial statements 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: 60 penalty units.

#### **398 Fraud or misappropriation** (cf Vic Act s 416)

(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: 60 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: 60 penalty units or imprisonment for 6 months, or both.

(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.

#### **399 Offering or paying commission** (cf Vic Act s 417)

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: 60 penalty units.

**400 Accepting commission** (cf Vic Act s 418)

- (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: 60 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.

**401 False statements in loan application etc** (cf Vic Act s 419)

- (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: 60 penalty units or imprisonment for 6 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 10 of the *Crimes (Sentencing Procedure) Act 1999* 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**

### **402 Application for special meeting or inquiry**

- (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.

### **403 Holding of special meeting**

- (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.

### **404 Expenses of special meeting or inquiry**

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.

#### **405 Power to hold special inquiry into co-operative**

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.

#### **406 Special meeting following inquiry**

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.

#### **407 Information and evidence**

- (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.

#### **408 Extension or abridgment of time** (cf Vic Act s 426)

- (1) The Registrar may grant an extension 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 extension of time even if the time for doing the thing has expired.
- (3) This section does not limit the operation of section 63 of the [Civil Procedure Act 2005](#), or the operation of any rules of the Court relating to the extension or abridgment of time.

#### **408A Power of Registrar to intervene in proceedings**

- (1) The Registrar may intervene in any proceedings relating to a matter arising under this Act or the regulations.
- (2) When the Registrar intervenes in proceedings, the Registrar is taken to be a party to the proceedings and, subject to this Act, has all the rights, duties and liabilities of such a party.
- (3) The Registrar may appear and be represented in any proceedings in which the Registrar wishes to intervene pursuant to this section:

- (a) by a person to whom the Registrar has delegated the Registrar's functions under this Act or such of those functions as relate to a matter to which the proceedings relate, or
- (b) by an officer or temporary employee of the Public Service who is engaged in the administration of this Act, or
- (c) by an Australian legal practitioner.

## **Part 15 Administration of this Act**

### **Division 1 The Registrar**

#### **409 Registrar's functions** (cf Vic Act s 429)

- (1) Subject to this Act, the Registrar is responsible for the general administration of this Act.
- (2) The Registrar has the functions that are conferred on the Registrar by or under this Act.
- (3) The Registrar must have a seal of office.
- (4) The Registrar may enter into any arrangements or agreements with any person or body to act as the agent of the Registrar in the carrying out of his or her functions.

#### **410 Register of Co-operatives** (cf Vic Act s 432)

- (1) There is established a Register of Co-operatives for the purposes of this Act.
- (2) The Registrar must record in the Register those documents relating to co-operatives and proposed co-operatives lodged with the Registrar which the Minister requires by order published in the Gazette to be recorded in the Register.

#### **410A Keeping of registers** (cf Vic Act s 433)

- (1) The Registrar must keep the Register of Co-operatives and such other registers as the Registrar considers necessary or desirable for the purposes of this Act.
- (2) Subject to section 410, a register must be kept in the form and contain the particulars that the Registrar thinks fit.
- (3) Subject to section 413, any document lodged with, furnished to or registered by the Registrar under this Act must be kept in the office of the Registrar.

#### **411 Delegation by Registrar**

- (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.

**412 Approvals by Registrar**

- (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.

**413 Disposal of records by Registrar** (cf Vic Act s 434)

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:

- (a) any annual return or balance-sheet lodged more than 7 years ago,
- (b) 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,
- (c) 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,
- (d) any document lodged, furnished or registered in relation to a co-operative that was deregistered or ceased to be registered more than 15 years ago,
- (e) any document a transparency or electronic image of which has been incorporated with a register kept by the Registrar or is otherwise kept in the office of the Registrar.

**413A Inspection of Register** (cf Vic Act s 435)

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

entitled under subsection (1) to require the production of the original of that document.

**413B Lodgment of documents** (cf Vic Act s 437)

A document is not to be taken to have been lodged under this Act or the regulations unless:

- (a) all information required to be provided in or with the document is provided, and
- (b) the fee (if any) prescribed by the regulations has been paid.

**413C Method of lodgment** (cf Vic Act s 438)

- (1) Subject to section 413B, it is sufficient compliance with a requirement under this Act or the regulations that a document be lodged with the Registrar if the Registrar receives a copy of the document by facsimile or electronic transmission.
- (2) If the Registrar receives from a person a copy of a document under subsection (1), the Registrar may require that person to produce and lodge the original within the time specified by the Registrar.
- (3) If the person does not comply with a requirement of the Registrar within the specified time, the person is to be taken not to have lodged the document.

**413D Power of Registrar to refuse to register or reject documents** (cf Vic Act s 439)

- (1) The Registrar may refuse to register or may reject a document submitted to the Registrar if the Registrar considers that the document:
  - (a) contains matter contrary to law, or
  - (b) contains matter, that in a material particular, is false or misleading in the form or context in which it is included, or
  - (c) by reason of an omission or misdescription, has not been duly completed, or
  - (d) does not comply with the requirements of this Act, or
  - (e) contains any error, alteration or erasure.
- (2) If the Registrar refuses to register or rejects a document under subsection (1), the Registrar may request:
  - (a) that the document be appropriately amended, or
  - (b) that a fresh document be submitted in its place, or
  - (c) if the document has not been duly completed, that a supplementary document in the form approved by the Registrar be submitted.

## **Division 2 The Council**

### **414 Constitution of Council**

- (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.

### **415 Nominations**

- (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.

### **416 Minister and Registrar may attend meetings**

- (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.

### **417 Functions of the Council**

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.

#### **418 Delegation by Council to Registrar**

- (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.

#### **419 Appeal to Court from decision of Council**

A person aggrieved by a decision of the Council under this Act may appeal against the decision to the Court in accordance with rules of court.

### **Division 3 Evidence**

#### **420 Certificate of incorporation**

- (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 deregistration of the co-operative or the cancellation of its registration.

#### **421 Certificate evidence** (cf Vic Act s 441)

- (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.

- (1A) The Registrar may issue a certificate stating that a requirement of this Act specified in the certificate:
- (a) had, or had not, been complied with at a date or within a period specified in the certificate, or
  - (b) had been complied with at a date specified in the certificate but not before that date.
- (1B) The Registrar may issue a certificate stating that on a date specified in the certificate a body specified in the certificate was not or had ceased to be registered as a co-operative under this Act.
- (2) Such a certificate given by the Registrar is evidence of the matters stated in the certificate.

#### **422 Orders etc published in the Gazette**

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.

#### **423 Records kept by co-operatives**

- (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.

#### **424 Minutes**

- (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.

#### **425 Official certificates etc**

- (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.

#### **426 The Registrar and proceedings** (cf Vic Act s 446)

- (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.

#### **427 Rules**

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.

#### **428 Registers**

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**

#### **429 Offences by officers of co-operatives**

- (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.

**430 Notice to be given of conviction for offence** (cf Vic Act s 450)

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 28 days 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.

**431 Secrecy** (cf Vic Act s 451)

- (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: 60 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 Commissioner of State Revenue, or
  - (d) the Auditor-General, or
  - (e) the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation holding office under a law of the Commonwealth, or
  - (f) the Australian Securities and Investments Commission, 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) any special commission (within the meaning of the *Special Commissions of Inquiry Act 1983*) if:
    - (i) the Registrar has received a written request in writing for information from the special commission, and
    - (ii) the Minister has given written approval to the Registrar of the communication of that information, and
    - (iii) the Registrar has given to that person written approval of the communication of that information, or
  - (i) a person seeking information under a reciprocal arrangement under section 441, or
  - (j) a police officer exercising functions as such, or
  - (k) a person nominated by a person referred to in paragraphs (a)–(g), or
  - (l) any person, to whom, in the opinion of the Registrar, it is in the public interest that the information be divulged.
- (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) an inspector appointed under this Act or the former Act, or

(c) an investigator appointed under this Act, or

(d) 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*.

**432 False or misleading statements** (cf Vic Act s 452)

(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: 120 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: 120 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: 60 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: 60 penalty units.

### **433 Further offence for continuing failure to do required act**

- (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.

### **434 Civil remedies**

- (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.

### **435 Proceedings for offences etc**

- (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) the Local Court, or

- (b) the Supreme Court in its summary jurisdiction.
- (3) The maximum penalty that may be imposed by the 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 the Local Court.
- (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**

**436** (Renumbered as sec 10)

**436A** (Renumbered as sec 11)

**436B** (Renumbered as sec 12)

### **437 Exemption from stamp duty**

- (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).

**438 (Repealed)**

### **439 Co-operative ceasing to exist**

- (1) As soon as practicable after a co-operative is deregistered or has otherwise ceased to exist, the Registrar is to register the deregistration 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 deregistered 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.

**440 Service of documents on co-operative** (cf Vic Act s 459)

- (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:
  - (a) by post, or
  - (b) 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, or
  - (c) by leaving it at the registered office in New South Wales of the foreign co-operative registered under Part 13A.
- (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 or to the registered office of the foreign co-operative in its place of registration, incorporation or formation.
- (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.

**440A Service on member of co-operative** (cf Vic Act s 460)

- (1) A notice required under this Act to be given to a member of a co-operative must be in writing.
- (2) A notice or other document required under this Act to be given to a member of a co-operative may be given:
  - (a) personally, or
  - (b) by post, or
  - (c) by publishing the notice in a newspaper circulating generally in New South Wales or in the area served by the co-operative, if:
    - (i) the co-operative is a non-trading co-operative, or
    - (ii) the member's whereabouts are unknown to the co-operative, or
    - (iii) the Registrar permits notice to be given to members of that co-operative in that manner.

#### **441 Reciprocal arrangements**

- (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.

#### **442 Translations of documents**

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.

#### **443 Injunctions**

- (1) If the Court is satisfied on the application of the Registrar or a person whose interests have been, are or would be affected by the conduct 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.

#### **443A Power of Court to punish for contempt**

Nothing in a provision of this Act affects the powers of the Court in relation to the punishment of contempts of the Court.

#### **444 Savings and transitional provisions**

Schedule 6 has effect.

#### **445 (Repealed)**

#### **446 Regulations** (cf Vic Act s 463)

- (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) the manner of lodgment of documents with the Registrar (including electronic lodgment and lodgment by facsimile),
  - (c) fees to be paid in connection with the administration of this Act including fees for lodgment of any documents under this Act and additional fees for late lodgment of any documents under this Act.
- (2A) Regulations relating to fees:
  - (a) may prescribe different fees for different classes of cases,
  - (b) may authorise the Registrar to waive, reduce or refund fees in particular cases or classes of cases.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

### **Schedule 1 Matters for which rules must make provision**

(Section 107)

#### **1 Requirements for all co-operatives**

The rules of all co-operatives must set out or make provision for each of the following:

- 1 The name of the co-operative.
- 2 Active membership provisions (within the meaning of Part 6).
- 3 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.
- 4 The rights and liabilities of members, and of the estates of deceased members, and the rights and liabilities of representatives of members under bankruptcy or mental

incapacity.

- 5 The circumstances in which members may be expelled or suspended, and the rights and liabilities of expelled or suspended members.
- 6 The circumstances in which membership ceases.
- 7 Any charges or subscriptions which are to be payable by a member to the co-operative.
- 8 The circumstances in which fines and forfeitures may be imposed on members of the co-operative, and the amount of the fines, not exceeding the prescribed maximum amount.
- 9 The grievance procedures for settling disputes under the rules between the co-operative and any of its members as defined in section 89, or between a member and any other member.
- 10 The restrictions, if any, on the powers of the co-operative and the board.
- 11 The number of directors, the qualification of directors, and the manner of electing, remunerating and removing directors and filling vacancies, the period for which directors are to hold office, and whether directors are to retire by rotation or otherwise and for the holding of annual elections.
- 12 The quorum for meetings, and the procedure at meetings, of the board.
- 13 The device, custody and use of the seal of the co-operative.
- 14 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.
- 15 Provision for the custody of securities belonging to the co-operative.
- 16 The manner in which debentures may be transferred.
- 17 The date on which the financial year of the co-operative concludes.
- 18 Provision for the financial statements of the co-operative to be audited annually or more frequently and the manner of appointment of the auditor.
- 19 The manner in which any loss which may result from the transactions of the co-operative is to be provided for.
- 20 The manner of calling general and special meetings, the requisite notices of meetings and the quorum for meetings of the co-operative.
- 21 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.

- 22 The method of conducting postal ballots, including special postal ballots, including the sending and lodgment of information and votes by facsimile or electronic means.
- 23 The manner of altering the rules.
- 24 The manner in which the co-operative may be wound up.
- 25 Any matters that may be prescribed by the regulations, whether in addition to or in substitution for any matter specified in this clause.
- 26 Any other matters that to the co-operative appear necessary or desirable.

## **2 Additional matters—co-operatives with share capital**

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:

- 1 The nominal value of each share in the co-operative.
- 2 The amount of the contingent liability, if any, attaching to shares.
- 3 The terms on which shares, not including bonus shares, but including shares, if any, with a contingent liability attached to them are to be issued.
- 4 The periodic subscriptions by which or the manner in which shares are to be paid for.
- 5 In the case of a trading co-operative, the manner in which any surplus may be distributed.
- 6 The allocation of a deficiency on the winding up of a co-operative.
- 7 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.
- 8 The manner in which shares may be transferred.
- 9 Any matters that may be prescribed, whether in addition to or in substitution for any matter specified in this clause.

## **3 Additional matters—non-trading co-operatives**

In addition to the matters specified in clauses 1 and 2, the rules of a non-trading co-operative must provide:

- 1 that there must be no return or distribution on surplus or share capital to members

other than the nominal value of shares (if any) at winding up, and

2 for the manner of distribution of the surplus property at winding up.

## **Schedule 2 Relevant interests, associates, related bodies**

(Section 5)

### **Part 1 Relevant interests**

#### **1 Terminology used in this Schedule**

- (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.

#### **2 Basic rules—relevant interests**

- (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.

#### **3 Control of body corporate having power in relation to a share**

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.

#### **4 Control of 20% of voting power in body corporate having power in relation to a share**

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 or 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.

#### **5 Deemed relevant interest in advance of performance of agreement that will give rise to a relevant interest**

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

(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.

## **6 Control of body corporate having a relevant interest by virtue of clause 5**

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.

## **7 Matters not affecting application of Schedule**

- (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.

## **8 Body corporate may have a relevant interest in its own shares**

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.

## **9 Exclusions: money-lenders**

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.

#### **10 Exclusions: certain trustees**

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.

#### **11 Exclusions: instructions to securities dealer to dispose of share**

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.

#### **12 Exclusions: honorary proxies**

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.

#### **13 Exclusions: holders of prescribed offices**

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.

#### **14 Prescribed exclusions**

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.

#### **15 Effect of Schedule**

- (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.

#### **16 Relevant interest—body corporate other than co-operative**

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 Act.

## **Part 2 Associates**

### **17 Effect of Part**

- (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.

### **18 Associates of a body corporate**

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.

### **19 Matters relating to voting rights**

- (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
- (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.

## **20 General**

(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.

## **21 Exclusions**

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,

- (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

### 22 Related bodies corporate

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

(Section 278)

## Part 1 Preliminary

### 1 Interpretation

In this Schedule:

**co-operative** includes a foreign co-operative registered under Part 13A.

**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 securities** has the same meaning as in the Corporations Act.

**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.

**property**, in relation to a co-operative, means property within New South Wales 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 18.

**registrable charge** means a charge in relation to which, by virtue of clause 4, the provisions of this Schedule mentioned in clause 4 (1) apply.

## **2 Application to charges referred to in clause 17**

- (1) A charge referred to in clause 17 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.
- (2) The registration of a charge referred to in clause 17 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.

## **3 Lodgment of documents**

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**

## **Division 1 Charges**

### **4 To which charges does Schedule apply?**

- (1) Subject to this Division, the provisions of this Schedule relating to the giving of notice in relation to, the registration of, and the priorities of, charges:
  - (a) apply in relation to the charges referred to in subclause (2) (whether legal or equitable) on property of a co-operative, and
  - (b) do not apply in relation to any other charges.
- (2) Subclause (1) applies to the following 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,
- (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.

## **5 Excluded charges**

The provisions of this Schedule mentioned in clause 4 (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.

## 6 Personal chattels

The reference in clause 4 (2) (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.

## 7 Book debts

The reference in clause 4 (2) (f) to a charge on a book debt:

- (a) 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
- (b) 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.

## 8 Crops or stock

The reference in clause 4 (2) (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 law of a State or Territory prescribed by the regulations.

## 9 Deposit of documents of title

For the purposes of this Division, a co-operative is to be considered to have deposited a document of title to property with another person (in this clause 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.

#### **10 Charges on land or fixtures on land**

- (1) The provisions of this Schedule mentioned in clause 4 (1) do not apply in relation to a charge on land.
- (2) The provisions of this Schedule mentioned in clause 4 (1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are affixed.

#### **11 What if other property is also charged?**

For the purposes of this Division, a charge is to be considered to be a charge on property of a kind to which a particular paragraph of clause 4 (2) 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.

#### **12 Effect of failure to lodge or give notice or document**

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.

### **Division 2 Notice of charge**

#### **13 Lodgment of notice of charge and copy of instrument**

- (1) If a co-operative creates a charge, the co-operative must ensure that there is lodged with the Registrar within 45 days after the creation of the charge, a notice in the form approved by the Registrar setting out the following particulars:
  - (a) the name of the co-operative and the date of the creation of the charge,
  - (b) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge,
  - (c) 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,
  - (d) a short description of the liability (whether present or prospective) secured by the charge,
  - (e) a short description of the property charged,
  - (f) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct,

- (g) if the charge is constituted by the issue of a debenture or debentures, the name of the trustee (if any) for debenture holders,
  - (h) 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,
  - (i) any other information that is prescribed by the regulations.
- (2) 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, the notice under subclause (1) must be accompanied by:
- (a) a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and
  - (b) a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture.
- (3) If, in a case to which subclause (2) does not apply, the charge created by the co-operative was created or evidenced by an instrument or instruments, the notice under subclause (1) must be accompanied by:
- (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 a statement in writing verifying the execution of the instrument or of each of the instruments.

#### **14 Series of debentures**

In a case to which clause 13 (2) applies:

- (a) the charge is, for the purposes of clause 13, 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.

#### **15 Operation of priority provisions in respect of issue of debentures**

If a notice with respect to an instrument creating a charge has been lodged under clause 13 (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 46-49 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.

## **16 Discounts**

- (1) If 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 clause 13 (1) must include particulars as to the amount or rate per cent of the payment or discount.
- (2) If 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 (1), as having allowed a discount in respect of the debentures.

## **17 Acquisition of property subject to charge**

- (1) If 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 with the Registrar a notice in the form approved by the Registrar in relation to the charge, setting out:
    - (i) the name of the co-operative, and
    - (ii) the date on which the property was so acquired, and
    - (iii) any other particulars required by clause 13 (1), and
  - (b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.
- (2) If the charge referred to in subclause (1) was created or evidenced as mentioned in clause 13 (2), the notice under subclause (1) (a) must be accompanied by:
  - (a) a copy of the resolution or of each of the resolutions referred to in clause 13 (2) verified by a statement in writing to be a true copy, and
  - (b) a copy of the first debenture issued in the series referred to in clause 13 (2) verified by a statement in writing to be a true copy.
- (3) If the charge referred to in subclause (1) was created or evidenced by an instrument or instruments (otherwise than as mentioned in clause 13 (2)), the notice under subclause (1) (a) must be accompanied by:
  - (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.

## **Division 3 Registration**

### **18 Register of Co-operative Charges**

The Registrar must keep a register to be known as the Register of Co-operative Charges.

### **19 Registration of documents relating to charge**

- (1) If a notice is lodged with the Registrar in accordance with Division 2, 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,
  - (b) if the charge was a charge existing on property acquired by the co-operative, the date on which the property was so acquired,
  - (c) a short description of the liability (whether present or prospective) secured by the charge,
  - (d) a short description of the property charged,
  - (e) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.
- (2) Subclause (1) only applies if the notice contains the required particulars and is accompanied by the required documents.
- (3) Subclause (1) applies whether the notice is lodged during or after the period within which the notice is required to be lodged.
- (4) Subject to this Division, if particulars in respect of a charge are entered in the Register in accordance with subclause (1), 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.
- (5) The Registrar may enter in the Register in relation to a charge, in addition to the particulars expressly required by this Division to be entered, such other particulars as the Registrar thinks fit.

### **20 Provisional registration if stamp duty not paid**

- (1) If:
  - (a) a notice in respect of a charge on property of a co-operative is lodged under Division 2, 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 clause 19 (1) (a)–(e), but must cause the word “provisional” to be entered in the Register next to the entry specifying that time and date.

- (2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.
- (3) The Registrar must delete the word “provisional” entered in the Register under subclause (1) from an entry relating to a charge if a certificate to the effect set out in subclause (1) (b) has been produced to the Registrar:
  - (a) within a period of 28 days, or
  - (b) within such longer period as is prescribed after the notice was lodged, or
  - (c) within such further period as the Registrar, if the Registrar considers it to be appropriate in a particular case, allows.
- (4) The Registrar must delete from the Register all the particulars that were entered in relation to a charge if:
  - (a) the word “provisional” is entered in the Register under subclause (1) in relation to an entry relating to the charge, and
  - (b) a certificate to the effect set out in subclause (1) (b) is not produced within the period, or the further period, referred to in subclause (3).

## **21 Provisional registration if required particulars not supplied**

- (1) If a defective notice in respect of a charge on property is lodged with the Registrar under clause 19, the Registrar must cause to be entered in the Register:
  - (a) the time and date when the document was lodged, and
  - (b) such of the particulars referred to in clause 19 (1) (a)–(e) as are ascertainable, and
  - (c) the word “provisional” next to the entry specifying the time and date.
- (2) If a defective notice in respect of a charge is lodged under clause 19, the Registrar must, by written notice to the person who lodged the defective notice, 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 Division 2.
- (3) Subclauses (1) and (2) apply whether the defective notice was lodged during or after the period within which the notice was required to be lodged.

- (4) The giving by the Registrar of a direction to the person under subclause (2) does not affect any liability that the co-operative may have incurred or may incur by reason of a contravention of Division 2.
- (5) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is complied with on or before the day specified in the notice containing the direction, the Registrar must:
  - (a) delete from the Register the word “provisional” that was inserted pursuant to subclause (1), and
  - (b) cause to be entered in the Register in relation to the charge any particulars referred to in clause 19 (1) that have not previously been entered.
- (6) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is not complied with on or before the day specified in the notice, the Registrar must delete from the Register all the particulars that were entered in relation to the charge.
- (7) If the Registrar gives a direction to a person under subclause (2) in relation to a charge and the direction is complied with after the day specified in the notice, the Registrar must cause to be entered in the Register in relation to the charge:
  - (a) the time at which and day on which the direction was complied with, and
  - (b) the particulars referred to in clause 19 (1) (a)-(e).
- (8) In this clause **defective notice** means a document that:
  - (a) purports to be a notice in respect of a charge on property of a co-operative for the purposes of Division 2, and
  - (b) contains the name of the co-operative concerned and the particulars referred to in clause 13 (1) (g) or (h), 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.

## 22 Effect of provisional registration

- (1) Subject to this clause, 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.
- (2) If the word “provisional” is deleted from the Register pursuant to clause 20 or 21 (5), 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 clause 20 or 21 (1), as the case may be.

- (3) If the particulars in relation to the charge are deleted from the Register pursuant to clause 21 (6) and those particulars and a time and day are subsequently entered in the Register in relation to the charge pursuant to clause 21 (7) the charge is to be considered to be registered from and including that last-mentioned time and day.

### **23 What if 2 or more charges relate to the same property?**

- (1) If, pursuant to clause 17, 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 Division), 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.
- (2) If, in accordance with subclause (1), 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 Division.

### **24 Registration of assignment or variation of charge**

- (1) If a notice is lodged under clause 36, 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.
- (2) Subclause (1) applies whether the notice was lodged during or after the period within which the notice was required to be lodged.

### **25 Standard time for the purposes of this Division**

- (1) The Registrar may, by notice published in the Gazette, declare a specified standard time to be the standard time for the purposes of this Division.
- (2) If a notice is in force under subclause (1), a reference in this Division 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.

## **Division 4 Certain charges void against liquidator or administrator**

### **26 Definitions**

In this Division:

**critical day**, in relation to a co-operative, means:

- (a) if the co-operative is being wound up, the day when the winding up began, or
- (b) if the co-operative is under administration, the relevant day in relation to the administration, or

- (c) if the co-operative has executed a deed of arrangement, the relevant day in relation to the administration that ended when the deed was executed.

**relevant day**, in relation to the administration of a co-operative, means:

- (a) if, when the administration began, a winding up of the co-operative was in progress, the day on which the winding up is taken because of Division 1A of Part 5.6 of the Corporations Act (as applying under this Act) to have begun, or
- (b) otherwise, the day on which the administration began.

## **27 Certain charges void against liquidator or administrator**

(1) Subject to this Division, if:

- (a) an order is made, or a resolution is passed, for the winding up of a co-operative, or
- (b) the Registrar gives a certificate under section 324 for the winding up of the co-operative, or
- (c) an administrator of a co-operative is appointed under Part 5.3A of the Corporations Act (as applying under this Act), or
- (d) a co-operative executes a deed of arrangement,

a registrable charge on property of the co-operative is void as a security on that property as against the liquidator, the administrator of the co-operative, or the deed's administrator, as the case may be.

(2) A charge is not void under subclause (1) if:

- (a) a notice in respect of the charge was lodged under clause 13 or 17, as the case requires:
  - (i) within the relevant period, or
  - (ii) at least 6 months before the critical day, or
- (b) the period within which a notice in respect of the charge (other than a notice under clause 36) is required to be lodged, being the period specified in the relevant clause or that period as extended by the Court under clause 29, has not ended at the start of the critical day and the notice is lodged before the end of that period, or
- (c) in relation to a charge to which clause 17 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 start of the critical day and the notice is lodged before the end of that period.

- (3) The reference in subclause (2) (a) to the relevant period is to be construed as a reference to:
- (a) in relation to a charge to which clause 13 applies—the period of 45 days specified in that clause, or that period as extended by the Court under clause 29, or
  - (b) in relation to a charge to which clause 17 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a co-operative.

## **28 Certain varied charges void against liquidator or administrator**

- (1) Subject to this Division, if, 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 administrator of a co-operative is appointed under Part 5.3A of the Corporations Act (as applying under this Act), or
  - (c) a co-operative executes a deed of arrangement,
- 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.
- (2) A charge is not void under subclause (1) if:
- (a) a notice in respect of the variation was lodged under clause 36:
    - (i) within the period of 45 days specified in clause 36 (2) or that period as extended by the Court under clause 29, or
    - (ii) not later than 6 months before the critical day, or
  - (b) the period of 45 days specified in clause 36 (2), or that period as extended by the Court under clause 29, has not ended at the start of the critical day and the notice is lodged before the end of that period.

## **29 Supreme Court may extend required period**

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 Schedule:

- (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.

### **30 Certain later charges void**

(1) Subject to subclause (3), if:

- (a) a registrable charge (in this clause referred to as the **later charge**) is created before the end of 45 days after the creation of an unregistered registrable charge (in this clause 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 administrator of the co-operative, or an administrator of a deed of arrangement executed by the co-operative.

- (2) Subclause (1) applies even if a notice in respect of the later charge was lodged under clause 13 within the period mentioned in clause 27 (2) (a).
- (3) Subclause (1) does not apply if 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 Division.

### **31 Effect of provisions on purchaser in good faith**

- (1) Nothing in clause 27 (1) or (2) or 28 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) an administrator of the co-operative being appointed under Part 5.3A of the Corporations Act (as applying under this Act), or
  - (d) the co-operative executing a deed of arrangement.



- (2) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in subclause (1) (a), (b), (c) or (d) is on the person asserting that the property was so purchased.

## **Division 5 Certain charges in favour of persons void**

### **32 Definitions**

In this Division:

**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 on 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.

**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).

### **33 Charges in favour of certain persons void in certain cases**

(1) If:

- (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 clause 34, 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, and are to be considered always to have been, void.

(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.

### **34 Court may give leave for enforcement of charge**

On application by the chargee under a charge, the Court may give leave for the charge to be enforced, if the Court 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.

### **35 Certain transactions excluded**

- (1) Nothing in clause 33 affects a debt, liability or obligation of a co-operative that would, if that clause had not been enacted, have been secured by a charge created by the co-operative.
- (2) Nothing in clause 33 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.
- (3) The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in subclause (2) is on the person asserting that the property was so purchased.

## **Division 6 Assignment, variation or satisfaction of charges**

### **36 Assignment and variation of charges**

- (1) If, 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 with the Registrar 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) If, 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 with the Registrar 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) If 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 13 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.

### **37 Satisfaction of, and release of property from, charges**

- (1) If, 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
  - (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 form approved by the Registrar 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 with the Registrar and, on the

memorandum being lodged, the Registrar must 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.

## **Division 7 General**

### **38 Lodgment of notices**

- (1) If a notice in respect of a charge on property of a co-operative is required to be lodged under clause 13, 17 or 36 (2), the notice may be lodged by the co-operative or by any interested person.
- (2) If a document required by this Part other than clause 36 (1) to be lodged with the Registrar 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.

### **39 Lodgment offences**

- (1) If clause 13, 17 or 36 (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.

- (2) If a person who becomes the holder of a registrable charge fails to comply with clause 36 (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.

### **40 Co-operative to keep documents relating to charges**

A co-operative must, at the place where the register referred to in clause 41 is kept, keep a copy of:

- (a) every document relating to a charge on property of the co-operative that is lodged with the Registrar under this Part, and
- (b) every document given to the co-operative under this Part.

Maximum penalty: 10 penalty units.

#### **41 Co-operative to keep register**

- (1) A co-operative must keep a register.
- (2) On the creation of a charge (whether registrable or not) on property of the co-operative, or on the acquisition of property subject to a charge (whether registrable or not), the co-operative must 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 (1) 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 amount prescribed by the regulations, as the co-operative requires or, if 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.
- (5) If a person makes a request under subsection (4), the co-operative must send the copy to that person:
  - (a) if the co-operative requires payment of an amount not exceeding the amount prescribed by the regulations, 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.
- (6) 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.

#### **42 Certificates**

- (1) If 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:
  - (a) setting out those particulars, and
  - (b) stating the time and day when a notice in respect of the charge containing those particulars was lodged with the Registrar, and
  - (c) if the word “provisional” appears in the Register next to the reference to that time and day, stating that fact.
- (2) A certificate issued under subclause (1) is evidence of the matters stated in the certificate.
- (3) If 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.

#### **43 Power of Court to rectify Register**

If 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 37, 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.

#### **44 Power to exempt from compliance with certain requirements of Part**

- (1) The Registrar may, by instrument in writing, exempt a person, as specified in the instrument and subject to the conditions (if any) that are specified in the instrument, from compliance with such of the requirements of clause 13, 17 or 36 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 13, 17 or 36 must not contravene the condition.
- (3) If 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**

#### **Division 1 General**

##### **45 Definitions**

- (1) In this Part:

**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.

**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 Division 3 of Part 2, and
- (b) if a notice has been lodged under clause 17 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 17, 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 36 (2), the time and day entered in the Register in relation to the charge pursuant to clause 24.

**registered charge** means a charge that is registered under Part 2.

**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.

**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) If, 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.

#### **46 Priorities of charges**

- (1) Subject to this clause, Division 2 has 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 Division 2, 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, on any of that property unless:
  - (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 13, 17 or 36 before the creation of the subsequent registered charge.
- (4) If a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of clause 4 (1) applies or apply and also relates to other property, Division 2 applies so as to affect the priority of the charge only in so far as it relates to the



first-mentioned property and does not affect the priority of the charge in so far as it relates to the other property.

## **Division 2 Priority rules**

### **47 General priority rules in relation to registered charges**

- (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, if 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.

### **48 General priority rule in relation to unregistered charges**

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 47 (1), and
- (b) another unregistered charge on the property created after the first-mentioned unregistered charge.

#### **49 Special priority rules**

- (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) If 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) If 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 13 or 17 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.
- (4) Subclause (3) applies whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and despite the fact 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.
- (5) Subclause (6) applies if:
  - (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 13 or 17 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.

- (6) In relation to a charge referred to in subclause (5):
- (a) 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, and
  - (b) 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.
- (7) Subclause (6) (b) extends to the prospective liability whether the advance was made before or after the registration of the first-mentioned charge and despite the fact 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.

## **Schedule 4 Receivers, and other controllers, of property of co-operatives**

(Section 279)

### **1 Interpretation**

In this Schedule:

**administrator**, in relation to a deed of arrangement, means an administrator of the deed appointed under Part 5.3A of the Corporations Act, as applying under this Act.

**control day**, in relation to a controller of property of a co-operative, means:

- (a) unless paragraph (b) applies:
  - (i) in the case of a receiver, or receiver and manager, of that property—the day when the receiver, or receiver and manager, was appointed, or
  - (ii) in the case of any other person who is in possession, or has control, of that property for the purpose of enforcing a charge,  
the day when the person entered into possession, or took control, of property of the co-operative for the purpose of enforcing that charge, or
- (b) if the controller became a controller of property of the co-operative:

- (i) to act with an existing controller of such property, or
- (ii) in place of a controller of such property who has died or ceased to be a controller of such property,

the day that is, because of any other application or applications of this definition, the control day in relation to the controller referred to in subparagraph (i) or (ii).

**controller**, in relation to property of a co-operative, means:

- (a) a receiver, or receiver and manager, of that property, or
- (b) anyone else who (whether or not as agent for the co-operative) is in possession, or has control, of that property for the purpose of enforcing a charge.

**co-operative** includes a foreign co-operative registered under Part 13A.

**daily newspaper** means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days.

**managing controller**, in relation to property of a co-operative, means:

- (a) a receiver and manager of that property, or
- (b) any other controller of that property who has functions or powers in connection with managing the co-operative.

**national newspaper** means a daily newspaper that circulates generally in each State, the Capital Territory and the Northern Territory.

**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.

## 2 Application of Schedule

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.

### 3 Persons not to act as receivers

- (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 Act, 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.

#### 3A Court may declare whether controller is validly acting

- (1) Where there is doubt, on a specific ground, about:
  - (a) whether a purported appointment of a person, after the commencement of this clause, as receiver of property of a co-operative is valid, or
  - (b) whether a person who has entered into possession, or assumed control, of property of a co-operative after the commencement of this clause did so validly under the terms of a charge on that property,

the person, the co-operative or any of the co-operative's creditors may apply to the Court for an order under subclause (2).

- (2) On an application, the Court may make an order declaring whether or not:
- (a) the purported appointment was valid, or
  - (b) the person entered into possession, or assumed control, validly under the terms of the charge,
- as the case may be, on the ground specified in the application or on some other ground.

#### **4 Liability of controller**

- (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
  - (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 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.

#### **4A Liability of controller under pre-existing agreement about property used by co-**

**operative**

- (1) This clause applies if:
  - (a) under an agreement made before the control day in relation to a controller of property of a co-operative, the co-operative continues after that day to use or occupy, or to be in possession of, property (***the third party property***) of which someone else is the owner or lessor, and
  - (b) the controller is controller of the third party property.
- (2) Subject to subclauses (4) and (7), the controller is liable for so much of the rent or other amounts payable by the co-operative under the agreement as is attributable to a period:
  - (a) that begins more than 7 days after the control day, and
  - (b) throughout which:
    - (i) the co-operative continues to use or occupy, or to be in possession of, the third party property, and
    - (ii) the controller is controller of the third party property.
- (3) Within 7 days after the control day, the controller may give to the owner or lessor a notice that specifies the third party property and states that the controller does not propose to exercise rights in relation to that property as controller of the property, whether on behalf of the co-operative or anyone else.
- (4) Despite subclause (2), the controller is not liable for so much of the rent or other amounts payable by the co-operative under the agreement as is attributable to a period during which a notice under subclause (3) is in force, but such a notice does not affect a liability of the co-operative.
- (5) A notice under subclause (3) ceases to have effect if:
  - (a) the controller revokes it by writing given to the owner or lessor, or
  - (b) the controller exercises, or purports to exercise, a right in relation to the third party property as controller of the property, whether on behalf of the co-operative or anyone else.
- (6) For the purposes of subclause (5), the controller does not exercise, or purport to exercise, a right as mentioned in subclause (5) (b) merely because the controller continues to be in possession, or to have control, of the third party property, unless the controller:
  - (a) also uses the property, or

(b) asserts a right, as against the owner or lessor, so to continue.

(7) Subclause (2) does not apply in so far as the Court, by order, excuses the controller from liability, but an order does not affect a liability of the co-operative.

(8) The controller is not taken because of subclause (2):

(a) to have adopted the agreement, or

(b) to be liable under the agreement otherwise than as mentioned in subclause (2).

## **5 Powers of receiver**

(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

(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 an Australian legal practitioner, 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.

#### **5A Controller's duty of care in exercising power of sale**

- (1) In exercising a power of sale in respect of property of a co-operative, a controller must take all reasonable care to sell the property for:
- (a) if, when it is sold, it has a market value—not less than that market value, or
  - (b) otherwise—the best price that is reasonably obtainable, having regard to the

circumstances existing when the property is sold.

- (2) Nothing in subclause (1) limits the generality of anything in Division 2 (Duties and liabilities of directors, officers and employees) of Part 9.

**5B Court may authorise managing controller to dispose of property despite prior charge**

- (1) On the application of a managing controller of property of a co-operative, the Court may by order authorise the controller to sell, or to dispose of in some other specified way, specified property of the co-operative, even though it is subject to a charge (in this clause called the **prior charge**) that has priority over a charge (in this clause called the **controller's charge**) on that property that the controller is enforcing.
- (2) However, the Court may only make an order if satisfied that:
- (a) apart from the existence of the prior charge, the controller would have power to sell, or to so dispose of, the property, and
  - (b) the controller has taken all reasonable steps to obtain the consent of the holder of the prior charge to the sale or disposal, but has not obtained that consent, and
  - (c) sale or disposal of the property under the order is in the best interests of the co-operative's creditors and of the co-operative, and
  - (d) sale or disposal of the property under the order will not unreasonably prejudice the rights or interests of the holder of the prior charge.
- (3) The Court is to have regard to the need to protect adequately the rights and interests of the holder of the prior charge.
- (4) If the property would be sold or disposed of together with other property that is subject to the controller's charge, the Court may have regard to:
- (a) the amount (if any) by which it is reasonable to expect that the net proceeds of selling or disposing of that other property otherwise than together with the first-mentioned property would be less than so much of the net proceeds of selling or disposing of all the property together as would be attributable to that other property, and
  - (b) the amount (if any) by which it is reasonable to expect that the net proceeds of selling or disposing of the first-mentioned property otherwise than together with the other property would be greater than so much of the net proceeds of selling or disposing of all the property together as would be attributable to the first-mentioned property.
- (5) Nothing in subclause (3) or (4) limits the matters to which the Court may have regard for the purposes of subclause (2).

- (6) An order may be made subject to conditions, for example (but without limitation):
- (a) a condition that:
    - (i) the net proceeds of the sale or disposal, and
    - (ii) the net proceeds of the sale or disposal of such other property (if any) as is specified in the condition and is subject to the controller's charge,or a specified part of those net proceeds, be applied in payment of specified amounts secured by the prior charge, or
  - (b) a condition that the controller apply a specified amount in payment of specified amounts secured by the prior charge.

**5C Receiver's power to carry on co-operative's business during winding up**

- (1) A receiver of property of a co-operative that is being wound up may:
- (a) with the written approval of the co-operative's liquidator or with the approval of the Court, carry on the co-operative's business either generally or as otherwise specified in the approval, and
  - (b) do whatever is necessarily incidental to carrying on that business under paragraph (a).
- (2) Subclause (1) does not:
- (a) affect a power that the receiver has otherwise than under that subclause, or
  - (b) empower the receiver to do an act that he or she would not have power to do if the co-operative were not being wound up.
- (3) A receiver of property of a co-operative who carries on the co-operative's business under subclause (1) does so:
- (a) as agent for the co-operative, and
  - (b) in his or her capacity as receiver of property of the co-operative.
- (4) The consequences of subclause (3) include, but are not limited to, the following:
- (a) for the purposes of clause 4 (1), a debt that the receiver incurs in carrying on the business as mentioned in subclause (3) of this clause is incurred in the course of the receivership,
  - (b) a debt or liability that the receiver incurs in so carrying on the business is not a cost, charge or expense of the winding up.

**6 Controller's duties in relation to bank, building society and credit union accounts and**

**accounting records**

- (1) A controller of property of a co-operative must:
  - (a) open and maintain an account, with a bank, building society or credit union, bearing:
    - (i) the controller's own name, and
    - (ii) in the case of a receiver of the property—the title "receiver", and
    - (iii) otherwise—the title "controller", and
    - (iv) the co-operative's name,or 2 or more such accounts, and
  - (b) within 3 business days after money of the co-operative comes under the control of the controller, pay that money into such an account that the controller maintains, and
  - (c) ensure that no such account that the controller maintains contains money other than money of the co-operative that comes under the control of the controller, and
  - (d) keep such financial records as correctly record and explain all transactions that the controller enters into as the controller.
- (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 controller of property of the co-operative for the purposes of subclause (1) (d).

**6A Managing controller to report within 2 months about co-operative's affairs**

- (1) A managing controller of property of a co-operative must prepare a report about the co-operative's affairs that is in the prescribed form and is made up to a day not later than 30 days before the day when it is prepared.
- (2) The managing controller must prepare and lodge the report within 2 months after the control day.
- (3) As soon as practicable, and in any event within 14 days, after lodging the report, the managing controller must cause to be published in a national newspaper, or in each State and Territory in a daily newspaper that circulates generally in that State or Territory, a notice stating:
  - (a) that the report has been prepared, and
  - (b) that a person can, on paying the prescribed fee, inspect the report at specified offices of the Registrar.

- (4) If, in the managing controller's opinion, it would seriously prejudice:
- (a) the co-operative's interests, or
  - (b) the achievement of the objectives for which the controller was appointed, or entered into possession or assumed control of property of the co-operative, as the case requires,
- if particular information that the controller would otherwise include in the report were made available to the public, the controller need not include the information in the report.
- (5) If the managing controller omits information from the report as permitted by subclause (4), the controller must include instead a notice:
- (a) stating that certain information has been omitted from the report, and
  - (b) summarising what the information is about, but without disclosing the information itself.

## **7 Reports by receiver**

- (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.

## **8 Supervision of controller**

(1) If:

- (a) it appears to the Court or to the Registrar that a controller of property of a co-operative has not faithfully performed, or is not faithfully performing, the controller's functions or has not observed, or is not observing, a requirement of:
  - (i) in the case of a receiver—the order by which, or the instrument under which, the receiver was appointed, or
  - (ii) otherwise—an instrument under which the controller entered into possession, or took control, of that property, or
  - (iii) in any case—the Court, or
  - (iv) in any case—this Act, the regulations or rules of court, or
- (b) a person complains to the Court or to the Registrar about an act or omission of a controller of property of a co-operative in connection with performing or exercising any of the controller's functions and powers, 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 a controller of property of a co-operative and the Court may order the controller 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:

- (a) require a controller of property of a co-operative to answer questions about the performance or exercise of any of the controller's functions and powers as controller, or

- (b) examine a person about the performance or exercise by such a controller of any of the controller's functions and powers as controller, or
- (c) direct an investigation to be made of such a controller's books.

### **9 Controller may apply to Court**

- (1) A controller of property of a co-operative may apply to the Court for directions in relation to any matter arising in connection with the performance or exercise of any of the controller's functions and powers as controller.
- (2) In the case of a receiver of property of a co-operative, subclause (1) applies only if the receiver was appointed under a power contained in an instrument.

### **10 Power of Court to fix receiver's remuneration**

- (1) The Court may 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 a 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.
- (3) The power conferred by subclause (2) (c) must not 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 vary or amend an order under this clause.
- (5) An order under this clause may be made, varied or amended on the application of:
  - (a) a liquidator of the co-operative, or
  - (b) an administrator of the co-operative, or
  - (c) an administrator of a deed of arrangement executed by the co-operative, or

(d) the Registrar.

(6) An order under this clause may be varied or amended on the application of the receiver concerned.

(7) An order under this clause may be made, varied or amended only as provided in subclauses (5) and (6).

#### **11 Controller has qualified privilege in certain cases**

A controller of property of a co-operative has qualified privilege in respect of:

(a) a matter contained in a report that the controller lodges under clause 6A or 7, or

(b) a comment that the controller makes under clause 14 (2) (c).

#### **12 Notification of matters relating to controller**

(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) A person who appoints another person to enter into possession, or take control, of property of a co-operative (whether or not as agent for the co-operative) for the purpose of enforcing a charge otherwise than as receiver of that property must:

(a) within 7 days after making the appointment, lodge notice of the appointment, and

(b) within 21 days after making the appointment, cause notice of the appointment to be published in the Gazette.

(3) A person who enters into possession, or takes control, as mentioned in subclause (2) must:

(a) within 7 days after so entering into possession or taking control, lodge notice that the person has done so, and

(b) within 21 days after so entering into possession or taking control, cause to be published in the Gazette notice that the person has done so,

unless another person:



- (c) appointed the first-mentioned person so to enter into possession or take control, and
  - (d) complies with subclause (2) in relation to the appointment.
- (4) Within 14 days after becoming a controller of property of a co-operative, a person must lodge notice in the prescribed form of the address of the person's office.
- (5) A controller of property of a co-operative must, within 14 days after a change in the situation of the controller's office, lodge notice in the form approved by the Registrar of the change.
- (6) A person who ceases to be a controller of property of a co-operative must:
- (a) within 7 days after so ceasing, lodge notice that the person has so ceased, and
  - (b) within 21 days after so ceasing, cause notice that the person has so ceased to be published in the Gazette.

### **13 Statement that receiver appointed or other controller acting**

- (1) Where a receiver of property (whether within or outside this State or within or outside Australia) of a co-operative has been appointed, the co-operative must set out, in every public document, and in every eligible negotiable instrument, 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.
- (2) Where there is a controller (other than a receiver) of property (whether within Australia or elsewhere) of a co-operative, the co-operative must set out, in every public document, and in every eligible negotiable instrument, of the co-operative, after the co-operative's name where it first appears, a statement that a controller is acting.

### **14 Officers to report to controller about co-operative's affairs**

- (1) In this clause:

**reporting officer**, in relation to a co-operative in respect of property of which a person is controller, means a person who was:

- (a) in the case of a co-operative other than a foreign co-operative—a 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 control day.
- (2) Where a person becomes a controller of property of a co-operative:
- (a) the person must serve on the co-operative as soon as practicable notice that the

person is a controller of property of the co-operative, and

(b) within 14 days after the co-operative receives the notice, the reporting officers must make out and submit to the person a report in the prescribed form about the affairs of the co-operative as at the control day, and

(c) the person must, within one month after receipt of the report:

(i) lodge a copy of the report and a notice setting out any comments the person sees fit to make relating to the report or, if the person 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 person became a controller of the property:

(A) because of an appointment as receiver of the property that was made by or on behalf of the holder of debentures of the co-operative, or

(B) by entering into possession, or taking control, of the property for the purpose of enforcing a charge securing such debentures,

and there are trustees for the holders of those debentures—send to those trustees a copy of the report and a copy of the notice lodged under subparagraph (i).

(3) Where notice has been served on a co-operative under subclause (2) (a), the reporting officers may apply to the controller or to the Court to extend the period within which the report is to be submitted and:

(a) if application is made to the controller—if the receiver believes that there are special reasons for so doing, the controller 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—if 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 controller 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.

(6) Subclauses (2), (3) and (4) do not apply in a case where a person becomes a controller of property of a co-operative:

- (a) to act with an existing controller of property of the co-operative, or
  - (b) in place of a controller of such property who has died or ceased to be a controller of such property.
- (7) However, if subclause (2) applies in a case where a controller of property of a co-operative dies, or ceases to be a controller of property of the co-operative, before subclause (2) is fully complied with, then:
- (a) the references in subclause (2) (b) and (c) to the person, and
  - (b) the references in subclauses (3) and (4) to the controller,
- include references to the controller's successor and to any continuing controller.
- (8) Where a co-operative is being wound up, this clause (including subclause (7)) and clause 15 apply even if the controller and the liquidator are the same person, but with any necessary modifications arising from that fact.

#### **15 Controller may require reports**

- (1) A controller 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 form approved by the Registrar, and submit to the controller, 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 control day—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 control day and are, in the opinion of the controller, capable of giving the information required,
  - (d) persons who are, or have been within one year before the control day, officers of, or employed by, a co-operative that is, or within that year was, an officer of the co-operative.
- (2) Without limiting the generality of subclause (1), a notice under that subclause may specify the information that the controller requires as to affairs of the co-operative by reference to information that this Act requires 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 controller's successor) out of the controller'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 controller (or the controller's successor) considers reasonable.

- (4) A person must comply with a requirement made under subclause (1).
- (5) A reference in this clause to the controller's successor includes a reference to a continuing controller.

## **16 Controller may inspect books**

A controller of property of a co-operative is entitled to inspect at any reasonable time any books of the co-operative that relate to that property and a person must not fail to allow the controller to inspect such books at such a time.

## **17 Lodging controller's financial statements**

- (1) A controller of property of a co-operative must lodge a financial statement:
  - (a) within one month after the end of:
    - (i) 6 months, or such shorter period as the controller determines, after the day when the controller became a controller of property of the co-operative, and
    - (ii) each subsequent period of 6 months throughout which the controller is a controller of property of the co-operative, and
  - (b) within one month after the controller ceases to be a controller of property of the co-operative.
- (2) A financial statement must be in the form approved by the Registrar and show:
  - (a) the controller's receipts and payments during:
    - (i) in the case of a financial statement under subclause (1) (a)—the 6 months or shorter period, as the case requires, or
    - (ii) in the case of a financial statement under subclause (1) (b)—the period beginning at the end of the period to which the last financial statement related, or on the control day, as the case requires, and ending on the day when the controller so ceased, and
  - (b) except in the case of a financial statement lodged under subclause (1) (a) (i)—the respective aggregates of the controller's receipts and payments since the control day, and
  - (c) in the case of:
    - (i) a receiver appointed under a power contained in an instrument, or

(ii) anyone else who is in possession, or has control, of property of the co-operative for the purpose of enforcing a charge,

the following:

(iii) the amount (if any) owing under that instrument or charge:

(A) in the case of a financial statement lodged under subclause (1) (a) (i)—at the end of the control day and at the end of the period to which the financial statement relates, or

(B) otherwise—at the end of the period to which the financial statement relates,

(iv) the controller's estimate of the total value, at the end of the period to which the financial statement relates, of the property of the co-operative that is subject to the instrument or charge.

- (3) 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 financial statements lodged in accordance with subclause (1) to be audited by a registered company auditor appointed by the Registrar and, for the purpose of the audit, the controller must furnish the auditor with such books and information as the auditor requires.
- (4) Where the Registrar causes the financial statements 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.
- (5) The costs of an audit under subclause (3) 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 taken to be a debt incurred by the controller as mentioned in clause 4 (1) and, where such an order is made, the controller is liable accordingly.
- (6) A person must comply with a requirement made under this clause.

## **18 Payment of certain debts, out of property subject to floating charge, in priority to claims under charge**

(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 556 of the Corporations Act (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 Act (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 Act (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 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 Act (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.

### **19 Enforcement of controller's duty to make returns**

- (1) If a receiver of property of a co-operative:
- (a) who has made default in making or lodging any return, financial statement 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 controller, by any member or creditor of the co-operative or trustee for debenture holders, of a notice requiring the controller to do so, or
  - (b) who has become a controller of property of the co-operative otherwise than by being appointed a receiver of such property by a court and who has, after being required at any time by the liquidator of the co-operative so to do, failed to render proper financial statements of, and to vouch, the controller'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 controller 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.

### **19A Court may remove controller for misconduct**

Where, on the application of a co-operative, the Court is satisfied that a controller of property of the co-operative has been guilty of misconduct in connection with performing or exercising any of the controller's functions and powers, the Court may order that, on and after a specified day, the controller cease to act as receiver or give up possession or control, as the case requires, of property of the co-operative.

### **19B Court may remove redundant controller**

- (1) The Court may order that, on and after a specified day, a controller of property of a co-operative:
  - (a) cease to act as receiver, or give up possession or control, as the case requires, of property of the co-operative, or
  - (b) act as receiver, or continue in possession or control, as the case requires, only of specified property of the co-operative.
- (2) However, the Court may only make an order under subclause (1) if satisfied that the objectives for which the controller was appointed, or entered into possession or took control of property of the co-operative, as the case requires, have been achieved, so far as is reasonably practicable, except in relation to any property specified in the order under subclause (1) (b).
- (3) For the purposes of subclause (2), the Court must have regard to:
  - (a) the co-operative's interests, and
  - (b) the interests of the holder of the charge that the controller is enforcing, and
  - (c) the interests of the co-operative's other creditors, and
  - (d) any other relevant matter.
- (4) The Court may only make an order under subclause (1) on the application of a liquidator appointed for the purposes of winding up the co-operative in insolvency.
- (5) An order under subclause (1) may also prohibit the holder of the charge from doing any or all of the following, except with the leave of the Court:
  - (a) appointing a person as receiver of property of the co-operative under a power contained in an instrument relating to the charge,
  - (b) entering into possession, or taking control, of such property for the purpose of enforcing the charge,
  - (c) appointing a person so to enter into possession or take control (whether as agent for the chargee or for the co-operative).

### **19C Effect of clauses 19A and 19B**

- (1) Except as expressly provided in clause 19A or 19B, an order under that clause does not affect a charge on property of a co-operative.
- (2) Nothing in clause 19A or 19B limits any other power of the Court to remove, or otherwise deal with, a controller of property of a co-operative (for example, the



Court's powers under clause 8).

## **20 Offence**

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**

(Section 414)

### **Part 1 Members**

#### **1 Term of office**

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.

#### **2 Deputies**

- (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.

#### **3 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, 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 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 that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

#### **4 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

#### **5 Disclosure of pecuniary interests**

- (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.

#### **6 Allowances**

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

## **7 Effect of certain other Acts**

- (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
  - (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.

## **8 Proof of certain matters not required**

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**

### **9 General procedure**

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.

### **10 Quorum**

The quorum for a meeting of the Council is 5 members.

### **11 Presiding member**

- (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.

## **12 Voting**

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.

## **13 Transaction of business outside meetings or by telephone etc**

- (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.

## **14 Committees of Council**

- (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.

## 15 Minutes

The Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

## 16 First meeting

The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

# Schedule 6 Savings, transitional and other provisions

(Section 444)

## Part 1 General

### 1 Definitions

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.

### 2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Co-operatives Amendment Act 1995*

*Co-operatives Amendment Act 1997*

*Statute Law (Miscellaneous Provisions) Act (No 2) 1997* (Schedule 1.3 and 1.4 only)

*Co-operatives Legislation Amendment Act 2001* (to the extent that it amends this Act)

*Statute Law (Miscellaneous Provisions) Act (No 2) 2010* (to the extent it amends 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 the Act concerned 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.

## **Part 2 Provisions relating to the 1923 Act**

### **3 General savings**

- (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.

### **3A Societies wound up or dissolved under the 1923 Act**

A society wound up, dissolved or struck off the register under the 1923 Act (other than a society exempt from clause 4) is taken to have been wound up, dissolved or struck off the register under this Act.

### **4 Certain co-operative societies become co-operatives under this Act**

- (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.

## 5 Property etc of transferred co-operatives

(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,
- (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.

## **6 1923 Act ceases to apply to transferred co-operatives**

- (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.

## **7 Primary objects/primary activities**

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.

## **8 Registration of charges**

- (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.

## **9 References to societies registered under 1923 Act**

- (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.
- (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.

## **10 Loans to directors**

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.

## **11 Active membership provisions**

- (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.

## **12 Dissolution of Advisory Council**

The Advisory Council established under the 1923 Act is dissolved.

## **13 Composition of the board—continuation of approvals**

- (1) This clause applies to a co-operative in respect of which an approval of the Advisory Council or an order of the Minister under section 84 (7) of the 1923 Act was in force immediately before the commencement of this clause.
- (2) If the composition of the board of a co-operative does not comply with section 206 (3) as a consequence of the approval or order, that subsection does not apply in respect of the co-operative.
- (3) While this clause operates in respect of a co-operative:
  - (a) a majority of its directors must be active members of the co-operative, and
  - (b) a meeting of the board of the co-operative is not competent to transact any business of the board unless a majority of the directors present at the meeting are active members of the co-operative.
- (4) The Minister may, by notice in writing to a co-operative, revoke the application of this clause to the co-operative, in which case this clause ceases to apply to the co-operative.
- (5) Section 206 (4) and (5) apply for the purposes of this clause as well as for the

purposes of section 206.

### **Part 3 Provisions consequent on the [Co-operatives Amendment Act 1995](#)**

#### **14 Convening of general meeting on requisition**

The amendment to section 202 made by the [Co-operatives Amendment Act 1995](#) does not apply in respect of a requisition for a general meeting served on a co-operative before the commencement of that amendment.

#### **15 Vacation in office of director**

The amendment to section 218 made by the [Co-operatives Amendment Act 1995](#) does not apply in respect of a notice in writing of a director's intention to resign office given by the director to the board of the co-operative before the commencement of that amendment.

#### **16 Operation of amendment to [Corporations Law](#)**

The amendment to section 229 made by the [Co-operatives Amendment Act 1995](#) is taken to have commenced immediately before the commencement of Part 5.7B of the [Corporations Law](#).

#### **17 Official management**

- (1) Section 332 of this Act (as in force immediately before its replacement by the [Co-operatives Amendment Act 1995](#)) continues to apply to and in respect of the official management of a co-operative under Part 5.3 of the [Corporations Law](#) that commenced before the replacement of that section.
- (2) A reference in this Act to an administrator, or to administration, under Part 5.3A of the [Corporations Law](#) includes a reference to an official manager or deputy official manager, or to official management, under Part 5.3 of that Law.

### **Part 4 Provisions consequent on [Co-operatives Amendment Act 1997](#)**

#### **18 Saving of registration of certain foreign co-operatives**

A foreign co-operative registered under Division 3 of Part 2 before the commencement of this clause is taken to be registered as a foreign co-operative under Division 2 of Part 13A.

#### **19 Saving of rules of certain foreign co-operatives**

An exemption granted to a foreign co-operative by the Registrar pursuant to clause 7 (2) (a) of the [Co-operatives \(General\) Regulation 1993](#) and in force immediately before the commencement of this clause is taken to be valid for a period of 2 years after that commencement.

## **20 Pending applications for registration as co-operatives**

- (1) Part 2 as in force immediately before the commencement of this clause continues to apply to an application for registration of a co-operative received by the Registrar before that commencement.
- (2) On registration of a co-operative to which this clause applies, the co-operative is taken to be a co-operative registered under Part 2.

## **21 Pending amalgamations**

- (1) Division 1 of Part 12 as in force immediately before the commencement of this clause continues to apply to an application for amalgamation made by 2 or more co-operatives before the commencement of this clause.
- (2) On registration of an amalgamated co-operative under this clause, the co-operative is taken to be a merged co-operative registered under Division 1 of Part 12.

## **22 Pending transfers of engagements**

- (1) Division 2 of Part 12 as in force immediately before the commencement of this clause continues to apply to:
  - (a) a transfer of engagements being made by one co-operative to another co-operative, or
  - (b) a direction given by the Registrar to a co-operative to transfer its engagements to another co-operative,before the commencement of this clause.
- (2) On completion, any such transfer of engagements is taken to have been made under Division 1 of Part 12.

## **23 Rules of existing co-operatives to conform with Act and regulations**

- (1) A co-operative that was registered under this Act immediately before the commencement of this clause must bring its rules into conformity with this Act and the regulations:
  - (a) within 4 years after the commencement of this clause, or
  - (b) within such further period as may be approved by the Registrar in respect of a particular co-operative or co-operatives of a particular class.
- (2) The rules of a co-operative to which this clause applies are taken to be valid until:
  - (a) the co-operative complies with subclause (1), or
  - (b) the expiry of the relevant period under subclause (1).

- (2A) The rules of a co-operative to which this clause applies are taken to have been valid from the expiry of the relevant period under subclause (1), as it was originally enacted, until:
- (a) the co-operative complies with subclause (1), or
  - (b) the expiry of the relevant period in subclause (1) as amended by the *Co-operatives Legislation Amendment Act 2001*,
- whichever occurs first.
- (3) If there is any inconsistency between a provision of this Act or the regulations and the rules of the co-operative as to the procedure for alteration of the rules of the co-operative, the provisions of this Act and the regulations prevail.

#### **24 Modification of certain rules**

- (1) This clause applies if, in the opinion of the Registrar, the rules of a co-operative registered under this Act immediately before the commencement of this clause should be altered to achieve conformity with any requirement of this Act or the regulations.
- (2) The Registrar may, by instrument served on a co-operative to which this clause applies, require it within a period specified in the instrument to alter its rules:
  - (a) in a manner specified in the instrument, or
  - (b) in a manner approved by the Registrar.
- (3) If, within the period specified in the instrument, the co-operative fails to alter its rules as required by the instrument, the Registrar may, by notation on the registered copy of the rules, alter the rules.
- (4) The Registrar must give written notice to a co-operative of any alteration of its rules made by the Registrar under this clause.
- (5) Any alteration made by the Registrar to the rules under this clause is as valid and effectual as an alteration made and registered under Part 5.

#### **25 Registration of special resolutions**

- (1) Sections 113 and 192 as in force immediately before the commencement of this clause continue to apply in respect of a special resolution passed by a co-operative under Division 2 of Part 8 before that commencement.
- (2) Any such resolution is taken to be a resolution registered under Division 2 of Part 8.

#### **26 Preservation of rights of members of non-trading co-operatives in shares issued at**

**premium**

A member of a non-trading co-operative who, immediately before the commencement of this clause, held shares issued at a premium in the co-operative retains all rights to a return of premium in relation to the shares that the member held immediately before that commencement.

**27 Exemptions relating to use of word “co-operative”**

An exemption granted to a co-operative under section 260 (3) (e) that is in force immediately before the repeal of that provision by the *Co-operatives Amendment Act 1997* is taken to be an exemption granted under section 255 (5) (g).

**28 Authentication of documents and proceedings**

The authentication of a document or proceeding in accordance with section 47 as in force immediately before the commencement of this clause is taken to be a valid authentication for the purposes of this Act after that commencement.

**29 Disputes involving members**

Division 4 of Part 4 as in force immediately before the commencement of this clause continues to apply in respect of the resolution of a dispute referred to arbitration or to the Registrar in accordance with that Division before that commencement.

**30 Pending applications concerning rate of dividend**

- (1) Section 153 (1) and (2) as in force immediately before the commencement of this clause continues to apply to an application to the Minister for approval of the rate of a dividend made before that commencement.
- (2) An order made by the Minister in respect of an application to which this clause refers has effect despite any provision of this Act.

**31 Court may resolve transitional difficulties**

- (1) The Court may, on the application of an interested person, make such order as the Court thinks appropriate and necessary to give effect to this Act to remove a difficulty arising in applying a provision of this Act to a particular case because of the amendment of that or another provision of this Act by the *Co-operatives Amendment Act 1997*.
- (2) An order under this clause has effect despite anything in a provision of this Act or in a provision of this Act as in force immediately before the commencement of the *Co-operatives Amendment Act 1997*.

**31A Loans made by members to co-operative**

A loan made by a member to a co-operative before the commencement of section 268A,

and any other loan made in accordance with a proposal referred to in section 268 that was approved before that commencement, continues to be payable at the same rate of interest as that in relation to which it was made as if section 268A had not been enacted.

### **32 Transitional regulations**

- (1) If, on the commencement of this clause, regulations have not been made for or with respect to any matter that by this Act as amended by the *Co-operatives Amendment Act 1997* 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 as so amended, regulations may be made under clause 2 to provide that such of the regulations made under the *Co-operatives Act 1996* of Victoria as are identified in the regulations apply to co-operatives to which this Act applies with such modifications as are necessary and with such modifications (if any) as may be prescribed by the regulations.
- (2) Any regulation to which this clause applies expires 6 months after the date on which the regulation commences.

### **33 General saving**

- (1) If anything done or commenced under this Act before the commencement of this clause and still having effect or not completed immediately before that commencement could have been done or commenced under this Act as amended by the *Co-operatives Amendment Act 1997* if this Act as so amended had been in force when the thing was done or commenced:
  - (a) the thing continues to have effect, or
  - (b) the thing commenced may be completed,as if it had been done or commenced under this Act as so amended.
- (2) This clause is subject to any express provision of this Act on the matter.

## **Part 5 Provisions consequent on *Co-operatives Legislation Amendment Act 2001***

### **34 Disclosure statements**

The amendments made to section 17 by the *Co-operatives Legislation Amendment Act 2001* extend to a disclosure statement submitted before the commencement of the amendments.

### **35 Exclusive dealing**

The repeal of section 43 does not affect the validity of anything done, or of any refusal to do any act or thing, before the date of commencement of Schedule 1 [4] to the *Co-operatives Legislation Amendment Act 2001*.

### **36 Money due to expelled member of co-operative**

The amendment made to section 81 by the *Co-operatives Legislation Amendment Act 2001* does not apply in respect of any person expelled from a co-operative before the amendment took effect.

### **37 First annual general meeting**

The amendment made to section 198 by the *Co-operatives Legislation Amendment Act 2001* does not apply to a co-operative incorporated between 18 months and 19 months before the commencement of the amendment.

### **38 Minutes and certain resolutions**

- (1) The amendment made to section 203 by the *Co-operatives Legislation Amendment Act 2001* does not apply in respect of any meeting of a co-operative held before the amendment took effect.
- (2) The amendment made to section 210 by the *Co-operatives Legislation Amendment Act 2001* does not apply in respect of a resolution approved before the amendment took effect.

### **39 Qualifications of directors**

The amendment made to section 206 by the *Co-operatives Legislation Amendment Act 2001* extends to those persons holding office as directors of co-operatives before the amendment took effect.

### **40 Exemptions concerning composition of boards**

- (1) An exemption granted by an order under section 206A (Exemptions concerning composition of board) and in force immediately before the repeal of that section by the *Co-operatives Legislation Amendment Act 2001* continues in force for 5 years after the date of repeal of the section.
- (2) The exemption has the effect of exempting the co-operative from the operation of section 206 (3). However, the exemption has no effect on and after the date of registration of any rules of the co-operative that are consistent with the provisions of section 206 (3).

### **41 Annual reports**

The amendment made to section 252 by the *Co-operatives Legislation Amendment Act 2001* extends to the first annual report required to be prepared after the commencement of the amendments.

### **42 Validation**

The acceptance by a co-operative of any money on deposit between 1 December 1997

(the date of commencement of section 263A) and the date of commencement of the amendment to that section made by the *Co-operatives Legislation Amendment Act 2001* is validated, to the extent that the co-operative would have been authorised, if the amendment had been in force when the money was accepted, to accept money on deposit (within the meaning of the section as amended).

## **Part 6 Provisions consequent on Statute Law (Miscellaneous Provisions) Act (No 2) 2010**

### **43 Definitions**

(1) In this Part:

**amending Act** means the *Statute Law (Miscellaneous Provisions) Act (No 2) 2010*.

**Charges Register** means the Register of Co-operative Charges referred to in clause 18 of Schedule 3 (as in force before its repeal by the amending Act), and includes the information in the Register that is required to be kept during the transitional period under clause 48 of this Schedule.

**commencement time** means the time when Schedule 3 to this Act is repealed by the amending Act.

**creditor**, in relation to a charge, means the person who is the holder of the charge and, in the case of a charge constituted by the issue of a debenture or debentures, includes the trustee (if any) for the debenture holders.

**debtor**, in relation to a charge, means the person who has the debt or other liability that is secured by the charge.

**existing charge** means a charge created before the commencement time that was a registrable charge within the meaning of clause 1 of Schedule 3 (as in force before that time) when it was created.

**existing charges registration provisions** means the provisions of section 278 and Schedule 3 (as in force immediately before the commencement time).

**matter** includes act, omission, body, person and thing.

**PPS Act** means the *Personal Property Securities Act 2009* of the Commonwealth.

**PPS Register** means the Personal Property Securities Register established under the PPS Act.

**PPS Registrar** means the Registrar of Personal Property Securities under the PPS Act.

**pre-transitional period** means the period:

(a) commencing at the migration time (within the meaning of the PPS Act) or such



earlier time as may be prescribed by the regulations, and

(b) ending at the commencement time.

**transitional period** means the period of 7 years commencing at the commencement time.

- (2) Clause 22A (References to charges and fixed and floating charges) of Schedule 1 to the *Personal Property Securities (Commonwealth Powers) Act 2009* does not apply in relation to a reference in this Part or in a provision of the existing charges registration provisions continued in effect by this Part.

#### **44 Existing charges registration provisions cease to have effect at commencement time**

- (1) The existing charges registration provisions cease to have effect at the commencement time, except as otherwise provided by this Part.
- (2) If a provision of the existing charges registration provisions (the **primary provision**) is continued in effect by this Part:
- (a) any other provision of the existing charges registration provisions (a **related provision**) that is referred to in the primary provision is also continued in effect to the extent necessary for the purposes of the continued application of the primary provision, and
- (b) any power to make regulations in respect of a matter that is conferred by the primary provision or a related provision is taken to include a power for the matter to be prescribed by regulations made under this Act after the commencement time.
- (3) The regulations under this Act as in force immediately before the commencement time continue to apply for the purposes of a primary provision or related provision that confers a regulation-making power for a matter under the existing charges registration provisions until regulations provide otherwise.

#### **45 Provision of information to the Commonwealth and other persons**

- (1) The Registrar is specifically authorised to provide the Commonwealth, the PPS Registrar or any other officer of the Commonwealth with such information recorded in, or concerning the use of, the Charges Register as the Registrar considers appropriate in order to assist the Commonwealth in establishing the PPS Register.
- (2) Without limiting subclause (1), the Registrar is also specifically authorised to provide any of the following persons with such information recorded in the Charges Register as the Registrar considers appropriate in order to assist in verifying the accuracy of information recorded in the Charges Register for the purposes of data migration to the PPS Register:

- (a) any person who is (or was) recorded in the Charges Register as a debtor or creditor,
  - (b) any person acting on behalf of such a debtor or creditor (or former debtor or creditor),
  - (c) any other person engaged by the Registrar to assist, or who is otherwise involved in assisting, in the migration of data from the Charges Register to the PPS Register.
- (3) The Registrar may provide the information that the Registrar is authorised to provide under this clause in whatever form (including by means of electronic data or in a form approved for the purposes of the PPS Act) as the Registrar considers appropriate.
- (4) Subject to subclause (5), the provisions of this clause prevail to the extent of any inconsistency with the provisions of this or any other Act or statutory rule.
- (5) The provisions of this clause are in addition to, and do not derogate from, the provisions of section 9A of the *Fair Trading Act 1987*.

#### **46 Provisional registration functions**

- (1) The Registrar may refuse to exercise a provisional registration function during the pre-transitional period.
- (2) In this clause:
- provisional registration function** means any function conferred or imposed on the Registrar by or under clause 20 or 21 of Schedule 3 (as in force before the commencement time).

#### **47 Lodgment of certain documents not required during pre-transitional period**

Clause 13 (2) and (3) of Schedule 3 cease to apply during the pre-transitional period in respect of charges created during that period.

#### **48 Maintenance of Charges Register**

- (1) During the transitional period, the Registrar is to continue to keep, in the form of the Charges Register, the information contained in the Register immediately before the commencement time.
- (2) The Registrar may, whether before or during the transitional period, seek information from a person who is (or was) recorded in the Charges Register as a debtor or creditor in relation to a charge as to whether 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 the property charged or part of that property has been released from the charge.
- (3) The Registrar may require the information sought under subclause (2) to be provided

on or before a date specified by the Registrar.

- (4) The Registrar may treat a debt or other liability secured by a charge that is recorded in the Charges Register as having been paid or discharged if:
  - (a) the creditor does not provide information sought under subclause (2) on or before the date specified by the Registrar for the provision of the information, and
  - (b) the Registrar has given written notice to both the debtor and creditor of his or her intention to treat the debt or other liability as having been paid or discharged within 7 days of the notice being served.
- (5) The Registrar may amend the Charges Register:
  - (a) on the basis of information provided under this clause, and
  - (b) to omit information concerning a charge on the basis of subclause (4).
- (6) Clause 43 of Schedule 3 continues to apply during the transitional period in relation to an existing charge.

#### **49 Certificates of Charges Register**

- (1) Clause 42 of Schedule 3 continues to apply during the transitional period in relation to:
  - (a) a certificate issued under that clause before the commencement time, and
  - (b) an existing charge the particulars of which were entered in the Charges Register before the commencement time.
- (2) The regulations may make provision for or with respect to fees payable in relation to:
  - (a) certificates (or copies of certificates) issued under clause 42 of Schedule 3 (as continued in force by subclause (1)), and
  - (b) the provision of copies of documents during the transitional period relating to charges recorded in the Charges Register.

#### **50 Constructive notice based on lodgment of documents**

Section 40 (2) continues to apply in relation to a document lodged under Division 3 (Charges) of Part 10 before the commencement time.

#### **51 Inspection of charges documents**

A person's rights under section 413A (1) (b) and (c) in relation to documents kept by the Registrar relating to existing charges continue to be exercisable during the transitional period subject to the payment of any fees prescribed for the purposes of those paragraphs.

## **52 Certain charges void against liquidator or administrator**

- (1) Subject to this clause, if an existing charge is void under clause 27 or 28 of Schedule 3 immediately before the commencement time, Division 4 of Part 2 of Schedule 3 (other than clause 29) is taken to continue to apply in relation to the charge.
- (2) The Supreme Court may, on such terms and conditions as seem to the Court just and expedient, by order, declare an existing charge not to be, and never to have been, void under clause 27 or 28 of that Schedule, if:
  - (a) before the commencement time, the charge is void under clause 27 or 28, and
  - (b) an application:
    - (i) is, immediately before the commencement time, pending under clause 29 of Schedule 3 for an extension of the required period, and as at the commencement time, the Court had not made a decision in relation to the application, or
    - (ii) is made to the Court on or after the commencement time for an order under this clause, and
  - (c) the Court is satisfied of the matters set out in clause 29 of Schedule 3 as in force immediately before the commencement time.

## **53 Enforcement of existing charges**

- (1) Subject to Chapter 9 (Transitional provisions) of the PPS Act and subclause (2), existing charges continue on and from the commencement time to have the same priority as between each other as they would have had under this Act as in force immediately before the commencement time.
- (2) If an existing charge recorded in the Charges Register becomes a migrated security interest (within the meaning of the PPS Act), the date (if any) recorded in the PPS Register as the date on which the charge was originally registered is taken to be the date on which the charge was originally registered under this Act in the absence of evidence to the contrary.

## **54 Compensation not payable in respect of charges transitional matters**

- (1) Compensation is not payable by or on behalf of:
  - (a) the State or an authority of the State, or
  - (b) an officer, employee or agent of the State,for an act or omission that is a charges transitional matter or that arises (directly or indirectly) from a charges transitional matter.

(2) Subclause (1):

- (a) applies only in respect of acts done or omitted to be done in good faith, and
- (b) does not apply to acts or omissions that cause personal injury to a person or the death of a person.

(3) In this clause:

**charges transitional matter** means any of the following:

- (a) the provision of information to the Commonwealth, the PPS Registrar, any other officer of the Commonwealth or any other person for the purpose of assisting the Commonwealth in establishing the PPS Register or of verifying the accuracy of information recorded in the Charges Register,
- (b) the administration of this Part or the exercise of functions under this Part.

**compensation** includes damages and any other form of monetary compensation.

#### **55 Savings and transitional regulations consequent on enactment of Commonwealth Act**

The power conferred by clause 2 (1) to make regulations of a savings or transitional nature consequent on the enactment of the amending Act extends to the making of regulations of a savings or transitional nature consequent on the enactment of any of the following Commonwealth Acts to the extent that the enactment of the Commonwealth Act affects the operation of this Act:

- (a) the *Personal Property Securities Act 2009*,
- (b) the *Personal Property Securities (Corporations and Other Amendments) Act 2010*,
- (c) any other Commonwealth Act that amends the *Personal Property Securities Act 2009* or the *Corporations Act 2001*.

#### **Schedule 7 (Repealed)**